

ORDINARY MEETING

4. REPORTS FOR DETERMINATION

Meeting Date: 14 February 2023

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4.1. PLANNING DECISIONS

4.1.1. CP - Planning Proposal - LEP005/22 - 6/21 Vincents Road, Kurrajong - Community Title Subdivision - (95498, 124414)

Directorate: City Planning

PLANNING PROPOSAL INFORMATION

| | |
|----------------------------|--|
| File Number: | LEP005/22 |
| Property Address: | 6/21 Vincents Road, Kurrajong |
| Applicant: | Sutherland and Associates Planning Pty Ltd |
| Owner: | P D Bennett |
| Date Received: | 2/12/2022 |
| Current Minimum Lot Size: | 10Ha |
| Proposed Minimum Lot Size: | No Change to the Minimum Lot Size |
| Current Zone: | RU1 Primary Production |
| Site Area: | 5.389Ha |

| | |
|-------------|--------------------------------------|
| Key Issues: | Land and Environment Court Judgement |
| | Existing Use Rights |
| | Community Title Subdivision. |

PURPOSE OF THE REPORT

The purpose of this report is to present this Planning Proposal to Council for a determination on whether to submit the Planning Proposal to the Department of Planning and Environment for a Gateway Determination. The Planning Proposal seeks to include an additional local provision under Part 6 of the Hawkesbury Local Environmental Plan 2012 to allow a community title subdivision of a 19 lot Seniors Housing Development, and an extension of a private cemetery at 6/21 Vincents Road, Kurrajong.

EXECUTIVE SUMMARY

Council is in receipt of a Planning Proposal from Sutherland and Associates Planning Pty Ltd for land described as Lot 6 DP 270827 at 6/21 Vincents Road, Kurrajong (subject site). The Planning Proposal is seeking an amendment to the Hawkesbury Local Environmental Plan (LEP) 2012 to allow a 19-lot community title subdivision of a Seniors Housing Development, and extension of a private cemetery which has been approved by the Land and Environment Court.

The Planning Proposal seeks to achieve the above intended outcome by inserting an additional local provision under Part 6 of the Hawkesbury LEP 2012 to allow the proposed community title subdivision of the subject site. This report provides an overview of the Planning Proposal which is considered to be generally consistent with the relevant NSW State and local planning framework.

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At its Meeting on 19 January 2022, the Hawkesbury Local Planning Panel considered the Planning Proposal and advised that the Planning Proposal has site specific and strategic merits and is supported.

RECOMMENDATION

That:

1. Based on assessment of the Planning Proposal for 6/21 Vincents Road, Kurrajong, and the advice of the Hawkesbury Local Planning Panel, Council supports this Planning Proposal with the addition of Clause 6.16 3 (d):
 - enables amalgamation of the remainder of the land with Lot 1 DP 270827 to create an association property for the entire Seniors' Living development within the meaning of the Community Land Development Act 2021.
2. Council forward the Planning Proposal to the Department of Planning and Environment for a Gateway Determination.

BACKGROUND

Background

In June 1999, Development Application (DA) (M844/98) for 19 Old Bells Line of Road, Kurrajong was approved under the provisions of State Planning Policy No 5 – Housing for Older People and People with Disabilities (SEPP 5). The DA was for the construction of an aged and disability housing development accommodating 18 dwellings and a community building development known as "Tallowood".

Subsequently, in September 2012, Council approved a Development Application (DA0014/12) for a 19-lot community title subdivision of Lot 6 DP270827 accommodating the existing Tallowood Seniors Housing Development and the private cemetery. Figure 1 illustrates the 19 lot community title subdivision.

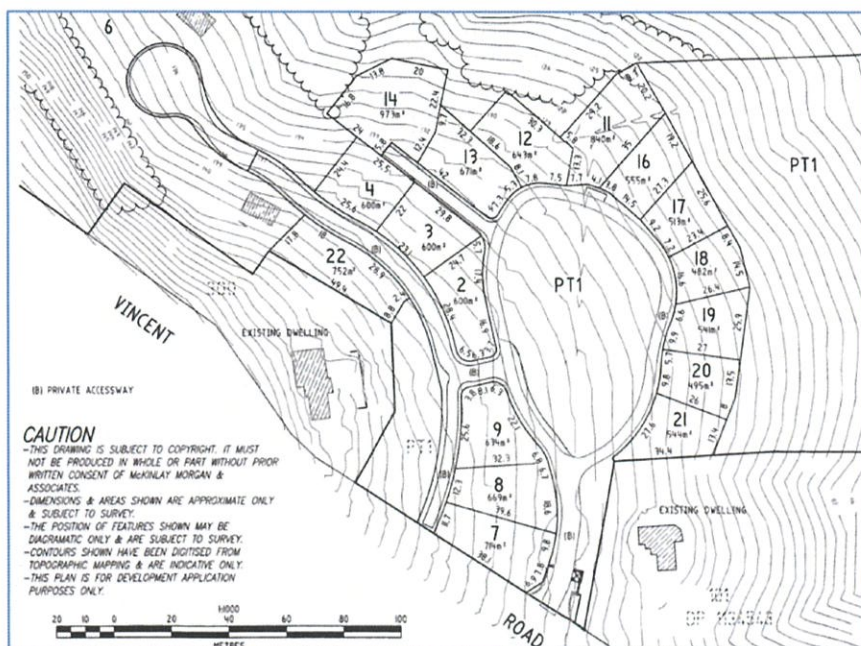


Figure 1: Council Approved 19-lot Community Title Subdivision

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On 8 March 2021, a Development Application (DA0055/22) seeking approval for the following proposed works on Lot 6 DP270827, Lot 1 in DP 270827 and Lot 300 in DP 1184237, 6/21, 1/21 and 7 Vincents Road, Kurrajong respectively, was lodged with Council for:

