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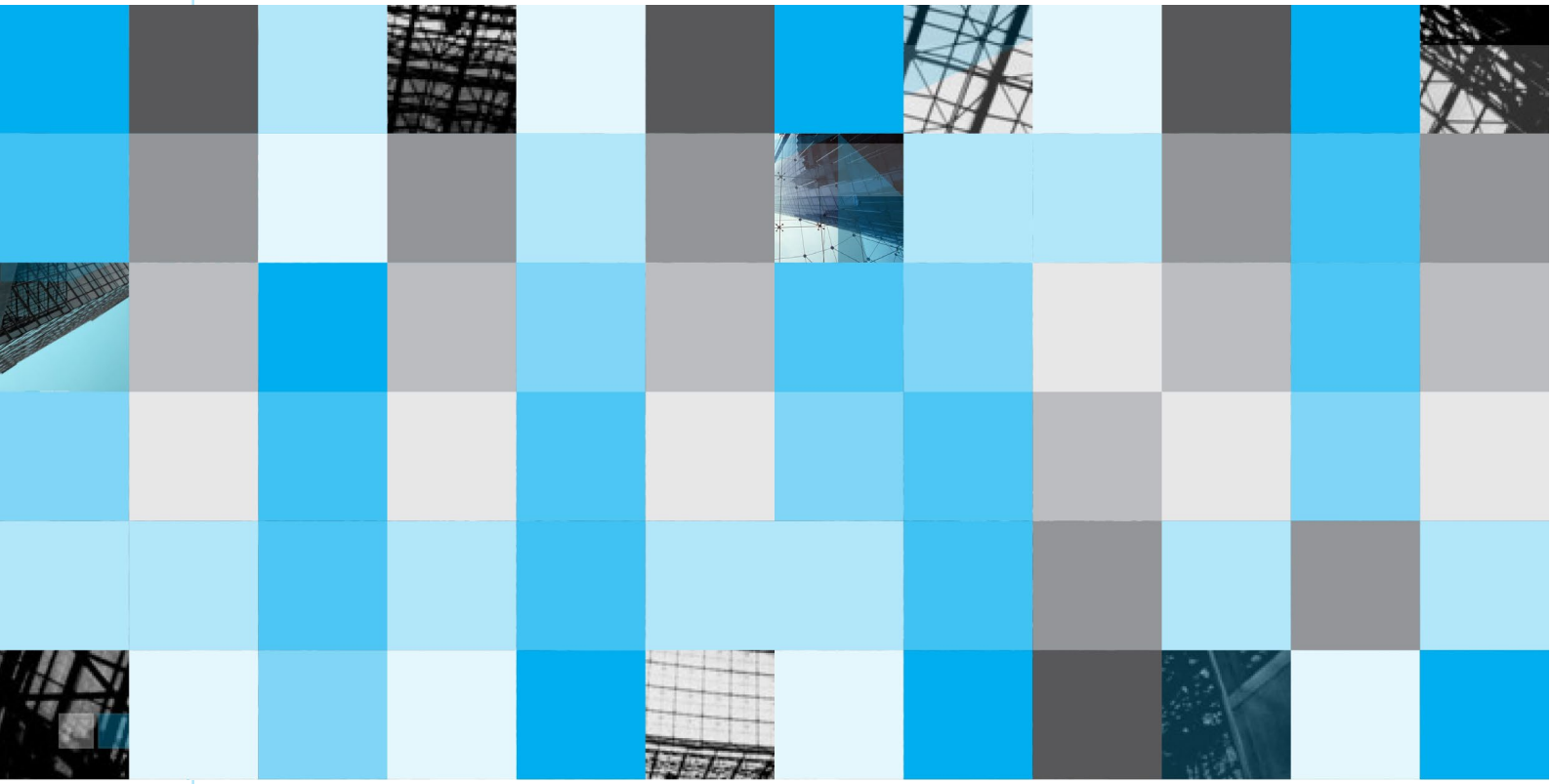

Lot 6, 21 Vincents Road, Kurrajong

Planning Proposal

SUTHERLAND & ASSOCIATES PLANNING

ABN 14 118 321 793 ACN 144 979 564

Planning Proposal

LOT 6, 21 VINCENTS ROAD, KURRAJONG

11 August 2023

Prepared under instructions from
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1.0 EXECUTIVE SUMMARY

This Planning Proposal has been prepared by Sutherland & Associates Planning Pty Ltd on behalf of Pamela Bennett in relation to the site at Lot 6 in DP 270827, 6/21 Vincents Road, Kurrajong.

On 15 November 2022, the Land and Environment Court of NSW approved DA0055/21 for the construction of a seniors housing development comprising 19 self-contained dwellings with attached garages, demolition of existing structures, earthworks, tree removal, extension of a private road, the conversion of an existing barn to a men's shed and the extension of a private cemetery at Lot 6 and Lot 1 in DP 270827 and Lot 300 in DP 1184237 and known as 6/21, 1/21 and 7 Vincents Road. The approved dwellings and extension to the private cemetery were located on Lot 6. The community title subdivision of the land which was proposed as part of this application was not approved.

The purpose of the Planning Proposal is to include an additional local provision in Part 6 of the Hawkesbury Local Environmental Plan 2012 (HLEP 2012) that will permit the community title subdivision of the approved seniors housing development and extension of a private cemetery on Lot 6.

The proposed amendment is required as the Land and Environment Court judgement for DA0055/21 (*Bennett v Hawkesbury City Council [2022] NSWLEC 1630*) found that the statutory provisions that apply to the site allow for the development of 19 seniors housing dwellings on the site (as the site benefits from existing use rights provisions) and an extension of a private cemetery yet the community title subdivision of the development is not permissible and cannot therefore be approved. This outcome is the result of a unique set of circumstances which includes a long history of seniors housing development on the site combined with an evolving planning regime.

It is clearly an unintended and undesirable outcome of the applicable statutory provisions to permit 19 seniors housing dwellings, an extension to a private cemetery and other ancillary works on the site yet not allow an appropriate ownership arrangement for the approved dwellings. In this regard it is noted:

- The subdivision of seniors housing developments has been consistently permitted by all iterations of the seniors housing State Environmental Planning Policy, despite the applicable subdivision provisions and minimum lot size standards in an LEP. There are no specific circumstances which would require a different approach being applied to the development on the site.
- As seniors housing is prohibited in the RU1 zone under the HLEP 2012, the 10-hectare minimum lot size has been developed to support a different range of permissible uses and therefore has no relationship with the specific accessibility and usability requirements of seniors housing. The 10-hectare standard should not therefore be applied to seniors housing. Smaller and more manageable lot sizes are required for seniors and people with a disability.
- There is no strategic basis to support any requirement for the 19 dwelling seniors housing development, and extension of the private cemetery, to remain in the ownership of a single entity.

Whilst the development can and will proceed without subdivision, the proposed amendment to permit the community title subdivision of the approved development has site-specific and strategic merit in that:

- The amendment will allow the community title subdivision of the seniors housing development so that each self-contained dwelling can be privately owned. Allowing private ownership increases the diversity of seniors or people with a disability that can occupy the dwellings. Allowing private ownership also provides greater certainty for future occupants than alternative ownership arrangements, such as complicated long-term lease or license arrangements which may be necessary to support the operation of the development under one owner. Alternative ownership arrangements are often complicated and

may not offer the same level of certainty for occupants around the length of tenure available for occupants.

- The amendment will allow the Bennett family private cemetery on Lot 6 to be owned and managed by the family.
- The amendment will enable Hawkesbury Council and the relevant authorities to directly manage, and apply rates and charges to, individual dwellings.
- The amendment will allow the community title subdivision of a seniors housing development, consistent with the historical and current provisions for seniors housing which have consistently permitted the subdivision of seniors housing developments. The minimum 10-hectare subdivision lot size for community title subdivision does not relate to the permitted seniors housing use of the land and has no relationship to the specific accessibility and usability requirements of seniors housing. A 10-hectare parcel of land is not accessible or manageable for most seniors or people with a disability.
- The amendment has strategic merit as no inconsistencies with relevant strategic policies will arise as a consequence of the proposal.
- The Planning Proposal only relates to the legal ownership of the 19 dwellings already approved for construction and will not result in any environmental impacts. The approval of the development application confirms the suitability of the site for the seniors housing dwellings and the extension of the private cemetery and the environmental capacity of the site to accommodate the dwellings.

The Planning Proposal is supported by the following documentation:

Appendix	Document	Consultant
A	Approved Architectural Plans	Environa Studio
B	Community title subdivision plan submitted with DA0055/21 and not approved	McKinlay Morgan & Associates Pty Ltd
C	Bushfire Assessment Report	Building Code and Bushfire Hazard Solutions Pty Ltd
D	Biodiversity Development Assessment Report	Kingfisher Urban Ecology and Wetlands
E	Preliminary Site Investigation Report	Martens Consulting Engineers
F	Detailed Site Investigation Report	Martens Consulting Engineers

The Planning Proposal has been prepared in accordance with section 3.33 of the Environmental Planning & Assessment Act 1979 (EP&A Act). As required by section 3.33 of the EP&A Act this Planning Proposal includes the following:

- a statement of the objectives or intended outcomes of the proposed instrument,
- an explanation of the provisions that are to be included in the proposed instrument,
- the justification for those objectives, outcomes and provision and the process for their implementation,
- if maps are to be adopted by the proposed instrument – a version of the maps containing sufficient detail to indicate the substantive effect of the proposed instrument, and
- details of the community consultation that is to be undertaken before consideration is given to the making of the proposed instrument.

The Planning Proposal has also been prepared having regard to the 'Local Environmental Plan Making Guideline – September 2022' developed by the NSW Department of Planning, Industry and Environment. The report addresses the Proposal's consistency with Greater Sydney Region Plan - A Metropolis of Three Cities, the Western City District Plan, the Hawkesbury Local Strategic Planning Statement and other relevant strategic plans. The Planning Proposal also assesses the consistency of the Planning Proposal against relevant State Environmental Planning Policies and Ministerial Directions.

2.0 SITE DESCRIPTION AND LOCATION

2.1 Site and Locality Description

The site is located within the suburb of Kurrajong which is within the Hawkesbury City Council Local Government Area. The site is located within 500 metres of the Kurrajong town centre and is approximately 10.5 kilometres from the centre of Richmond. The location of the site in relation to Kurrajong town centre is show in Figure 1.

Figure 1:

Location Plan identifying Lot 6: (Source: EPlanning Spatial Viewer NSW Planning Portal 2020)

The Planning Proposal relates to Lot 6 in DP 270827, 6/21 Vincents Road Kurrajong which is a development lot within the 19-lot community title subdivision of the existing Tallowood seniors housing development. An aerial view showing Lot 6, 21 Vincents Road is included as Figure 2.

The existing Tallowood seniors living development consists of 16, one and two storey dwellings, within a landscaped setting. The development is accessed from Vincents Road. Each dwelling has access to the community facility and community park. The letterboxes for each dwelling within Tallowood are located at the entrance to the development from Vincents Road. The waste storage area is located on the southern side of the entrance and is directly accessible from Vincents Road.

Lot 6 has an area of 5.389 hectares and is of an irregular shape. The site has a 182.585 metre frontage to Old Bells Line of Road and a 40.25 metre frontage to Vincents Road.

