

## HAWKESBURY LOCAL PLANNING PANEL MEETING

### SECTION 1 – Reports for Advice

Meeting Date: 19 January 2023

### SECTION2 – Reports for Advice

Item: 001 CP - Planning Proposal - LEP005/22 - 6/21 Vincents Road, Kurrajong -  
Community Title Subdivision - (124414)

Directorate: City Planning

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#### PLANNING PROPOSAL INFORMATION

File Number:	LEP005/22
Property Address:	6/21 Vincents Road, Kurrajong
Applicant:	Sutherland & Associates Planning Pty Ltd
Owner:	P D Bennett
Date Received:	2/12/2022
Current Zone:	RU1 Primary Production
Site Area:	5.389Ha

**Key Issues:**

- ◆ Land & Environment Court Judgement
- ◆ Existing Use Rights
- ◆ Community Title Subdivision

#### EXECUTIVE SUMMARY

Council is in receipt of a Planning Proposal from Sutherland & 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 & 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.

#### RECOMMENDATION:

That the Hawkesbury Local Planning Panel provide advice on the Planning Proposal which 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.

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#### Purpose of the Report

The purpose of this report is to seek advice from the Hawkesbury Local Planning Panel on the Planning Proposal which seeks to include an additional local provision under Part 6 of the Hawkesbury Local Environmental Plan 2012 to allow a community title subdivision of 19 lot seniors housing development, and an extension of a private cemetery at 6/21 Vincents Road, Kurrajong.

## Background

In June 1999, Development Application 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 Development Application was for the construction of aged/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 shows the 19 lot community title subdivision.

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 Nineteen (19) self-contained dwellings with attached garages;
- an extension to existing private cemetery;
- a community title subdivision of the subject site; and
- other ancillary development works including demolition of existing structures, earthworks, tree removal and conversion of an existing barn to a men's shed.

Given the proposed seniors housing development is not a permitted land use within the RU1 Primary Production Zone (note that there were changes as a consequence of the introduction of the Metropolitan Rural Area Exemption introduced by the NSW Government in 2020), the Development Application relied upon the ‘existing uses’ provisions in Division 4.11 of the Environmental Planning & Assessment Act 1979 to sustain the permissibility of the proposed development on the subject site.

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.

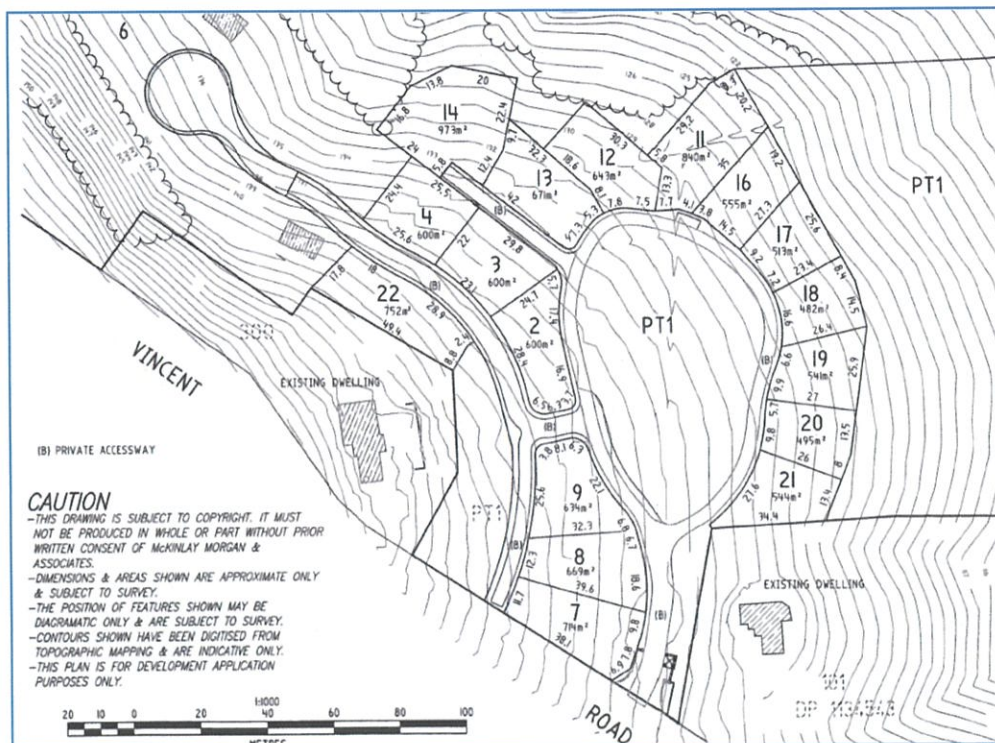


Figure 1: Council Approved 19-lot Community Title Subdivision





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

Council was not convinced in terms of the application of existing use provisions in support of the proposed development on the subject site, and as such was unable to determine DA0055/22 within the assessment period specified in Clause 91 of the Environmental Planning & Assessment Regulation 2021. In November 2021, the property owner/developer lodged a Class 1 Appeal with the Land & Environment Court NSW against the Council's deemed refusal of the Development Application (DA0055/22).