- Seniors Housing Development accommodating 19 self-contained dwellings with attached garages
- an extension to the existing private cemetery
- a community title subdivision of the subject site
- other ancillary development works including demolition of existing structures, earthworks, tree removals and conversion of an existing barn to a Men's Shed.

This application was not determined by Council based on permissibility issues.

The proposed Seniors Housing Development accommodating 19 self-contained dwellings with attached garages and the private cemetery are located on the subject site as shown in Figure 2.



Figure 2: Proposed Seniors Housing Development and the Existing Cemetery on Lot 6

In November 2021, the property owner/developer lodged a Class 1 Appeal with the Land and Environment Court NSW against the Council's deemed refusal of the Development Application (DA0055/22).

On 15 November 2022, the Land and Environment Court (the Court) concluded that the subject site is a resultant lot of the previously approved 19-community title subdivision (M844/98) and therefore enjoys existing use rights. Further, the Court recognised that the proposed Seniors Housing Development on the subject site as an extension of the existing Tallowood Seniors Living development as defined in s4.65(b) of the Environmental Planning and Assessment Act 1979 (EP& A

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The subject site is legally described as Lot 6 DP 270827 and is irregular in shape and has an area of approximately 5.4ha. The subject site has an approximately 183m frontage to Old Bells Line of Road and a 40m frontage to Vincents Road. It is bounded by Old Bells Line of Road to the North-West, Vincents Road to South-West, the existing Tallowood Seniors Housing Development to the South, rural residential properties to the north-east and St Gregory's Catholic Church to the north as shown in Figure 5.



Figure 5: Aerial View of the Subject Site

The subject site is not affected by flooding and is not listed as a heritage item or located within or near a heritage conservation area.

The majority of the site area is vacant, and a number of sheds are located adjacent to the access road to the subject site and the cul-de-sac head that is located within the subject site.

Currently the subject site is accessed via a cul-de-sac on Lot 1 DP 270827 off Vincents Road and as shown in Figure 6.

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Figure 6: Current Access to the Subject Site via a Cul-de-sac

The subject site is surrounded by a mix of land uses including rural residential properties, rural agricultural lands, seniors housing, St Gregory's Catholic Church and Cemetery and some remnant bushland.

Planning Provisions and Controls

The current planning provisions and controls applying to the subject site under the Hawkesbury Local Environmental Plan 2012, and how the subject site complies or is affected by those planning provisions and controls is shown in Table 1.

Table 1: Planning Provisions/Controls Applying to the Subject Site

| Planning Control | How the Subject is affected |
|---|---|
| Land Zoning | RU1 Primary Production |
| Lot Size | Minimum of 10Ha |
| Height of Buildings | Maximum 10M |
| Clause 4.1AA Minimum subdivision lot size for community title schemes | Not complied with this provision |
| Clause 4.6 Exceptions to development standards | Not complied with this provision |
| Acid Sulphate Soil | Class 5 – Acid Sulphate Soil |
| Bush Fire | Yes, containing designated Category 1 and Category 3 Vegetation |
| Clause 6.4 Terrestrial Biodiversity | Endangered Ecological communities and connectivity between remnant vegetation |

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DISCUSSION

Relationship to State and Local Strategic Framework

The following section discusses the consistency of the Planning Proposal with the relevant State and local planning framework, strategic merits, and site-specific merits and subject site's suitability and capability to achieve the intended outcomes of the Planning Proposal.

Greater Sydney Region Plan

On 18 March 2018, the NSW Government released A 'Metropolis of Three Cities' – the Greater Sydney Region Plan. The Greater Sydney Region Plan, along with Transport for NSW's Future Transport 2056, and Infrastructure NSW's State Infrastructure Strategy 2018-36 provide a 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 strategy outlines 38 objectives, 10 directions, and 42 objectives guiding the future of Sydney.

Direction 4: Housing the City – giving people housing choices

Direction 4 requires councils to investigate opportunities for the supply and a diversity of housing particularly around centres to create more walkable neighbourhoods. Objectives 10 and 11 of the Plan include:

Objective 10: Greater Housing Supply - Providing ongoing housing supply and a range of housing types in the right locations will create more liveable neighbourhoods and support Greater Sydney's population. It needs to ensure steady supply of market housing in locations well supported by existing or planned services and amenity with an emphasis on public transport access.