The majority of Lot 6 is vacant with several sheds adjoining the road and cul-de-sac that extends into Lot 6. A relatively level area of the site adjoining Old Bells Line of Road is used as a private cemetery which is accessed from Old Bells Line of Road. The land on the eastern side of the cemetery falls steeply to a cleared area with a moderate fall, to the north of the existing cul-de-sac turning head on Lot 1. The moderate fall continues to the eastern boundary of Lot 6. Two dams are located within the eastern portion of Lot 6, to the south of the properties at 22 and 24 Mason Lane.

Figure 2:

Aerial view of the site (Source: Six Maps, NSW Government Spatial Services 2022)

The Biodiversity Development Assessment Report prepared by Ecological Consultants Australia prepared to accompany DA0055/211 describes the vegetation on the site as follows:

> The site has been managed for agricultural and horticultural purposes (stone fruit orchards) since the 1800s. Native vegetation would have once covered the area although due to modification and disturbance, the site has lost many natural attributes. The site has been significantly altered and degraded from its natural state due to a long history of vegetation clearing, habitat fragmentation and on-going disturbance, via agricultural practices. A majority of vegetation on the site is regrowth or has been planted by the property owner. There is little to no remnant vegetation left on the property. Exotic species are dominant across the site and are preventing the recruitment or the original vegetation community. (Page 2)

The site is identified as bushfire prone land on the Hawkesbury City Council Bushfire Prone Land Map. Specifically, the site contains Category 1 and 3 Vegetation and their associated buffer zones.

The vegetation along the western boundary is identified as “significant vegetation” on the HLEP 2012 Terrestrial Biodiversity Map. A band of vegetation through the centre of Lot 6, is identified as “connectivity between significant vegetation’ on the HLEP 2012 Terrestrial Biodiversity Map.

The site is within the RU1 Primary Production zone pursuant to the HLEP 2012 and the site adjoins land zoned R2 Low Density Residential to the west and south-west. The site is not identified as a heritage item pursuant to the HLEP 2012 nor is it located within a heritage conservation area.

Photograph 1:

View along the roadway within Lot 1 to Lot 6

Photograph 2:

View to the north of the cleared area within Lot 6

Photograph 3:

View to the south from the cleared area within Lot 6

Photograph 4:

View to the south-west of the existing sheds on Lot 6, on the western side of the access road within Lot 1 with Vincents Road beyond

Photograph 5:

View showing part of Lot 6

Photograph 6:

View to the north-east to the dams at the on the eastern side of Lot 6

Photograph 7:

View from Old Bells Line of Road to the private cemetery and bus stop on the western side of Lot 6

Photograph 8:

Existing gravesite within the private cemetery on Lot 6

Photograph 9:

View of the site from 7 Vincents Road

Photograph 10:

Entry to Tallowood from Vincents Road (Source: Core Logic)

Photograph 11:

Community centre within the Tallowood development

Photograph 12:

Community park within the Tallowood development

Photograph 13:

Internal view of the community centre within the Tallowood development

Photograph 14:

Development within the existing Tallowood development

2.2 Adjoining Development

Northern Boundary

The northern boundary of Lot 6 adjoins five properties. These properties are zoned RU1 Primary Production.

A length of 85.855 metres of the northern boundary adjoins 13 Old Bells Line of Road. 13 Old Bells Line of Road has frontage to both Old Bells Line of Road and Mason Lane. This allotment is currently vacant.

The remainder of the northern boundary adjoins 22, 24, 26 and 30 Mason Lane. These allotments each have an area of approximately one acre. Each property is improved by a detached dwelling in a landscaped setting. The site of the proposed dwellings is closest to 22 Mason Lane. 24, 26 and 30 Mason Lane are located to the north of the eastern side of the site which is to remain undeveloped.

Photograph 15:

View to the north showing 22 Mason Lane (centre)

Southern Boundary

The southern boundary of Lot 6 adjoins lots within the community title subdivision of the Tallowood development

Photograph 16:

View to the adjoining dwellings within Tallowood on Lots 4 and 14 in DP 270827

3.1 Tallowood Seniors Housing Approval

Development Application M844/98 was approved on 15 June 1999 for the construction of aged/disability housing at 19 Old Bells Line of Road, Kurrajong (subsequently known as 1 and 21 Vincents Road, Kurrajong) under the provisions of State Environmental Planning Policy No. 5 – Housing for Older People of People with Disabilities (SEPP 5). The site of the approved development had an area of 7.8 hectares as shown in Figure 3.

Figure 3:

Aerial photograph showing the site of the approved development and existing lot boundaries

The consent approved 18 dwellings and a community building arranged around a circular, loop driveway on the southern portion of the site. The consent has been modified on five occasions with the most recent change to the layout of the dwellings approved under MA844/98C. An extract of the approved site plan is provided at Figure 4.

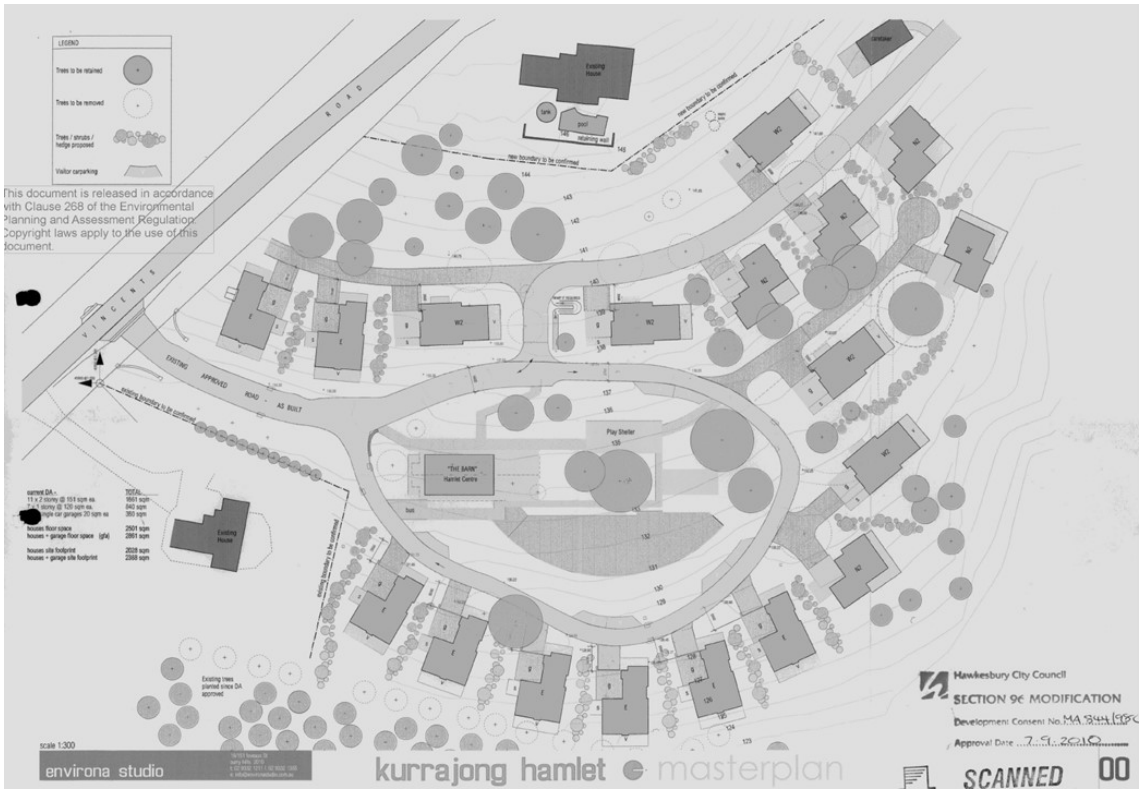

Figure 4:

Extract from MA844/98C approved on 7 September 2010

3.2 Existing Development at 21 Vincents Road

16 dwellings, internal roads, a private park and a community hall have been constructed on the site and the development is known as 'Tallowood'. The dwellings were mostly constructed from 2014-2018.

One of the dwellings approved by M844/98 and as amended by Modification Application M0884/098C on September 2010 was located on the subject site (Lot 6), however this dwelling has not yet been constructed. A second dwelling approved by M844/98 was on Lot 22 and has also not yet been constructed.

A private burial site was approved on the site under DA1106/04 on 6 January 2005. The location of the burial site was amended on 7 April 2008 under DA1106/04A to be near a burial site was approved on the site under DA0333/07. The approved plan showing the grave sites approved under 1106/04A shows eight grave sites.

3.3 Subdivision

The 19-lot community title subdivision of the Tallowood seniors living development was approved under development Application DA0014/12 on 28 September 2012 and modified under Modification Application DA0014/12A on 11 March 2013 (as shown in Figure 5).

These applications identified Lot 6 as a development lot for possible future development (despite a dwelling already having been approved on the site). This is shown on the approved subdivision plans and is recognised in Council's Assessment Report for the community title subdivision DA and modification applications.

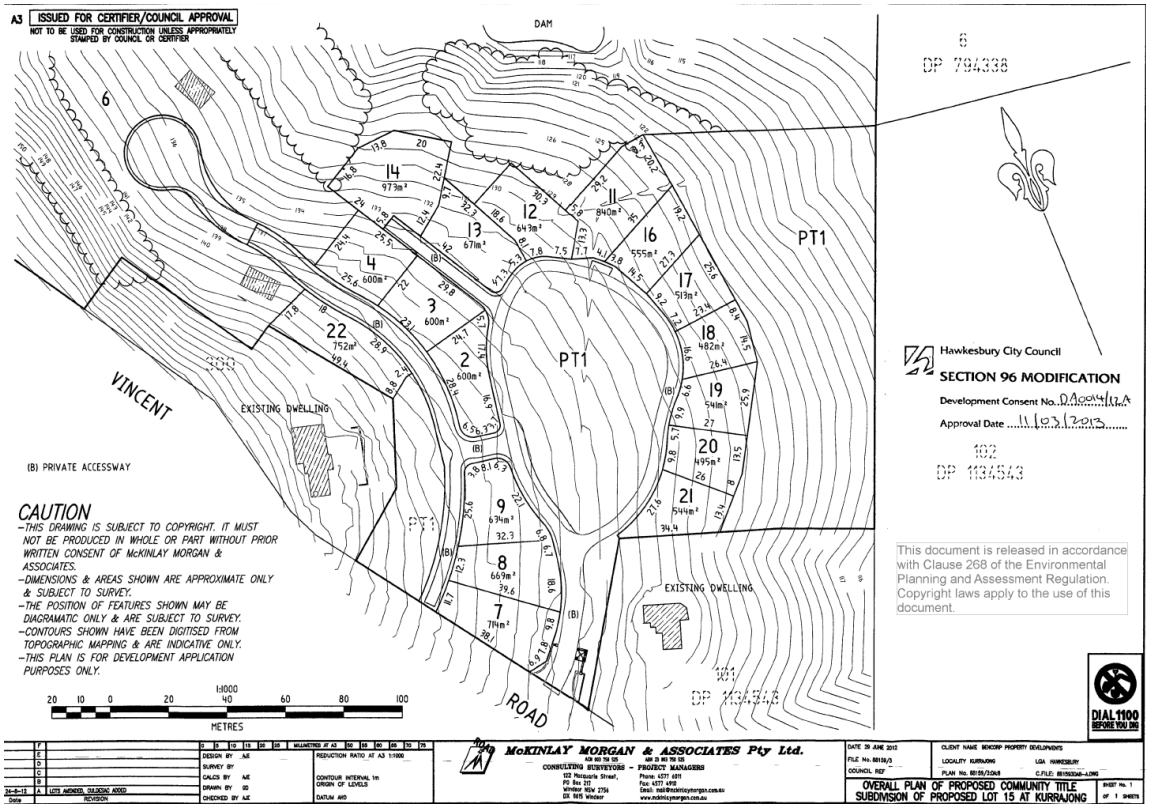

Figure 5:

Approved subdivision (DA0014/12A)

3.4 Changes to Permissibility

The permissibility of development on the site has changed since the seniors housing development application was approved on 15 June 1999. Key changes to the applicable planning controls, which have led to the reliance on existing use rights for the seniors housing development on Lot 6 are summarised as follows:

- On 15 June 1999 when the original consent was granted, seniors housing development was permissible development on the land pursuant to both Hawkesbury Local Environmental Plan 1989 (HLEP 1989) and SEPP 5. The original consent was granted pursuant to SEPP 5 largely because SEPP 5 permitted subdivision of seniors housing development with no minimum lot size pursuant to clause 18, whereas HLEP 1989 required a 10-hectare minimum lot size. Each of the proposed lots were less than 10 hectares.
- On 31 March 2004 SEPP HSPD commenced. Seniors housing continued to be permitted on the site under SEPP HSPD. Clause 21 of SEPP HSPD permitted the subdivision of seniors housing development that has been carried out under Chapter 3 of the SEPP.
- On 21 September 2012, HLEP 1989 was repealed by HLEP 2012. Under HLEP 2012 the site was zoned RU1 Primary Production and seniors housing became a prohibited use on the site. The minimum lot size for the site remained at 10 hectares under HELP 2012 and clause 4.6(6) specifically prevented development consent from being granted for a subdivision of land in Zone RU1 Primary Production if:

  (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

- Seniors housing continued to be permissible on the site pursuant to SEPP HSPD until 29 July 2020, when Housing for Seniors SEPP 2004 was amended by State Environmental Planning Policy (Housing for Seniors or People with a Disability) Amendment (Metropolitan Rural Areas Exemption) 2020. The amending instrument added cl 4B to SEPP HSPD. Cl 4B excluded the application of Housing for Seniors SEPP 2004 to land identified as within a 'metropolitan rural areas exclusion zone' on a map referred to in cl 4B. The site was within the 'metropolitan rural area exclusion zone' on the map and therefore SEPP HSPD no longer applied to the site.
- SEPP HSPD was replaced by State Environmental Planning Policy (Housing) 2021 (SEPP Housing) on 26 November 2021. Pursuant to s79 of SEPP Housing, seniors housing is not a permitted land use on the site because it is zoned RU1 Primary Production under HLEP 2012. Clause 90 of SEPP Housing permits the subdivision of seniors housing (except on land in zone B3 Commercial Core.

3.5 Recent Land and Environment Court Approval

A Development Application was lodged on 8 March 2021 for the construction of a seniors housing development and the extension of a private cemetery. The application included the construction of 19 self-contained dwellings with attached garages, demolition of existing structures, earthworks, tree removal, extension of a private road and the conversion of an existing barn to a maintenance shed, as well as a community title subdivision of land being Lot 6 and Lot 1 in DP 270827 and Lot 300 in DP 1184237, known as 6/21, 1/21 and 7 Vincents Road, Kurrajong (the site). The majority of the proposed works associated with the seniors housing development and cemetery were located on Lot 6, however an existing internal access road within Lot 1 in DP 270827 was to be utilised and extended to provide access to the proposed seniors housing development within Lot 6.

A Class 1 Appeal was filed with the Court on 24 November 2021 in response to Council's 'deemed refusal' of the application.

The issues in dispute related solely to the permissibility of the proposed development for both seniors housing and community title subdivision. All merit issues raised by the respondent were resolved prior to the commencement of the hearing. Importantly, there were no merit issues raised in the appeal regarding the proposed community title subdivision. No adverse social, economic or environmental impacts arising from the subdivision were identified.

On 15 November 2022 development consent was granted to DA0055/21 by the NSW Land and Environment Court for the construction of a seniors housing development comprising 19 self-contained dwellings with attached garages, demolition of existing structures, earthworks, tree removal, extension of a private road, the conversion of an existing barn to a men's shed and the extension of a private cemetery at Lot 6 and Lot 1 in DP 270827 and Lot 300 in DP 1184237 and known as 6/21, 1/21 and 7 Vincents Road, Kurrajong. Consent was not granted to the community title subdivision of the development.

The outcome of the appeal is summarised in Paragraph 34 of the judgement (*Bennett v Hawkesbury City Council [2022] NSELEC 1630*) as follows:

> I am satisfied that the use of Lot 6 for seniors housing is an 'existing use' within the meaning of s 4.65(b) of the EPA Act and that as such, in conformity with cIl 41 and 42 of the Regs, which are incorporated into HLEP 2012, it benefits from 'existing use' rights and may be enlarged or expanded

> as proposed. However, I have also determined that development consent cannot be granted for that aspect of the development which proposes the subdivision of Lot 6 by community title. This is so because, in my judgment, subdivision is not a use of land and, in any event, is not the 'enlargement, expansion' nor 'intensification' of the 'existing use' which is for seniors housing alone and therefore the incorporated provisions are not available and no question of possible derogation can arise. Further, whilst subdivision of land is permissible with development consent via cl 2.6 of HLEP 2012, consent cannot be granted in the present case because the proposed lot sizes are each in breach of the 10-ha minimum area requirement in cl 4.1AA of HLEP 2012 and cl 4.6(6) of HLEP 2012 prevents the granting of development consent for the subdivision pursuant to cl 4.6 of HLEP 2012 in those circumstances. In my opinion, the proposed subdivision is not, of itself, a use of land but is development which is independent of seniors housing development and cannot be subsumed into that development. Finally, subdivision was not part of the development approved by the original consent and for that additional reason, cannot qualify as an 'existing use'.

The approved architectural plans are included as Appendix A of this report. An extract of the approved site plan is included as Figure 6. The community title subdivision plan that formed part of the development application is included as Appendix B. A reduced version of the subdivision plan is included as Figure 7.

The development will proceed despite subdivision not being approved as part of DA0055/21. The owner of the site has commenced preparation of the necessary Construction Certificate, NBN, Sydney Water and Endeavour Energy applications to enable construction of the development to commence in 2023.

Figure 6:

Extract from Drawing 101 Revision Z prepared by Environa Studio

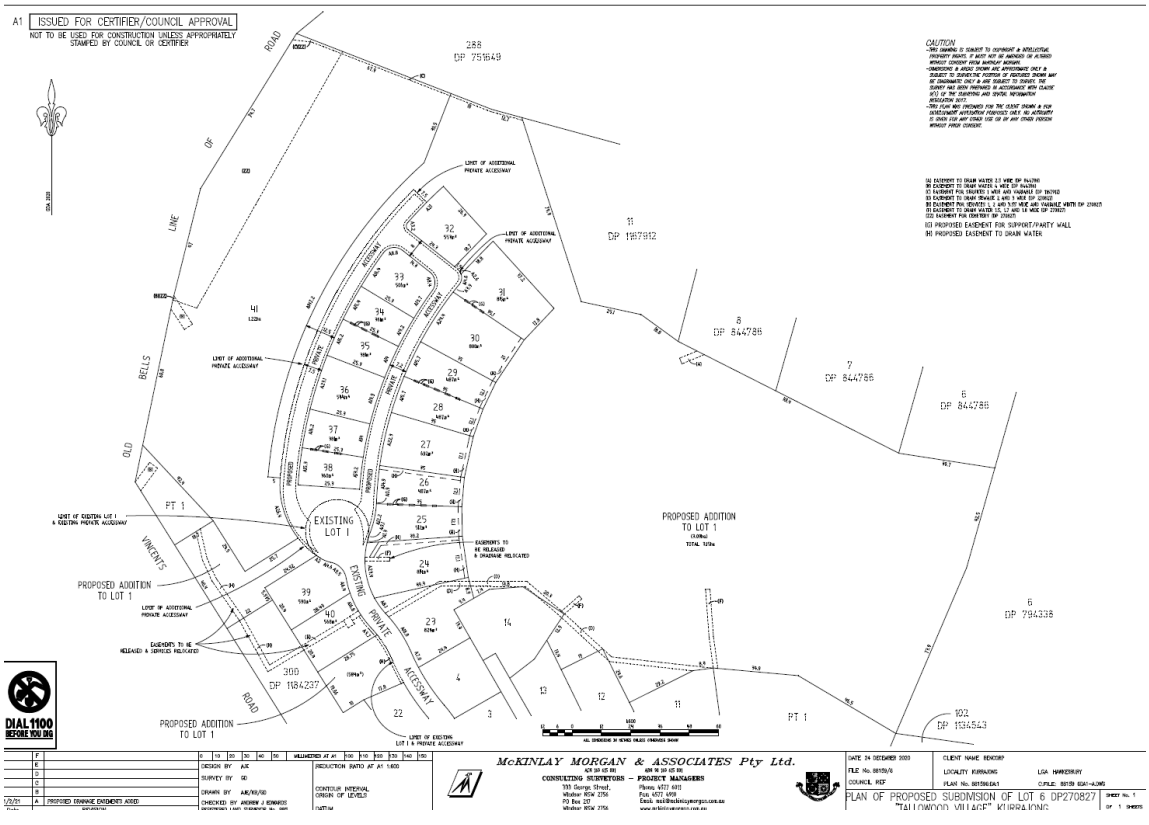

Figure 7:

Subdivision Plan submitted with the Development Application but not approved due to the permissibility of the subdivision

3.6 Pre-lodgement Discussions

A pre-lodgement meeting was held with Council's Strategic Planners and a representative of the Department of Planning and Environment (DPE) on 25 November 2022.

Draft wording for the proposed LEP amendment was sent to Council staff and the DPE on 30 November 2022 for review and advice. Amended wording was provided by Hawkesbury Council staff on 1 December 2022 for consideration. The amended wording was endorsed by the DPE on 1 December 2022. The suggested amended wording has been incorporated into the Planning Proposal with a minor change to ensure that the development consent relates to a seniors housing development and extension of the private cemetery yet the development consent can be granted prior to an Occupation Certificate being issued for the development.

4.1 Hawkesbury Local Environmental Plan 2012

The Hawkesbury Local Environmental Plan 2012 (HLEP 2012) applies to the site. Key provisions applying to the site that are relevant to the Planning Proposal are identified below.

4.1.1 Zoning and Permissibility

The site is zoned RU1 Primary Production pursuant to the HLEP 2012. An extract of the Land Zoning Map is included as Figure 8.