Objective 10 focusses on a range of housing types or the diversity for the needs of the community at different stages of life and caters for diverse household types. Diversity: including a mix of dwelling types, a mix of sizes, universal design, seniors and aged-care housing, student accommodation, group homes, and boarding houses. It means that as people age they can move into smaller homes and age in their own neighbourhoods.

The NSW Government has identified that 725,000 additional homes will be needed by 2036 to meet demand based on current population projections. By 2056, it is anticipated that significant further housing supply will be required to meet Greater Sydney's continued strong population growth.

Objective 11: Housing is more diverse and affordable – It is important that the supply of housing delivers the type of housing that communities and places need as they grow and change. A diversity of housing types, sizes and price points can help improve affordability.

The Planning Proposal seeking to amend the Hawkesbury Local Environmental Plan 2012 to allow a community title subdivision of the Court approved Seniors Housing Development containing 19 self-contained dwellings with attached garages within a reasonable walking to the existing Kurrajong Neighbourhood Centre and supporting more walkable neighbourhoods is considered to be generally consistent with Direction 4 Housing the City and objectives 10 and 11 of the Plan.

Metropolitan Rural Area

The Greater Sydney Region Plan and the Western City District Plan identify the whole Hawkesbury Local Government Area (except the Vineyard Precinct in the North West Growth Area) as a Metropolitan Rural Area. Objective 29 of The Greater Sydney Region Plan is to protect and enhance the environmental, social and economic values in rural areas.

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The Plan acknowledges that the distinctive towns and villages of the Metropolitan Rural Area offer opportunities for people to live and work in attractive rural or bushland settings, close to a major city. They provide focal points for local communities and rural industries. Ongoing planning and management of rural towns and villages will need to respond to local demand for growth, the character of the town or village and the values of the surrounding landscape and rural activities.

The Planning Proposal enabling opportunities for seniors to live in attractive rural or bushland setting and proximity to the existing Kurrajong Neighbourhood Centre, responding to senior housing demand and increasing economic viability and supporting ongoing management of rural neighbourhood centres is not considered to be inconsistent with the objectives of the Metropolitan Rural Area.

Western City District Plan

The Western City District Plan sets out planning priorities and actions for improving the quality of life for residents of the Western City District as the District grows and changes. The Western City District covers the Blue Mountains, Camden, Campbelltown, Fairfield, Hawkesbury, Liverpool, Penrith and Wollondilly Local Government Areas. This 20-year Plan is to manage growth in the context of economic, social and environmental matters to achieve the 40-year vision for Greater Sydney.

Of relevance to this planning proposal are the following directions and objectives of the District Plan:

- Directions for Liveability: A City for people, Housing the city- A City of Great Places,
- Planning Priority W5 - Providing housing supply and choice and affordability with access to jobs, services and public transport,
- Objective 10 - Greater housing supply and
- Objective 11 - Housing is more diverse and affordable.

The Planning Proposal enabling a seniors housing development containing 19 self-contained dwellings would help to achieve increased housing supply, choice and affordability within a reasonable walking distance (approximately 500m) to the established Kurrajong Neighbourhood Centre.

This Centre meets the resident's day-to-day shopping needs and provides local services. As such, the Planning Proposal is considered to be generally consistent with the Directions for Liveability, Planning Priority 5 and Objectives 10 and 11 of the Western City District Plan.

State Environmental Planning Policies

The following State Environmental Planning Policies are relevant to the Planning Proposal:

State Environmental Planning Policy (Biodiversity and Conservation) 2021.

Chapters 4 and 6 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 apply to the subject site.

Chapter 4 Koala habitat protection 2021

The aim of this Chapter is 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.

A Biodiversity Development Assessment Report prepared by Ecological Consultants Australia, dated April 2022 (which formed part of the Court approved Development Application DA0055/21) for Seniors

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Housing Development confirmed that the subject site does not contain areas of optimal koala habitat. Further, the report states that 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. Tree removal will occur, however the development has been designed to ensure areas of native vegetation can be retained and enhanced.

Chapter 6: Water Catchment (6.13 Hawkesbury-Nepean conservation area sub-catchments)

The Court concluded that the proposed development will not adversely impact the environment and environmental amenity and the subject site has the environmental capacity to accommodate the proposed development. Therefore, It is considered that the proposed 19-lot community title subdivision of the subject site will be able to satisfy the planning principles, strategies and development controls contained in this Chapter or be able to appropriately minimise any adverse impacts. Should the Plan be made to give effect to the Planning Proposal, the above matters can be further considered at the development application stage.

State Environmental Planning Policy (Housing) 2021

There are number of principles of this Policy including the followings:

- (a) enabling the development of diverse housing types, including purpose-built rental housing,
- (b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,
- (c) ensuring new housing development provides residents with a reasonable level of amenity,
- (d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,
- (e) minimising adverse climate and environmental impacts of new housing development,
- (f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,

The Planning Proposal is generally consistent with the above principles.

However, Part 5 of the State Environmental Planning Policy (Housing) 2021 does not apply to rural zoned lands (other than RU5 Village zoned lands). This means, Housing for seniors and people with a disability is not a permitted land use on the subject site which is zoned RU1 Primary Production.