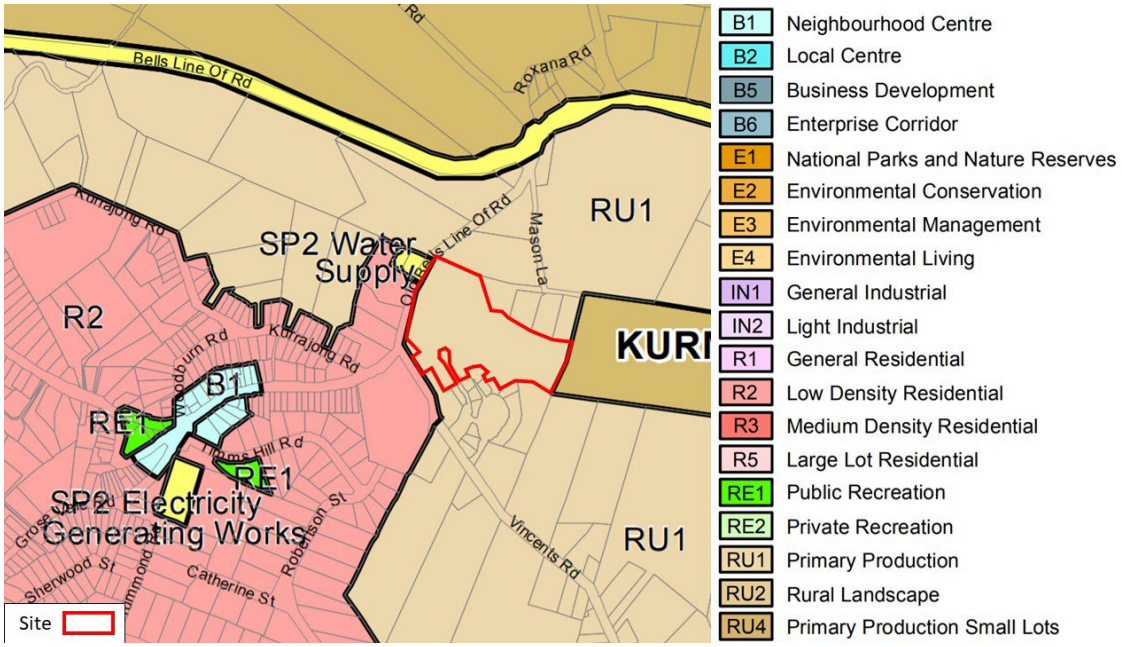

Figure 8:

Extract from the HLEP Land Zoning Map

The objectives of the RU1 Primary Production Zone are:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To encourage agricultural activities that do not rely on highly fertile land.
- To ensure that development occurs in a way that does not have a significant adverse effect on water catchments, including surface and groundwater quality and flows, land surface conditions and important ecosystems such as waterways.
- To promote the conservation and enhancement of local native vegetation including the habitat of threatened species, populations and

ecological communities by encouraging development to occur in areas already cleared of vegetation.

- To ensure that development retains or enhances existing landscape values including a distinctive agricultural component.
- To ensure that development does not detract from the existing rural character or create unreasonable demands for the provision or extension of public amenities and services.

4.1.2 Minimum Lot Size

In accordance with clause 4.1 'Minimum subdivision lot size', Clause 4.1AA 'Minimum subdivision lot size for community title schemes' and Clause 4.1A 'Minimum subdivision lot size for strata plan scheme in certain rural, residential and environmental protection zones' the size of any lot resulting from a subdivision of land is not to be less than the minimum size shown on the Lot Size Map in relation to that Land (other than any lot comprising association property within the meaning of the Community Land Development Act 2021 or any lot comprising association property within the meaning of the Community Land Development Act 2021). The minimum lot size shown for the land is 10 hectares. An extract of the Lot Size Map (based on the imagery available from the ePlanning Spatial Viewer) is included as Figure 9.

The extent to which the minimum lot size standard can be varied in certain zones (including the RU1 zone) is limited by clause 4.6(6) of the HLEP 2012 which provides:

> (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—
>
> (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
>
> (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

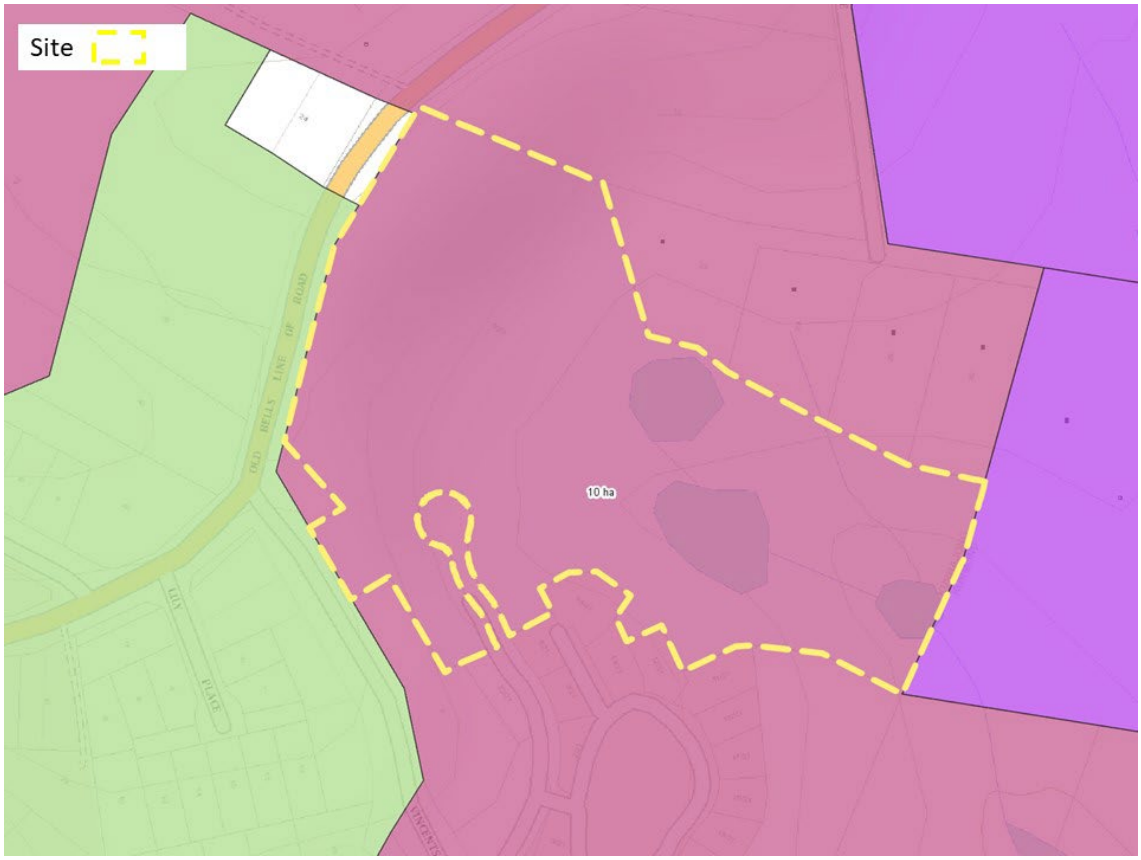

Figure 9:

Extract from the Hawkesbury Lot Size Map (Source: NSW ePlanning Spatial Viewer 2022)

5.0 PLANNING PROPOSAL

5.1 Overview

In accordance with section 3.33(2) of the Environmental Planning and Assessment Act 1979 (the EP&A Act) a planning proposal is to include the following:

> (a) a statement of the objectives or intended outcomes of the proposed instrument,
>
> (b) an explanation of the provisions that are to be included in the proposed instrument,
>
> (c) the justification for those objectives, outcomes and provisions and the process for their implementation (including whether the proposed instrument will give effect to the local strategic planning statement of the council of the area and will comply with relevant directions under section 9.1),
>
> (d) if maps are to be adopted by the proposed instrument, such as maps for proposed land use zones; heritage areas; flood prone land—a version of the maps containing sufficient detail to indicate the substantive effect of the proposed instrument,
>
> (e) details of the community consultation that is to be undertaken before consideration is given to the making of the proposed instrument.

Section 3.33(3) of the Act allows the Secretary to issue requirements with respect to the preparation of a Planning Proposal.

This section of the report addresses and responds to the matters for consideration detailed within the Local Environmental Plan Making Guideline (NSW Department of Planning, Industry and Environment, September 2022).

5.2 Part 1: Objectives or Intended Outcomes

Objective

To introduce a site-specific additional local provision in Part 6 of the HLEP 2012 to allow the community title subdivision of an approved seniors housing development and extension of a private cemetery at 6/21 Vincents Road, Kurrajong.

Intended Outcomes

The intended outcomes for the Planning Proposal are:

- To allow for the community title subdivision of the seniors housing development so that each self-contained dwelling can be privately owned. Allowing private ownership of each dwelling increases the diversity of seniors or people with a disability that can occupy the dwellings by allowing owner occupiers (down sizers and other seniors wanting to stay in their local community) and investors to purchase the dwellings instead of just providing dwellings available for rent. Allowing private ownership also provides greater certainty for future occupants than alternative ownership arrangements such as complicated long-term lease or license arrangements which may be necessary to support the operation of the

development under one owner. Alternative ownership arrangements are often complicated and may not offer the same level of certainty for occupants around the length of tenure available for occupants.

- To allow for the community title subdivision of a seniors housing development, consistent with the provisions of all iterations of the seniors housing State Environmental Planning Policy that have permitted the subdivision of seniors housing developments. There are no specific circumstances which would require a different approach being applied to the development on the site.
- To allow the Bennett family private cemetery on Lot 6 to be owned and managed by the family.
- To enable Hawkesbury City Council and the relevant authorities to directly manage and apply rates and charges to individual dwellings.

5.3 Part 2: Explanation of Provisions

5.3.1 Proposed Amendment to Hawkesbury Local Environmental Plan 2012

The Planning Proposal seeks to amend the HLEP 2012 to introduce a site-specific provision in Part 6 of the LEP that would permit the community title subdivision of Lot 6 in DP 270827. Development consent must only be granted to the community title subdivision if the subdivision relates to a seniors housing development and extension of the private cemetery, the number of residential lots created by the subdivision does not exceed 19 and each lot created has a lot size of 360 square metres or greater.

It is important that the clause specifically relates to seniors housing, as an open-ended clause enabling community title subdivision on the site would allow other types or residential development on the site (that are permitted with consent under the HLEP 2012) to be subdivided. This would expand the scope of Planning Proposal beyond that which is intended and require further consideration of the site and strategic merit of the proposal.

By linking the permissibility of the community title subdivision to the seniors housing development, the clause will have no effect if the consent lapses. As such, it is not necessary to include a 'sunset' clause or time limit the clause.

5.3.2 Suggested LEP Wording

Whilst the wording of the LEP amendment will be finalised by Parliamentary Counsel, given the unique circumstances and specific complexities associated with this proposal, the following wording is provided in accordance with the Gateway Determination to demonstrate how the amendment could be drafted to achieve the intended outcomes:

Clause 6.16 Development of land at 6/21 Vincents Road, Kurrajong

1. This clause applies to Lot 6 in DP 270827, 6/21 Vincents Road, Kurrajong

2. Despite any other provision of this Plan, consent may be granted under this clause to a community title subdivision of Lot 6 in DP 270827 subject to subclause (3).

3. Development consent must not be granted for the purposes of a community title subdivision on land to which this clause applies, unless the community title subdivision:

a. is for the subdivision of development for the purposes of seniors housing development and extension of private cemetery following the completion of the senior housing development; and

b. the number of residential lots created by the subdivision does not exceed 19, and

c. each lot created has a lot size of 360m2 or greater, and

d. enables amalgamation of the remainder of the land with Lot1 DP 270827 to create an association property for the entire Seniors' Living development within the meaning of the Community Land Development Act 2021.

4. The community title subdivision or expansion of the existing private cemetery protects and enhances the biodiversity values of the site, and in particular any Critically Engaged Ecological Communities.

Further advice is being sought in relation to subclause (4) to clarify whether a community title subdivision DA that does not involve any works and relates to a development approved under a separate DA for which a BDAR was prepared, can and should require the biodiversity values of the site to be enhanced. The reference to the expansion of the private cemetery will also be further considered as the clause is related to the subdivision of the site and the works to the private cemetery have been previously approved.

5.4 Part 3: Justification of strategic and site-specific merit

This Part of the Planning Proposal demonstrates both the strategic and site-specific merit for the proposed amendment to the HLEP 2012.

The table below contains the matters for consideration in Table 3 of 'The Local Environmental Plan Making Guideline' which demonstrate that there is both strategic merit (Sections A and B - Questions 1 to 7) and also site-specific merit (Sections C, D and E Questions 8 to 12) for the proposal. The table contains a reference to the relevant section of this report where these questions are addressed.

Strategic Merit		
Section A – need for the planning proposal		
Question 1	Is the planning proposal a result of an endorsed LSPS, strategic study or report?	Section 5.4.1
Question 2	Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?	Section 5.4.2
Section B – relationship to the strategic planning framework		
Question 3	Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?	Section 5.4.3

Strategic Merit		
Question 4	Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?	Section 5.4.4
Question 5	Is the planning proposal consistent with any other applicable State and regional studies or strategies?	Section 5.4.5
Question 6	Is the planning proposal consistent with applicable SEPPs?	Section 5.4.6
Question 7	Is the planning proposal consistent with applicable Ministerial Directions (section 9.1 Directions)?	Section 5.4.7
Site-Specific Merit		
Section C – environmental, social and economic		
Question 8	Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?	Section 5.4.8
Question 9	Are there any other likely environmental effects of the planning proposal and how are they proposed to be managed?	Section 5.4.9
Question 10	Has the planning proposal adequately addressed any social and economic effects?	Section 5.4.10
Section D – Infrastructure (Local, State and Commonwealth)		
Question 11	Is there adequate public infrastructure for the planning proposal?	Section 5.4.11
Section E – State and Commonwealth Interests		
Question 12	What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?	Section 5.4.12

5.4.1 Question 1 - Is the planning proposal a result of an endorsed LSPS, strategic study or report?

The proposed amendment is necessary due to a unique set of circumstances, that has led to the applicable statutory provisions permitting 19 seniors housing dwellings and an extension to a private cemetery on the site and not allowing an appropriate ownership arrangement for the approved dwellings.

The Planning Proposal is not the result of an endorsed LSPS, strategic study or report.

5.4.2 Question 2 - Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Other alternatives to the Planning Proposal have been considered including:

- Appealing the current Land and Environment Court judgement.
- Lodging a new DA for subdivision and proceeding to an appeal.
- Investigating less traditional alternative ownership options such as long term lease and licences.

The appeal options do not offer certainty the intended outcomes will be achieved.

Alternative ownership options would be more complicated for both the owner of the site and future residents and are likely to offer less certainty for occupants in terms of length of housing tenure provided and are therefore a less desirable pathway.

The consequence of the Planning Proposal not proceeding is that the site remains owned by a single entity, with each dwelling rented out. This situation is not ideal for several reasons:

- The cemetery will remain under the ownership of the ownership of the 19 dwellings and cannot be kept solely within the Bennett family.
- The dwellings will remain under the ownership of a single entity and can only be made available for rent. The dwellings will not therefore be available to a significant portion of the ageing population including those who want to down size, or age in the neighbourhood, yet still own their own home.
- Council and essential service providers are unable to apply rates and fees to each individual property and will only be able to apply rates to the single property, thereby reducing rates/fees.

The Planning Proposal is the best means of achieving the objectives and intended outcomes for the site as it resolves an inconsistency between the current approval (which permits seniors housing but is prevented from approving the community title subdivision component due to the permissibility issue) and the provisions that generally enable the subdivision of similar seniors housing developments. It is the only means of providing certainty that the intended outcomes will be achieved.

5.4.3 Question 3 - Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?

Greater Sydney Region Plan – A Metropolis of Three Cities

In March 2018 the *Greater Sydney Region Plan - A Metropolis of Three Cities* was released. The Plan sets a 40-year vision to 2056 and establishes a 20-year plan to manage growth and change for Greater Sydney. The vision for Greater Sydney as a metropolis of three cities — the Western Parkland City, the Central River City and the Eastern Harbour City where most residents live within 30 minutes of their jobs, education and health facilities, services and great places. The Plan sets out 10 Directions which set out the aspirations for the region and objectives to support the Directions. The 10 Directions are:

- A City supported by infrastructure
- A collaborative city
- A city for people
- Housing the city
- A city of great places
- A well-connected city
- Jobs and skills for the city
- A city in its landscape
- An efficient city
- A resilient city

The Plan provides 38 objectives concerning, Infrastructure and collaboration, Liveability, Productivity and Sustainability which are aimed at achieving the identified Directions.

The Planning Proposal relates to the permissibility of subdivision on the site and is intended to relate to a specific, approved seniors housing development. The recent DA approval confirms the suitability of the site for the 19 seniors housing dwellings and the environmental capacity of the site to accommodate these dwellings. The suitability of the site for housing or other works has been determined and approved is therefore not relevant to the proposed amendment. Directions and objectives related to the location of housing and environmental issues have not therefore been addressed.

A key element of the Plan is the retention of the integrity of the values of the Metropolitan Rural Area and the Protected Natural Area. The Metropolitan Rural Area covers an extensive area of Western Sydney, including the Hawkesbury as shown in Figure 10. The proposed amendment to allow the community title subdivision of an approved and constructed development and the change in ownership of the dwellings that it will permit, will not result in any impact on the integrity of the values of the Metropolitan Rural Area.

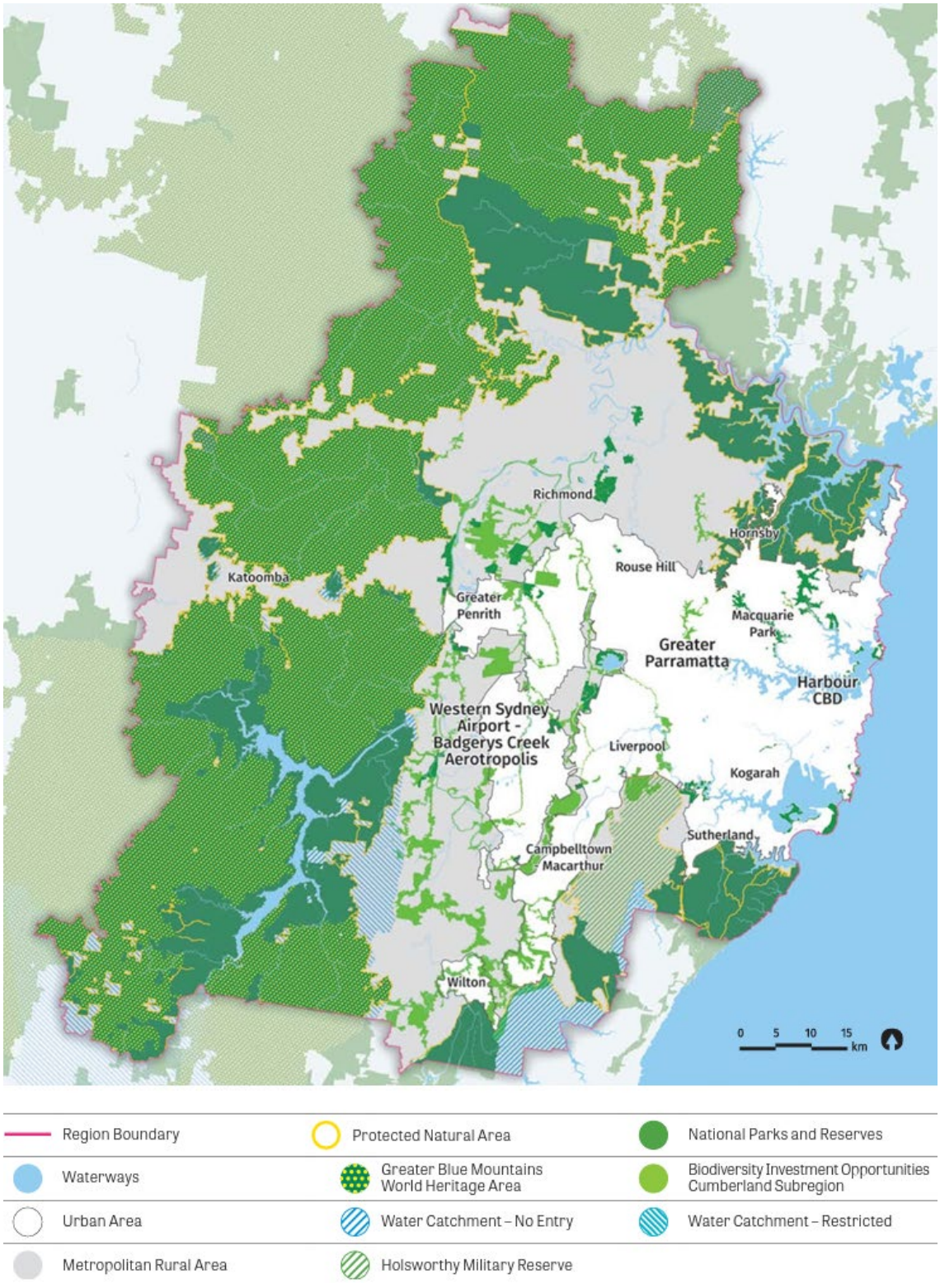

Figure 10:

Figure 49 of the Greater Sydney Region Plan: Protected Natural Area and Metropolitan Rural Area, showing the Metropolitan Rural Area in Grey

The following table summarises the proposals consistency with relevant objective of the Plan:

Objective	Comment	Consistent
Objective 10: Greater Housing Supply	The NSW Government has identified that 725,000 additional homes will be needed by 2036 to meet demand based on population projections. The objective seeks to create capacity for new housing in the right locations. The recent DA approval confirms the suitability of the site for the 19 seniors housing dwellings and the environmental capacity of the site to accommodate these dwellings. Objective 10 seeks to encourage the provision of a range of housing types to cater for the needs of the community at different stages of life. Specifically, the objective notes the importance of providing a range of housing types and sizes, including smaller homes, so that people can age in their own neighbourhoods. Specific accessibility provisions have been developed and implemented under various iterations of SEPP 5, SEPP HSPD and now SEPP Housing for seniors housing, to ensure that seniors and people with a disability have housing that is usable and accessible for people with limited mobility. A 10-hectare minimum lot size applies to the site under the HLEP and has been designed to relate to the permissible uses in the RU1 zone (which does not include seniors housing). The 10-hectare lot size is completely incompatible with the seniors housing provisions as such a large land area would be completely unmanageable and inaccessible for many seniors or people with a disability. The current minimum lot size clearly does not relate to the permissible and approved seniors housing use on the site. The Planning Proposal allows for smaller lot sizes within a community title subdivision of a seniors housing development that are more appropriate for the specific needs and accessibility requirements of seniors and people with a disability. The Planning Proposal also allows for seniors and people with a disability to age in the neighbourhood by providing seniors the opportunity to purchase smaller dwellings yet benefit from the amenity provided by the substantial open spaces within the site that will be managed and maintained by the community association.	Yes

Objective	Comment	Consistent
Objective 27	Objective 27 seeks to protect biodiversity and enhance urban bushland and remnant vegetation, by supporting landscape-scale biodiversity conservation and restoration of bushland corridors, managing urban bushland and remnant vegetation as green infrastructure and managing urban development and urban bushland to reduce edge-effect impacts. The western portion of Lot 6 is identified as 'Significant vegetation' and 'Connectivity between significant vegetation' on the HLEP Terrestrial Biodiversity Values Map. The BDAR that accompanied the DA0055/21 notes that the site contains Turpentine-Ironbark Forest which is a Critically Endangered Ecological Community (CEEC). The Biodiversity Development Assessment Report that accompanied DA0055/21 assessed the impact of the seniors housing development on the biodiversity values of the site and provided recommendations for the future management of the site. The BDAR also set out the required ecosystem credits and species credits to be paid to offset the impacts of the development. The BDAR is referenced in the conditions of consent for DA0055/21. The BDAR is included as Appendix D of this report. The proposed subdivision does not involve any physical works as these works have been approved under DA005/21 and will not therefore impact on the biodiversity and urban bushland on the site. Notwithstanding this any development application for future development of the site, including the proposed subdivision, will need to address the proposal's impact on the biodiversity values of the site. Clause 6.16(4) is proposed to ensure that the biodiversity values of the site are protected.	Yes

Western City District Plan

In March 2018 the Greater Sydney Commission published the Western City District Plan which covers the Blue Mountains, Camden, Campbelltown, Fairfield, Hawkesbury, Liverpool, Penrith and Wollondilly local government areas. The Western City District Plan is a 20-year plan to manage growth in the context of economic, social and environment matters.