However, given the subject site is enjoying the existing use rights as determined by the Court, the proposed Seniors Housing Development can be accommodated on the subject site as an extension of the existing Tallwood Seniors Living development.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 of the State Environmental Planning Policy (Resilience and Hazards) 2021 requires the consent authority to consider whether land is contaminated prior to granting consent to carrying out any development on that land and, if the land is contaminated, be satisfied that the land is suitable in its current state or will be after remediation for the purpose for which the development is proposed to be carried out.

A Detailed Site Investigation prepared by Martens Consulting Engineers, dated October 2021 which formed part of the Court approved Development Application (DA0055/21) for Seniors Housing Development confirmed that the site is suitable for the proposed development. However, it is noted

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that the subject site has been previously used for agricultural and horticultural purposes that are listed in Table 1 – ‘Some activities that may cause contamination’ of the Managing Land Contamination Planning Guidelines. Therefore, this is a matter for the Department of Planning and Environment to consider at the Gateway Determination if the Planning Proposal is to proceed.

State Environmental Planning Policy (Resources and Energy) 2021

Chapter 3: Extractive Industries in Sydney

The Planning Proposal is only to include an additional local provision under Part 6 of the Hawkesbury Local Environmental Plan 2012, and the current RU1 Primary Production zoning of the subject site which allows extractive industries remains unchanged. Therefore, the Planning Proposal is consistent with the State Environmental Planning Policy (Resource and Energy) 2021.

Local Planning Direction (Ministerial Directions)

Relevant to the planning proposal are the following ministerial directions:

Direction 1.1 Implementation of Regional Plans

As outlined in the early part of this report, the Planning Proposal is consistent with the relevant regional plans.

Direction 1.3 Approval and Referral Requirements

The Planning Proposal does not require concurrence, consultation or referral of development application to a minister or public authority therefore the Planning Proposal is consistent with this direction.

Direction 1.4 Site Specific Provisions

The objective of this Direction is to discourage unnecessary restrictive site-specific planning controls.

There are no other options or mechanisms other than the proposed amendment to the Hawkesbury Local Environmental Plan 2012 to facilitate a community title subdivision of the Court approved Seniors Housing Development.

The suitability of the subject site for Seniors Housing and the associated development works and the subject site's environmental capacity has been determined and approved by the Court. The proposed site-specific planning controls contained in the Planning Proposal are only to facilitate a community title subdivision of the Court Seniors Housing Development, and therefore those planning controls are not considered to be unnecessary restrictive site-specific planning controls. Further, the Planning Proposal does not contain or refer to drawings that show details of the proposed development.

The above outlined circumstances provide sufficient justification for the inconsistency with the Direction. However, this is a matter for the Department of Planning and environment to consider at the Gateway Determination if the Planning Proposal is to proceed.

Direction 4.3 Planning for Bushfire Protection

The subject site is identified as being bushfire prone, containing Vegetation Categories 1 and 3 on the NSW Rural Fire Service's Bushfire Prone Land Map. The Planning Proposal is accompanied by a Bushfire Assessment Report prepared by Building Code & Bushfire Hazard Solutions Pty Ltd. The Report concludes that the subject site and proposed Seniors Housing Development comply with the relevant specifications and requirements of the Planning for Bushfire Protection 2019. Therefore, the planning proposal is considered to be generally consistent with this Direction.

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However, following receipt of a Gateway determination from the Department of Planning and Environment advising Council to proceed with the planning proposal, consultation on the planning proposal will be undertaken with the NSW Rural Fire Service to ensure compliance with Planning for Bushfire Protection 2006, and compliance with various Asset Protection Zones, vehicular access, water supply, layout, and building material provisions in accordance with the Direction.

Direction 4.4 Remediation of Contaminated Land

A Detailed Site Investigation prepared by Martens Consulting Engineers, dated October 2021 which formed part of the Court approved DA0055/21 for Seniors Housing Development confirmed that the site is suitable for the proposed development. However, it is noted that the subject site has been previously used for agricultural and horticultural purposes that are listed in Table 1 - Some activities that may cause contamination of the Land Management Guideline. Therefore, this is a matter for the Department of Planning and Environment to consider at the Gateway Determination if the Planning Proposal is to proceed.

Direction 4.5 Acid Sulfate Soils

This Direction requires that a relevant planning authority must not prepare a planning proposal that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps.

The subject site is identified as containing "Class 5 acid sulfate soils on the Acid Sulphate Soils Planning Maps, and as such any future development on the land will be subject to Clause 6.1 Acid Sulfate Soils of the Local Environmental Plan 2012 which has been prepared in accordance with the 'Acid Sulfate Soils Model Local Environmental Plan provisions within the Acid Sulfate Soils' Planning Guidelines adopted by the Director General.

Direction 5.1 Integrated Land Use and Transport

This direction generally applies to urban land. However, the Planning Proposal enables Seniors Housing within a reasonable walking distance to the existing Kurrajong Neighbourhood Centre which generally serves the Kurrajong Residential Community's day-to-day needs and provides some local jobs and services. Therefore, there will be no adverse impacts on local transport or infrastructure.

Given the above circumstances, the planning proposal is considered to be generally consistent with this Direction.

Direction 8.1 Mining, Petroleum production and Extractive Industries.