The following table summarises the Planning Proposal's consistency with relevant components of the Western City District Plan.

Chapter	Comment	Consistent
Liveability		
W3 Providing services and social infrastructure to meet people's changing needs	The Plan notes that a 206% proportional increase in people aged 85 and over, and a 93% increase in the 65–84 age group is expected by 2036. This means 18 per cent of the District's population will be aged 65 or over in 2036, up from 13 per cent in 2016. The Plan suggests that more diverse housing types and medium density housing, as well as the design of walkable neighbourhoods, will create opportunities for older people to continue living in their community, where being close to family, friends and established health and support networks improves people's wellbeing. The Planning Proposal will expand the ownership options for the seniors housing development and provide a greater opportunity for older people to continue living in their community. In this regard, the Planning Proposal is consistent with this objective.	Yes
W5. Providing housing supply, choice and affordability, with access to jobs, services and public transport	Planning Priority W5 notes that new housing must be in the right places to meet demand for different housing types, tenure, price points, preferred locations and design. The recent DA approval confirms the suitability of the site for the 19 seniors housing dwellings and the environmental capacity of the site to accommodate these dwellings. The subdivision provisions and minimum lot size standard in the HLEP 2012 is not aligned with the permissibility of a seniors housing development on the site. A 10-hectare parcel of land is not manageable for most seniors or people with a disability and there is no planning basis for requiring the ownership of the 19 seniors housing dwellings to remain in a single entity. The Planning Proposal will bring the ownership and lot size requirements for the seniors housing dwellings into alignment with the specific requirements of the use and is therefore consistent with Planning Priority W5.	Yes
W14. Protecting and enhancing bushland and biodiversity	Priority W14 seeks to protect the biodiversity values of the district plan area by identifying, protecting, and managing urban and rural bushland. A Biodiversity Development Assessment Report accompanied DA0055/21 (refer to Appendix D) which addressed the impact of the proposed seniors housing development on the site. The BDAR is referenced in the conditions of consent for DA0055/21. The BDAR is included as Appendix D of this report. The proposed subdivision does not involve any physical works and will not therefore impact on the biodiversity and	Yes

Chapter	Comment	Consistent
	urban bushland on the site. Notwithstanding this any development application for future development of the site, including the proposed subdivision, will need to address the proposal's impact on the biodiversity values of the site. Clause 6.16(4) is proposed to ensure that the biodiversity values of the site are protected.	

5.4.4 Question 4 - Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?

Hawkesbury Local Strategic Planning Statement 2040

The purpose of the Hawkesbury Local Strategic Planning Statement (LSPS) is to:

- Provide a 20-year land use vision for the Hawkesbury LGA;
- Outline the characteristics which make the Hawkesbury unique;
- Identify Hawkesbury's shared values to be enhanced or maintained;
- Direct how future growth and change will be managed;
- Updated to guide the Hawkesbury LEP and DCP
- Identify further detail strategic planning for future needs.

The plan does not include any specific guidance or provisions related to the subdivision of land that has already been approved for development. The LSPS does however include two Planning Priorities that have some relevance to the Planning proposal as detailed in the table below.

Planning Priority	Comment	Consistent
• Planning Priority 3 – Provide a diversity of housing types to meet the needs of the changing population.	The LSPS notes that the Hawkesbury has an aging population, an increase in lone person households and a decrease in couples with children households. The Planning Priority notes there is limited diversity in housing types and that the typology of residential development in the LGA has not responded to demands for smaller dwellings. Whilst the Planning Proposal does not affect the permissibility of the residential uses on the site, the proposal to allow the community title subdivision of the approved seniors housing development will increase the diversity of smaller houses available to purchase and own that are specifically designed for seniors and people with a disability.	Yes
• Planning Priority 5 – Managing rural lands.	This Planning Priority indicates that further rural-residential development is generally not supported but notes that limited growth of rural-residential development could be considered where there are no adverse impacts on the amenity of the local area and the development provides incentives to maintain and enhance the environmental, social and economic values of the Metropolitan Rural Area.	Yes

Planning Priority	Comment	Consistent
	As noted previously, this Planning Proposal does not facilitate further rural-residential development as it only relates to the community title subdivision of an approved development. The seniors housing approval on the site relies on the existing use rights provisions of the Environmental Planning and Assessment Act and its Regulations and is based on highly specific and unique site circumstances. As such, the Planning Proposal cannot be used as the basis to promote or support other rural-residential development in the Metropolitan Rural area which may ultimately impact on the character of the Metropolitan Rural Area. The proposed amendment will only allow for the community title subdivision of the dwellings and will have no impact on the character or values of the Metropolitan Rural Area.	

5.4.5 Question 5 - Is the Planning Proposal consistent with any other applicable State and regional studies or strategies?

Hawkesbury Local Housing Strategy

The Hawkesbury Housing Strategy outlines how housing growth can be managed by identifying locations suitable for additional housing supply in the Hawkesbury LGA.

The suitability of the site for seniors housing has been determined through the assessment of DA0055/21 and confirmed by the approval of the development application and therefore the majority of the direction provided by the Local Housing Strategy is not relevant to the Planning Proposal.

A key strategic direction of the Strategy is to increase the supply of smaller dwellings, including dwellings that are suited to older persons in locations within walkable access to shops, health services and community facilities. The DA approval provides for 19 seniors housing dwellings (designed to meet specific accessibility and usability requirements for people with limited mobility) based on existing use rights provisions, however the current planning provisions do not allow for an appropriate method of subdivision to support the seniors housing dwellings that are permissible on the site. The Planning Proposal will rectify the inconsistency that has arisen between the permissibility of use on the site and the minimum lot size and type of subdivision that is permitted. In this regard the Planning Proposal is consistent with the Hawkesbury Local Housing Strategy.

Hawkesbury Rural Lands Strategy

The Hawkesbury Rural Lands Study March 2021 considers the whole of the Hawkesbury LGA, which is predominantly zoned rural and includes limited areas zoned for urban residential and employment purposes as well as open space. The Strategy includes recommendations to guide the growth and preservation of rural lands and recommendations to support economic development of the agricultural industries in the area.

The Strategy does not provide any recommendations that specifically relate to the Planning Proposal particularly given that a seniors housing development has already been approved on the site and the proposal only relates to allowing the subdivision of this development.

5.4.6 Question 6 - Is the planning proposal consistent with applicable SEPPs?

The Planning Proposal is consistent with all relevant State Environmental Planning Policies as summarised in the following table:

SEPP	Comment	Consistent
State Environmental Planning Policy (Housing) 2021	Whilst the provisions in Part 5 'Housing for seniors and people with a disability' of SEPP Housing do not apply to land zoned RU1 Primary Production pursuant to clause 79 of the SEPP, clause 90 permits the subdivision of seniors housing developments to which the Part does apply as follows: *(1) Development consent may be granted for the subdivision of land on which development has been carried out under this Part.* *(2) Development consent must not be granted for the subdivision of a building resulting from development carried out under this Part on land in Zone B3 Commercial Core.* Where seniors housing is permitted by the SEPP, subdivision is permitted (except on land zoned B3 Commercial Core). This acknowledges that reduced lot sizes and forms of subdivision like strata subdivision and community title subdivision are appropriate for seniors housing and that larger lot sizes that may otherwise be required by the applicable LEP would be inconsistent with the accessibility and useability standards set out in the SEPP. The Planning Proposal is consistent with the Seniors Housing SEPP in that it will allow for the usual form of ownership of seniors housing dwellings. A greater inconsistency with the current approach to seniors housing arises from the current planning regime where subdivision of the seniors housing development is not permitted.	Yes
State Environmental Planning Policy (Biodiversity and Conservation) 2021	Chapter 4 Koala habitat protection 2021 Chapter 4 aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline. Chapter 4 applies to the City of Hawkesbury local government area. Chapter 4 requires the consent authority to assess whether a development is likely to have any impact on koalas of koala habitat before granting consent to a development application to carry out development on the land. A Biodiversity Development Assessment Report dated April 2022 was prepared in support of DA0055/21 (refer to Appendix D). The report addressed the Koala habitat provisions of State Environmental Planning Policy (Koala Habitat Protection) 2020 which applied at the time. The report confirmed that the subject	N/A

SEPP	Comment	Consistent
	site does not contain areas of optimal koala habitat. The koala assessment in the BDAR concluded the following: *The site does not contain areas of optimal koala habitat and as such will avoid removal of habitat which may be critical to the survival of the species. Many areas of the site will remain vegetated with locally native species. Vegetation to be retained will be maintained and will satisfy APZ requirements. Patches of retained vegetation will also ensure that connectivity within the landscape is maintained. A majority of the development footprint occurs within areas of the site which are currently cleared. Tree removal will occur; however, the development has been designed to ensure areas of native vegetation can be retained and enhanced.* *There is expected to be an increase in vegetation condition post development. This can be facilitated through effective bushland management programs. Planting of feed and browse tree species is recommended to encourage Koala back to the site. All Koala feed and browse trees should be retained in areas outside of the development footprint.* The planning proposal relates to the community title subdivision of an approved development and as such will not result in any physical impacts on the vegetation on the site. Notwithstanding this any future development application, including an application for the community title subdivision of the site, must address the relevant provisions of Chapter 4. The planning proposal does not affect the operation of these provisions. Chapter 6: Water Catchment (clause 6.13 Hawkesbury-Nepean sub catchments. Chapter 6 applies to land in several water catchments, including the Hawkesbury-Nepean Catchment. The subject site is located within the Hawkesbury Nepean Catchment. Chapter 6 sets out relevant considerations for a consent authority in deciding whether to grant consent to development in the catchment, including the impact of the development on water quality and quantity, aquatic ecology, flooding, recreation and public access and total catchment management. Any future development application, including an application for the community title subdivision of the site, must address the relevant provisions of Chapter 6. The planning proposal does not affect the operation of these provisions.	
State Environmental Planning Policy (Resilience and Hazards) 2021	Chapter 4 'Remediation of land' applies to the whole State. Section 4.6 sets out the relevant considerations for a consent authority when determining a development application. A Preliminary Site Investigation (Appendix E) and a Detailed Site Investigation (Appendix F) were prepared in support of DA0055/21 to determine the suitability of the site for the seniors housing	Yes