The objective of this direction is to ensure that future extraction of State or Regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.

The planning proposal is consistent with this direction as the subject site is not located within an Identified Resource Area, Potential Resource Area or the Transition Area which is adjacent to Identified Resource Areas as identified by mineral resource maps provided by the NSW Resource & Energy Division of NSW Trade & Investment.

Additionally, the subject site is not located within or in the vicinity of land described in Schedule 1, 2 and 5 of the Sydney Regional Environmental Plan No. 9 - Extractive Industry (No 2- 1995).

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Direction 8.1 Rural Zones

The objective of this direction is to protect the agricultural production value of rural land. The Direction requires not rezone land from a rural zone to a residential, business, industrial, village or tourist zone and not contain provisions that will increase the permissible density of land within a rural zone.

The Planning Proposal retains the current RU1 Primary Production zoning of the subject site and seeks only to include a new local provision under Part of the Hawkesbury Local Environmental Plan 2012 to allow a community subdivision of the Court approved Seniors Housing Development on the subject site.

There is a minor inconsistency with this direction as the Planning Proposal seeks to create 19 community title lots to accommodate the Court approved Seniors Housing Development containing 19 self-contained dwellings and attached garages. Currently, the subject is entitled or can be developed for a single dwelling or an attached dual occupancy. However, this inconsistency is considered to be warranted due to the following reasons:

- The Planning Proposal is only to facilitate the proposed community title subdivision of the Court approved Seniors Housing Development on the subject and there are no other options to achieve this, and
- the proposed local provision ensures that no further increased density other than the Court approved density (19 community title lots) on the subject site.

Irrespective of the above comments, this is a matter for the Department of Planning and Environment to consider at the Gateway Determination if Council resolved to proceed with the Planning Proposal.

Hawkesbury Local Strategic Planning Statement 2040

The Hawkesbury Local Strategic Planning Statement 2040 prepared in response to the Greater Sydney Region Plan and Western City District Plan, provides a 20-year land use vision for the Hawkesbury Local Government Area. The Statement outlines Council's intended course of action in delivering the planning objectives.

The statement establishes the following clear vision for Hawkesbury Local Government Area to 2040.

"Hawkesbury Local Government Area will provide a diversity of housing to meet the future needs of the community without compromising safety, environmental quality and local character".

Planning Priority 3 of this Statement is to provide a diversity of housing types to meet the needs of the changing population and Planning Priority 5 is to manage rural lands.

The Planning Proposal enabling increased housing and housing choice to meet the demand and needs of the changing and vulnerable population with no adverse impacts on the natural environment and amenity, retaining rural character and zoning of the subject site is generally considered to be consistent with this Statement.

Hawkesbury Local Housing Strategy (December 2020)

The Hawkesbury Local Housing Strategy provides a clear plan to deliver the housing vision in Hawkesbury Local Government Area over the next 20 years. The Strategy identifies eight guiding principles, and Principle No 5 is as follows:

"5 Increase housing diversity to deliver housing choice to meet the needs of the ageing population with more lone person households."

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The Planning Proposal is in line with the Principle 5 of the Strategy and therefore the Planning Proposal is considered to be generally consistent with the Strategy.

Hawkesbury Rural Lands Strategy

Hawkesbury's rural land is an important resource. It comprises a number of land uses, landforms and vast areas of national parks and native vegetation. It is productive as a source of food and consumables; it is also important for biodiversity habitat and catchment management as well as a place for people to live and work.

However, planning for the preservation of rural land is a complex issue. The Hawkesbury Rural Lands Strategy provides Council with a better planning framework for effective management and protection of rural lands with significant agricultural, environmental and biodiversity values whilst making provisions for ongoing planning and management of rural towns and villages for people to live and work in rural settings proximity to rural neighbourhoods, villages and towns.

The Planning Proposal enabling opportunities for senior people to live in attractive rural or bushland setting and proximity to the existing Kurrajong Neighbourhood Centre, responding to senior housing demand and increasing economic viability and supporting ongoing management of rural neighbourhood centres is not considered to be inconsistent with the Strategy.

Hawkesbury Local Environmental Plan

Land Zoning

The subject is currently zoned RU1 Primary Production under the provisions of the Hawkesbury Local Environmental Plan 2012 as shown in Figure 7 and seniors housing is a prohibited land use within this zone.

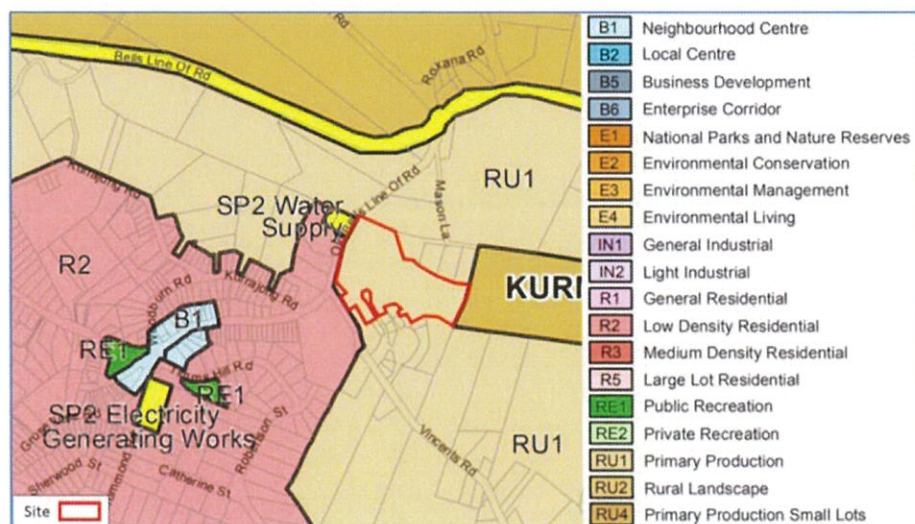


Figure 7: Extract of the Land Zoning Map

Given the Planning Proposal is relying upon the existing use rights, the proposed Seniors Housing can be accommodated on the subject site.

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Lot Size Map

The current minimum lot size for subdivision of the subject site is 10ha as shown in Figure 7. Given the subject site has an area of approximately 5.4ha, it cannot be subdivided. Therefore, the Planning Proposal seeks to include an additional local provision under Part 6 of the Hawkesbury Local Environmental Plan 2012 to allow the proposed community title subdivision comprising of 19 lots with minimum lot size not less than 360m².

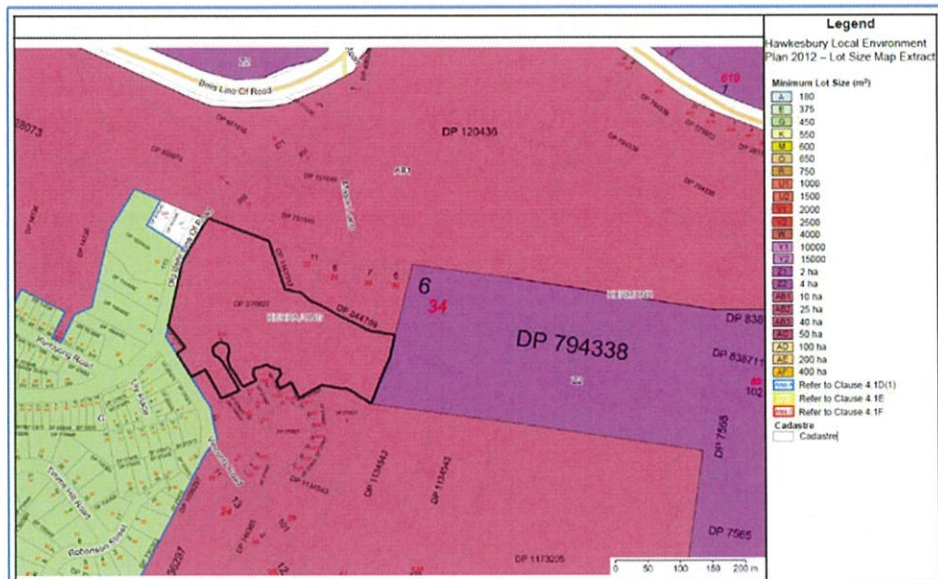


Figure 7: Extract of the Lot Size Map

Height of Buildings Map

A 10m maximum height of buildings provision applies to the subject to site as shown in Figure 8.

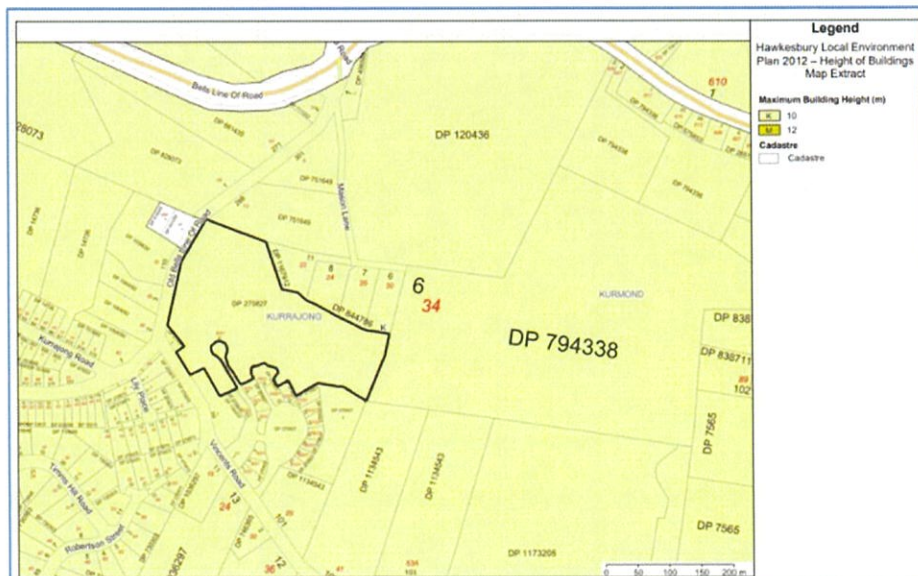


Figure 8: Extract of the Height of Buildings Map

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The architectural plans of the proposed development prepared by Enviro Studio depict that the proposed development complies with the 10-metre height limit.