SEPP	Comment	Consistent
	development. The DSI concluded the site was suitable for the proposed seniors living development. The consent for DA0055/21 refers to the DSI report. The proposed amendments to the LEP and change to the permissibility of community title subdivision for the site will not result in any inconsistency or non-compliance with the provisions of Chapter 4 'Remediation of land'.	
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	The Planning Proposal does not result in any inconsistency with the provisions of the exempt and complying development codes SEPP. Part 6 Subdivisions Code sets out complying development provisions for strata subdivisions, Torrens title subdivisions and subdivision certificates. A general requirement for complying development is that the development must be permissible with consent under an environmental planning instrument applying to the land on which the development is carried out. As the amendment only relates to community title subdivision the Torrens and strata title complying development provisions will still have no effect.	N/A

5.4.7 Question 7 - Is the Planning Proposal consistent with applicable Ministerial Directions (s9.1 directions)?

The following table summarises the Planning Proposal's consistency with applicable Ministerial Directions:

S.9.1 Direction No. and Title	Comment	Consistent
Focus Area 1: Planning Systems		
1.1 Implementation of Regional Plans	This direction requires the planning proposal to be consistent with Regional Plans released by the Minister for Planning. The Planning Proposal is consistent with the relevant provisions of the Greater Sydney Region Plan and the Western City District Plan as detailed in this document.	Yes
1.2 Development of the Aboriginal Land Council	Not Applicable.	N/A
1.3 Approval and Referral Requirements	The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development. In accordance with the direction the Proposal does not include provisions that require the concurrence, consultation or referral of a development application to a Minister or	Yes

S.9.1 Direction No. and Title	Comment	Consistent
	public authority. Further the Proposal does not identify future development on the site as designated development.	
1.4 Site Specific Provisions	The objective of this direction is to discourage unnecessarily restrictive site-specific planning controls. The direction applies when a relevant planning authority prepares a Planning Proposal that will allow a particular development to be carried out. The Planning Proposal requires a site-specific amendment to the LEP however the provisions have been limited to those necessary to achieve the intended outcomes. The provisions are not unnecessarily restrictive. The Direction states that a planning proposal must not contain or refer to drawings that show details of the proposed development. The Planning Proposal includes details of the approved application, and the subdivision plan submitted with the development application. The subdivision plan that was submitted with the development application (but was not approved due to the permissibility issue) has been provided as part of the background material to assist in understanding the need for the Planning Proposal and assist in drafting an appropriate site and development specific subdivision control given the unique circumstances of this proposal. The proposed amendment does not refer to any drawings or any specific proposal.	Yes
Focus Area 1: Place Based		
1.5 Parramatta Road Corridor Urban Transformation Strategy	Not Applicable	N/A
1.6 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	Not Applicable	N/A
1.7 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and	Not Applicable	N/A

S.9.1 Direction No. and Title	Comment	Consistent
Infrastructure Implementation Plan		
1.8 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Not Applicable	N/A
1.9 Implementation of Glenfield to Macarthur Urban Renewal Corridor	Not Applicable	N/A
1.10 Implementation of the Western Sydney Aerotropolis Plan	Not Applicable	N/A
1.11 Implementation of Bayside West Precincts 2036 Plan	Not Applicable	N/A
1.12 Implementation of Planning Principles for the Cooks Cove Precinct	Not Applicable	N/A
1.13 Implementation of St Leonards and Crows Nest 2036 Plan	Not Applicable	N/A
1.14 Implementation of Greater Macarthur 2040	Not Applicable	N/A
1.15 Implementation of the Pyrmont Peninsula Place Strategy	Not Applicable	N/A
1.16 North West Rail Link Corridor Strategy	Not Applicable	N/A
1.17 Implementation of the Bays West Place Strategy	Not Applicable	N/A

S.9.1 Direction No. and Title	Comment	Consistent
1.18 Implementation of the Macquarie Park Innovation Precinct	Not Applicable.	N/A
1.19 Implementation of the Westmead Place Strategy	Not Applicable.	N/A
1.20 Implementation of the Camellia-Rosehill Place Strategy	Not Applicable.	N/A
Focus area 2: Design and Place		
	No directions added.	N/A
Focus Area 3: Biodiversity and Conservation		
3.1 Conservation Zones	Direction 3.1 relates to conservation zones. The objective of the direction is to protect and conserve environmentally sensitive areas. Direction 3.1 requires the following: *(1) A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.* *(2) A planning proposal that applies to land within a conservation zone or land otherwise identified for environment conservation/protection purposes in a LEP must not reduce the conservation standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with Direction 9.2 (2) of "Rural Lands".* The western portion of Lot 6 is identified as 'Significant vegetation' and 'Connectivity between significant vegetation' on the HLEP Terrestrial Biodiversity Values Map. The BDAR that accompanied DA0055/21 (refer to Appendix D) notes that the site contains Turpentine-Ironbark Forest which is a Critically Endangered Ecological Community (CEEC). The Biodiversity Development Assessment Report that accompanied DA0055/21 assessed the impact of the seniors housing development on the biodiversity values of the site and provided recommendations for the future management of the site. The BDAR also set out the required ecosystem credits and species credits to be paid to offset	Yes

S.9.1 Direction No. and Title	Comment	Consistent
	the impacts of the development. The BDAR is referenced in the conditions of consent for DA0055/21. The proposed subdivision does not involve any physical works and will not therefore impact on the biodiversity and urban bushland on the site. The proposal is consistent with Direction 3.1 in that: • The Planning Proposal does not reduce the conservation standards that apply to the land as it does not alter the applicable legislative provisions that require an assessment of the impact of a future development on the biodiversity values of the site. Any development application for future development of the site, including the proposed subdivision, will need to address the proposal's impact on the biodiversity values of the site. • A provision has been included in the draft clause that requires the community title subdivision or expansion of the private cemetery to protect and enhance the biodiversity values of the site, and in particular any Critically Endangered Ecologically Communities.	
3.2 Heritage Conservation	The site is not an identified heritage item or within a conservation area. The site is not located within the immediate vicinity of any heritage items.	N/A
3.3 Sydney Drinking Water Catchments	Not Applicable	N/A
3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs	Not Applicable	N/A
3.5 Recreation Vehicle Areas	Not Applicable	N/A
3.6 Strategic Conservation Planning	This direction applies to all relevant planning authorities when preparing a planning proposal that relates to land that, under the State Environmental Planning Policy (Biodiversity and Conservation) 2021, is identified as avoided land or a strategic conservation area. Whilst the site is within the SEPP land application area, the site is not identified as avoided land or a strategic conservation area.	N/A
3.7 Public Bushland	This direction applies when a planning proposal prepares a planning proposal for land in the Hawkesbury LGA (excluding land north of the Colo River).	Yes

S.9.1 Direction No. and Title	Comment	Consistent
	The objective of this direction is to protect bushland in urban areas, including rehabilitated areas, and ensure the ecological viability of the bushland, by: *(a) preserving:* *i. biodiversity and habitat corridors,* *ii. links between public bushland and other nearby bushland,* *iii. bushland as a natural stabiliser of the soil surface,* *iv. existing hydrological landforms, processes and functions, including natural drainage lines, watercourses, wetlands and foreshores,* *v. the recreational, educational, scientific, aesthetic, environmental, ecological and cultural values and potential of the land, and* *(b) mitigating disturbance caused by development,* *(c) giving priority to retaining public bushland.* When preparing a planning proposal, the planning proposal authority must be satisfied that the planning proposal: *(a) is consistent with the objectives of this direction, and* *(b) gives priority to retaining public bushland, unless the planning proposal authority is satisfied that significant environmental, economic or social benefits will arise that outweigh the value of the public bushland.* The Planning Proposal only relates to the subdivision of the site and affects the ownership of the approved dwellings. The Planning Proposal will not result in any changes to the built or natural environment. As such the Planning proposal will have no impact on biodiversity, bushland, drainage, watercourses or the environmental values of the site.	
3.8 Willandra Lakes Region	Not Applicable.	N/A
3.9 Sydney Harbour Foreshore and Waterways Area	Not Applicable.	N/A
3.10 Water Catchment Protection	This direction applies when a planning proposal authority prepares a planning proposal which will affect land within a regulated catchment, excluding the Sydney Drinking Water Catchment, within the meaning of the State Environmental Planning Policy (Biodiversity and Conservation) 2021.	Yes

S.9.1 Direction No. and Title	Comment	Consistent
	The site is located within the Hawkesbury Nepean Catchment as identified in Chapter 6 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021. The proposed amendment to allow the subdivision of the site will have no impact on the water quality in the catchment.	
Focus Area 4: Resilience and Hazards		
4.1 Flooding	Not applicable.	N/A
4.2 Coastal Management	Not Applicable	N/A
4.3 Planning for Bushfire Protection	This direction applies to all local government areas when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to, land mapped as bushfire prone land. The site is depicted on Hawkesbury City Council's Bushfire Prone Land Map as containing designated Category 1 and Category 3 Vegetation and their associated buffer zones. The subject site is therefore considered 'bushfire prone'. The consent for the approved seniors living development on the site requires compliance with the specific recommendations of the Bushfire Assessment Report prepared by Building Code and Bushfire Hazard Solutions dated 11 February 2021 (Appendix C). This report addressed both the seniors housing development on the site and the community title subdivision of the development. General Terms of Approval were issued by the NSW Rural Fire Service on 3 June for the development (including the subdivision of the development) and Condition 2 of the consent for seniors housing on the site notes that the General Terms of Approval issued by the NSW Rural Fire Service form part of the approval. Notwithstanding this, compliance with the relevant requirements of Planning for Bushfire Protection will need to be addressed in a development application for the subdivision of the site.	Yes
4.4 Remediation of 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. This direction applies to: (a) land that is within an investigation area within the meaning of the Contaminated Land Management Act 1997,	Yes

S.9.1 Direction No. and Title	Comment	Consistent
	(b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out, (c) the extent to which it is proposed to carry out development on it for residential, educational, recreational or childcare purposes, or for the purposes of a hospital – land: (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and (ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge). The suitability of the site for the approved land uses was considered under the approved development application and relied on a Detailed Site Investigation prepared by Martens Consulting Engineers (Appendix F). The proposed subdivision will not have any impact on the suitability of the site for the seniors housing development and does not result in any inconsistency with this direction.	
4.5 Acid Sulphate Soils	This direction applies to all relevant planning authorities that are responsible for land having a probability of containing acid sulfate soils when preparing a planning proposal that will apply to land having a probability of containing acid sulfate soils as shown on the Acid Sulfate Soils Planning Maps held by the Department of Planning and Environment. The direction provides that the relevant planning authority must consider the Acid Sulfate Soils Planning Guidelines adopted by the Planning Secretary when preparing a planning proposal that applies to any land identified on the Acid Sulfate Soils Planning Maps as having a probability of acid sulfate soils being present. The site is identified as class 5 land on the acid sulfate soils map. The subdivision of the site will have no impact on acid sulphate soils and as such the proposal will not result in any inconsistencies with this direction.	Yes
4.6 Mine Subsidence and Unstable Land	Not Applicable.	N/A
Focus Area 5: Transport and Infrastructure		
5.1 Integrating Land Use and Transport	Not Applicable.	N/A