Clause 6.4 Terrestrial biodiversity

The primary aim of Clause 6.4 of the Hawkesbury Local Environmental Plan 2012 is to maintain terrestrial biodiversity protecting native fauna and flora.

As shown in Figure 9, the subject site contains 'Shale Sandstone Transition Forest and Connectivity between Remnant Vegetation' as identified on the Terrestrial Biodiversity Map of the Hawkesbury Local Environmental Plan 2012. Council's vegetation mapping depicts the concentration of Shale Sandstone Transition Forest, which is a Critically Endangered Ecological Community under the Biodiversity Conservation Act 2016 mainly along the North-Western boundary.

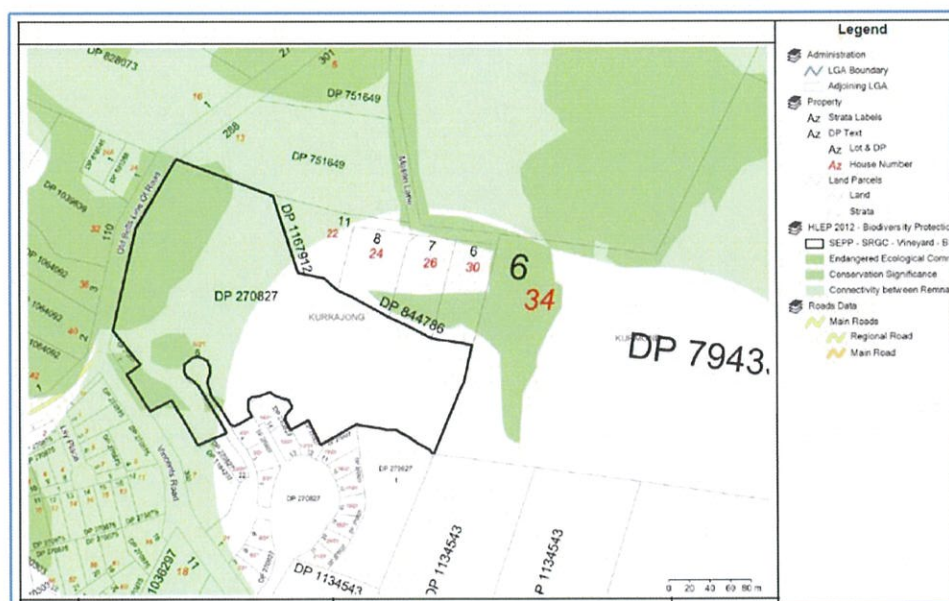


Figure 9: Extract of the Terrestrial Biodiversity Map

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."

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. Tree removal will occur however the development has been designed to ensure areas of native vegetation can be retained and enhanced."

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Strategic and Site-specific Merits

The Planning Proposal is consistent with the relevant State and local planning framework. Given the subject site has frontages to both Bells Line of Road and Vincents Road, enjoys existing use rights, and is located immediately north of the existing Tallowood Seniors Living development and within walking distance to the Kurrajong Neighbourhood Centre. It is considered that it has clear merits to accommodate the proposed community title subdivision of the Court approved Seniors Housing Development.

The Court determined that the subject site has the environmental capacity with easy access to all necessary infrastructure services and is capable of accommodating the proposed Seniors Housing Development as an extension to the existing Tallowood Seniors Living development with no adverse impacts on the immediate surrounding and the amenity of the locality.

Environmental, Social and Economic Impacts

The proposed development will not adversely impact the natural environment as determined by the Court. The proposed development can be accommodated on the vacant land area free of any significant vegetation with no adverse impacts on critical habitat or populations, or ecological communities. Further the Court stated that there will be appropriate measures in order to ensure that there are no adverse impacts result from the proposed development on the natural environment. A Bushfire Assessment Report prepared by Building Code & Bushfire Hazard Solutions concludes that the subject site and proposed Seniors Housing Development comply with the relevant specifications and requirements of the Planning for Bushfire Protection 2019.

The Planning Proposal enabling increased housing and housing choice for seniors, economic viability of the existing Kurrajong Neighbourhood Centre, local jobs and services are considered to be positive social and economic impacts

Consideration

The Land and Environment Court approved the proposed development other than the community title subdivision of the seniors housing development. This is because the Land and Environment Court determined that 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.

In accordance with clause 2.6 – 'Subdivision - consent requirements' and clause 4.1AA – 'Minimum subdivision lot size for community title schemes' of the Hawkesbury Local Environmental Plan 2012, a consent cannot be granted for the proposed community title subdivision of the Land and Environment Court approved seniors housing development proposing 19 community title lots with minimum lot size of not less than 360m².

This is because these two clauses state that 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. According to clause 4.1AA, this minimum lot size requirement is not applying to any lot comprising association property within the meaning of the Community Land Development Act 2021.

The predominant minimum lot size within the immediate vicinity of the subject site is 10Ha. Therefore, any amendment to the Lot size Map in order to allow a 360m² minimum lot size provision for subdivision of the subject site to enable the proposed community title subdivision of the Seniors Housing is considered to be inappropriate, undesirable planning outcome for rural lands and is unwarranted.