S.9.1 Direction No. and Title	Comment	Consistent
5.2 Reserving Land for Public Purposes	Not Applicable.	N/A
5.3 Development Near Regulated Airports and Defence Airfields	Not Applicable.	N/A
5.4 Shooting Ranges	Not Applicable.	N/A
Focus Area 6: Housing		
6.1 Residential Zones	This direction applies to all relevant planning authorities when preparing a planning proposal that will affect land within an existing or proposed residential zone (including the alteration of any existing residential zone boundary), or any other zone in which significant residential development is permitted or proposed to be permitted. Whilst the zone does not permit significant residential development (the residential development is permitted based on existing use rights) and the Planning Proposal does not permit significant residential development, the direction is addressed below for the sake of completeness. Direction 6.1 is as follows: *(1) A planning proposal must include provisions that encourage the provision of housing that will:* *(a) broaden the choice of building types and locations available in the housing market, and* *(b) make more efficient use of existing infrastructure and services, and* *(c) reduce the consumption of land for housing and associated urban development on the urban fringe, and* *(d) be of good design.* *(2) A planning proposal must, in relation to land to which this direction applies:* *(a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and* *(b) not contain provisions which will reduce the permissible residential density of land.*	Yes

S.9.1 Direction No. and Title	Comment	Consistent
	The consent for DA0055/21 establishes the type and location of the housing and the servicing arrangements for the dwellings. The Planning Proposal will not alter the residential density approved on the land, with the density established by the consent for DA0055/21.	
6.2 Caravan Parks and Manufactured Home Estates	Not Applicable.	N/A
Focus Area 7: Industry and Employment		
7.1 Business and Industrial Zones	Not Applicable.	N/A
7.2 Reduction in non-hosted short-term rental accommodation period	Not Applicable.	N/A
7.3 Commercial and Retail Development along the Pacific Highway, North Coast	Not Applicable.	N/A
Focus Area 8: Resources and Energy		
8.1 Mining, Petroleum Production and Extractive Industries	Not Applicable.	N/A
Focus Area 9: Primary Production		
9.1 Rural Zones	This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary. Direction 9.1 provides that: *1) A planning proposal must:* *(a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.* *(b) not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).*	Yes

S.9.1 Direction No. and Title	Comment	Consistent
	The Planning Proposal will not alter the residential density approved on the land, with the density established by the consent for DA0055/21.	
9.2 Rural Lands	This direction applies when a relevant planning authority prepares a planning proposal for land outside the local government areas of lake Macquarie, Newcastle, Wollongong and LGAs in the Greater Sydney Region (as defined in the Greater Sydney Commission Act 2015) other than Wollondilly and Hawkesbury, that: *(a) will affect land within an existing or proposed rural or conservation zone (including the alteration of any existing rural or conservation zone boundary) or* *(b) changes the existing minimum lot size on land within a rural or conservation zone.* The Planning Proposal affects the minimum lot size on a rural zone in the Hawkesbury LGA and therefore the direction applies. The Planning Proposal is consistent with this direction in that: • It is consistent with the applicable regional plan, district plan and relevant strategic plans as detailed in this statement. • The change to the minimum lot size will have no impact on agriculture and primary production as it will only relate to a completed seniors housing development on the site. Lot 6 is not an appropriate location for agriculture in any case as it is an existing lot within a seniors housing development. • The change to the minimum lot size will not have any impact on the built or natural environment as the subdivision will relate to an already approved development. • The use of Lot 6 as approved under DA0055/21 and the proposed amendment to the HLEP 2012 to allow for the community title subdivision of the development will result in a development that is consistent with the adjoining, first stage of the Tallowood seniors housing development that was approved in 1999. • The subdivision of the seniors housing development will not result in any land use conflicts. The use of Lot 6 for agricultural purposes would result in far greater impacts on the adjoining residential land. • The proposal subdivision is in the social, economic and environmental interests of the community. There are no	Yes

S.9.1 Direction No. and Title	Comment	Consistent
	environmental planning grounds to support a requirement for the 19 seniors housing dwellings to remain in the ownership of a single entity whereas there are clear benefits to future occupants to allowing each dwelling to be privately owned. There is also an economic benefit to Council if subdivision is approved as rates can be applied to each dwelling rather than to a single property. • The proposed amendment will not impact on the operation and viability of future rural land uses and related enterprises having regard to the location of Lot 6 within an existing seniors housing community title subdivision and that the owner of the site is committed to constructing the 19 approved dwellings, whether or not subdivision is permitted.	
9.3 Oyster Aquaculture	Not Applicable.	N/A
9.4 Farmland of State and Regional Significance on the NSW Far North Coast	Not Applicable.	N/A

5.4.8 Question 8 - Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the Proposal?

The Planning Proposal only facilitates the subdivision of an approved development. The Planning Proposal therefore will not result in any environmental impacts and will not adversely impact any critical habitat, threatened species, populations or ecological communities, or their habitats.

5.4.9 Question 9 - Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

There are no environmental effects envisaged as a result of the planning proposal.

There are no hazards that impact the site or environmental effects that would preclude consideration of the Planning Proposal.

5.4.10 Question 10 - Has the Planning Proposal adequately addressed any social and economic effects?

The planning proposal will result in positive social impacts in that the Planning Proposal will allow each self-contained dwelling to be privately owned. Allowing private ownership increases the diversity of seniors or people with a disability that can occupy the dwellings. Allowing private ownership also

provides greater certainty for future occupants than alternative ownership arrangements, such as complicated long-term lease or license arrangements, which may be necessary to support the operation of the development under one owner. Alternative ownership arrangements are often complicated and may not offer the same level of certainty for occupants around the length of tenure available for occupants.

There is also an economic benefit to Council if subdivision is approved as rates can be applied to each dwelling rather than to a single property.

5.4.11 Question 11 - Is there adequate public infrastructure for the Planning Proposal?

The Planning Proposal does not generate any requirement for public infrastructure.

5.4.12 Question 12 - What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

Relevant public authorities, such as the NSW RFS will be consulted following the Gateway determination.

5.5 Part 4: Mapping

No mapping changes are required for the proposed amendment.

5.6 Part 5: Community Consultation

Hawkesbury Council and the Department of Planning and Environment (DPE) have been consulted during the preparation of the subject Planning Proposal. Hawkesbury Council and the DPE have provided feedback in relation to draft wording of the proposed new clause in Part 6 of the LEP. The suggested amended wording has been incorporated into the Planning Proposal with a minor change to ensure that the development consent relates to a seniors housing development and extension of the private cemetery yet the development consent can be granted prior to an Occupation Certificate being issued for the development.

A standard planning proposal is to be exhibited for 20 working days in accordance with the Local Environmental Plan Making Guideline.

5.7 Part 6: Project Timeline

The Project timeline will be dependent on Hawkesbury City Council and the Department of Planning. However, the expected timeframes for each stage are summarised in the following table.

It is noted that benchmark timeframes are outlined in the Local Environmental Plan Making Guideline however these are the maximum length of time each stage of the process is expected to take. Given the unique circumstances of the Proposal, simple nature of the proposed amendment and consistency with relevant strategic plans and policies it is expected that this Planning Proposal will be able to proceed more quickly than the benchmark timeframes provided in the Local Environmental Plan Making Guideline.

Stage	Timeframe
Consideration of submissions by Council	November 2023 (targeting 14 November 2023 Council Meeting)

Stage	Timeframe
Submission to the Department for finalisation	November 2023
Gazettal of LEP amendment	December 2023

6.0 CONCLUSION

The purpose of the Planning Proposal is to include an additional local provision in Part 6 of the Hawkesbury local Environmental Plan 2012 (HLEP 2012) that will facilitate the community title subdivision of an approved seniors housing development and extension of a private cemetery on Lot 6/21 Vincents Road, Kurrajong.

The proposed amendment is required as the Land and Environment Court judgement for DA0055/21 (*Bennett v Hawkesbury City Council [2022] NSWLEC 1630*) found that the statutory provisions that apply to the site allow for the development of 19 seniors housing dwellings on the site (as the site benefits from existing use rights provisions) and an extension of a private cemetery yet the community title subdivision of the development is not permissible and cannot therefore be approved. This outcome is the result of a unique set of circumstances which include a long history of seniors housing development on the site combined with an evolving planning regime.

It is clearly an unintended and undesirable outcome of the applicable statutory provisions to permit 19 seniors housing dwellings, an extension to a private cemetery and other ancillary works on the site yet not allow an appropriate ownership arrangement for the approved dwellings. In this regard it is noted:

- The subdivision of seniors housing developments has been consistently permitted by all iterations of the seniors housing State Environmental Planning Policy, despite the applicable subdivision provisions and minimum lot size standards in an LEP. There are no specific circumstances which would require a different approach being applied to the development on the site.
- As seniors housing is prohibited in the RU1 zone under the HLEP 2012, the 10-hectare minimum lot size has been developed to support a different range of permissible uses and therefore has no relationship with the specific accessibility and usability requirements of seniors housing. The 10-hectare standard should not therefore be applied to seniors housing. Smaller and more manageable lot sizes are required for seniors and people with a disability.
- There is no strategic basis to support any requirement for the 19 dwelling seniors housing development, and extension of the private cemetery, to remain in the ownership of a single entity.

Whilst the development can and will proceed without subdivision, the proposed amendment to permit the community title subdivision of the approved development has site specific and strategic merit in that:

- The amendment will allow the community title subdivision of the seniors housing development so that each self-contained dwelling can be privately owned. Allowing private ownership increases the diversity of seniors or people with a disability that can occupy the dwellings. Allowing private ownership also provides greater certainty for future occupants than alternative ownership arrangements such as complicated long-term lease or license arrangements which may be necessary to support the operation of the development under one owner. Alternative ownership arrangements are often complicated and may not offer the same level of certainty for occupants around the length of tenure available for occupants.
- The amendment will allow the Bennett family private cemetery on Lot 6 to be owned and managed by the family.
- The amendment will enable Hawkesbury Council and the relevant authorities to directly manage and apply rates and charges to individual dwellings.
- The amendment will allow the community title subdivision of a seniors housing development, consistent with the historical and current provisions for seniors housing which have consistently permitted the subdivision of seniors housing developments. The minimum 10-hectare subdivision lot size for community title subdivision does not relate to the permitted seniors housing use of the land and has no

relationship to the specific accessibility and usability requirements of seniors housing. A 10-hectare parcel of land is not accessible or manageable for most seniors or people with a disability.

- The amendment has strategic merit as no inconsistencies with relevant strategic policies will arise as a consequence of the proposal. The Planning Proposal is consistent with 'A Metropolis of Three Cities', the Western City District Plan and the Hawkesbury Local Strategic Planning Statement and other relevant strategies.

For the reasons outlined above it is appropriate for Hawkesbury City Council, as the relevant planning authority, to support the Planning Proposal.

APPENDIX A

APPROVED ARCHITECTURAL PLANS

A

Environa Studio

APPENDIX B

COMMUNITY TITLE SUBDIVISION PLAN

B

McKinlay Morgan

APPENDIX C

BUSHFIRE ASSESSMENT REPORT C

Building Code and Bushfire Hazard Solutions Pty

APPENDIX D

BIODIVERSITY DEVELOPMENT ASSESSMENT REPORT

D

Kingfisher Urban Ecology and Wetlands

APPENDIX E

PRELIMINARY SITE INVESTIGATION E

Martens Consulting Engineers

APPENDIX F

DETAILED SITE INVESTIGATION REPORT F

Martens Consulting Engineers