Further, it is expected that the Department of Planning and Environment will not support that approach for rural lands and it also creates a significant lot size anomaly in the locality and a precedent.

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There are no provisions in the Hawkesbury Local Environmental Plan 2012 or any other existing State planning instrument other than an insertion of an additional local provision under Part 6 of the Hawkesbury Local Environmental Plan 2012 to enable the proposed community title subdivision of the Land and Environment Court approved seniors development as proposed in the Planning Proposal.

However, a Planning Proposal containing or referring to drawings that show details of the proposed development is inconsistent with the section 9.1 Ministerial Directions. Therefore, it is proposed to include an additional subclause in the proposed additional local provision in order to ensure amalgamation of the remainder of the subject site with the existing Lot 1 DP 270827 to serve as the association property of the entire seniors' development comprising of the existing Tallowood Seniors Living development and the proposed Seniors Housing Development on the subject site. This would help avoid any uncertainty or speculations about the future use of the remainder of the subject site and provide certainty to the future senior users/owners of residential lots within the proposed seniors housing development that the remainder of the subject site will be amalgamated with the existing Lot 1 DP 270827 to form as the association property for the entire seniors' development.

Therefore, consideration of the inclusion of an additional subclause 3(d) in the proposed local provision as follows is warranted:

"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 Lot 1 DP 270827 to create an association property for the entire Seniors' Living development within the meaning of the Community Land Development Act 2021."*

Hawkesbury Local Planning Panel Advice

This Planning Proposal was considered by the Hawkesbury Local Planning Panel at its Meeting on 19 January 2022. The advice from the Hawkesbury Local Planning Panel was to support this Planning Proposal.

The draft minutes are provided below:

The Panel unanimously provided the following advice:

"The Planning Panel supports the Planning Proposal proceeding to Gateway, including the additional Clause 3(d) as recommended by Council staff, for the following reasons:

- 1. The Panel notes that the Planning Proposal arises from the decision of the Land and Environment Court to approve the Seniors Housing Development on the site, but which held that the strata subdivision component of that development was prohibited under current planning controls. The Planning Proposal aims to address this apparent anomaly.*

ORDINARY MEETING

4. REPORTS FOR DETERMINATION

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2. *The Panel is satisfied that the Planning Proposal has strategic merit as it is consistent with relevant State and Local Planning Strategies, and that it has site specific merit based on its relationship with the existing and approved Tallwood Seniors Living Development on the site.*
3. *The Planning Proposal facilitates the orderly and economic use of the site, allowing for the effective ongoing management of the Seniors Housing development and of the private cemetery.*
4. *Whilst not a matter relating to the Planning Proposal considered by the Panel, the Community Member, Mr Paul Rogers identified that the Community has ongoing concerns around the need for footpaths from Kurmond to Kurrajong, and particularly urges Council to provide safe pedestrian access to the site on Vincents Road at the earliest opportunity."*

Conclusion

The Planning Proposal seeks the insertion of a site-specific local provision under Part 6 of the Hawkesbury Local Environmental 2012 to enable the proposed community title subdivision of the Land and Environment Court approved seniors housing development, and an extension of the existing private cemetery has some merits.

The Planning Proposal will provide increased housing and housing choice as well as some form of affordability for local elderly people or seniors to live and enjoy in a rural setting in proximity to local shops and services. Also, the Planning Proposal enabling the proposed development on the subject site is considered to be generally compatible with the surrounding uses, there will be no adverse impact on the natural and built environment.

The Planning Proposal is also consistent with relevant State and local planning framework, and also would help ongoing economic viability of the Kurrajong Neighbourhood Centre.

COMMUNITY ENGAGEMENT

Should Council resolve to forward the Planning Proposal to the Department of Planning and Environment for a Gateway determination and the proposal proceeds, consultation with the community and relevant government agencies will be undertaken in accordance with relevant Gateway determination and statutory requirements.

CONFORMANCE TO THE HAWKESBURY COMMUNITY STRATEGIC PLAN 2022-2042

The proposal is consistent with the following Long-Term Community Objectives set out within the CSP.

Great Place to Live

1.5 Provide the right places and spaces to serve our community.

FINANCIAL IMPACT

There are no financial implications applicable to this report.

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Planning Decision

As this matter is covered by the definition of a "planning decision" under Section 375A of the Local Government Act 1993, details of those Councillors supporting or opposing a decision on the matter must be recorded in a register. For this purpose a division must be called when a motion in relation to the matter is put to the meeting. This will enable the names of those Councillors voting for or against the motion to be recorded in the minutes of the meeting and subsequently included in the required register.

ATTACHMENTS

- AT - 1** Land and Environment Court Judgement - (*Distributed under separate cover*).
- AT - 2** Court Approved Architectural Plans - (*Distributed under separate cover*).
- AT - 3** Proposed Plan of Subdivision of Lot 6 DP270827 Tallowood Village Kurrajong - (*Distributed under separate cover*).
- AT - 4** Planning Proposal for 6/21 Vincents Road, Kurrajong - (*Distributed under separate cover*).

oooO END OF REPORT Oooo