On 15 November 2022, the Court concluded that the subject site is a resultant lot of the previously approved 19-community title subdivision (M844/98) and therefore has existing use rights. Further, the Land and Environment 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 Act 1979). Therefore, the Land and Environment Court upheld the Appeal and granted consent for DA0055/22 except for the proposed community title subdivision which is shown in Figure 3 below.

The Land and Environment Court was of the opinion that subdivision does not fall within the scope of 'enlargement, expansion or intensification' as referred to in s 4.67(2) of the EP&A Act 1979 or clause 42 of the repealed Environmental Planning & Assessment Regulation 2000 (Clause 164 of the current Regulation 2021). Therefore, 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. A copy of the Land and Environment's Court Determination with respect to Development Application (DA0055/22), and a copy of the Land and Environment Court approved Architectural Plans showing the proposed development are attached to this report as Attachments 1 and 2 respectively. Attachment 3 shows the proposed Community Title Subdivision.





A copy of the Planning Proposal is attached to this report as Attachment 4.

### Subject Site and Surrounds

The subject site is located within approximately 500m walking distance from the Kurrajong Rural Neighbourhood Centre, approximately 3kms from the Kurmond Neighbourhood Centre, and 7kms from the North Richmond Village Centre, and 10.5kms from the Richmond Town Centre (Figure 4).

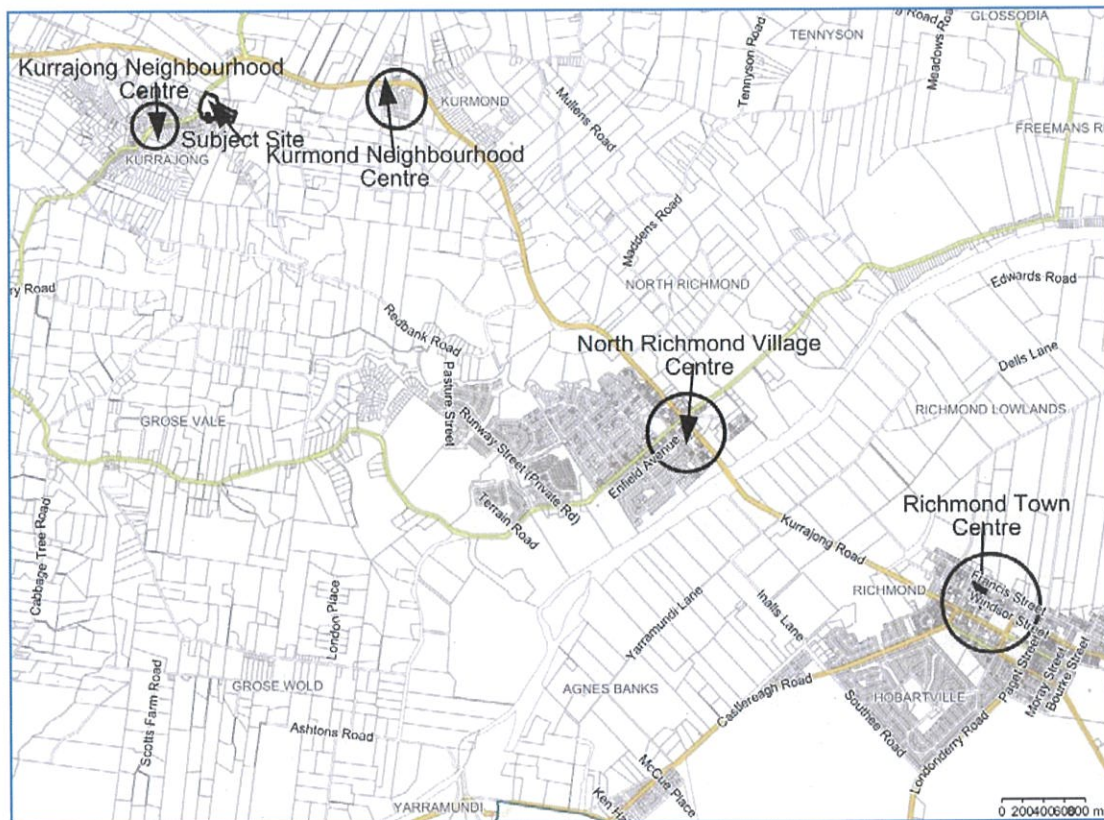


Figure 4: Subject Site Location Map

The subject site is legally described as Lot 6 DP 270827 and is an irregular shape with an area of approximately 5.4ha. The subject site has approximately 183m frontage to Old Bells Line of Road and 40m frontage to Vincents Road. It is bounded by Old Bells Line of Road to the North-West, Vincents Road to the 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.



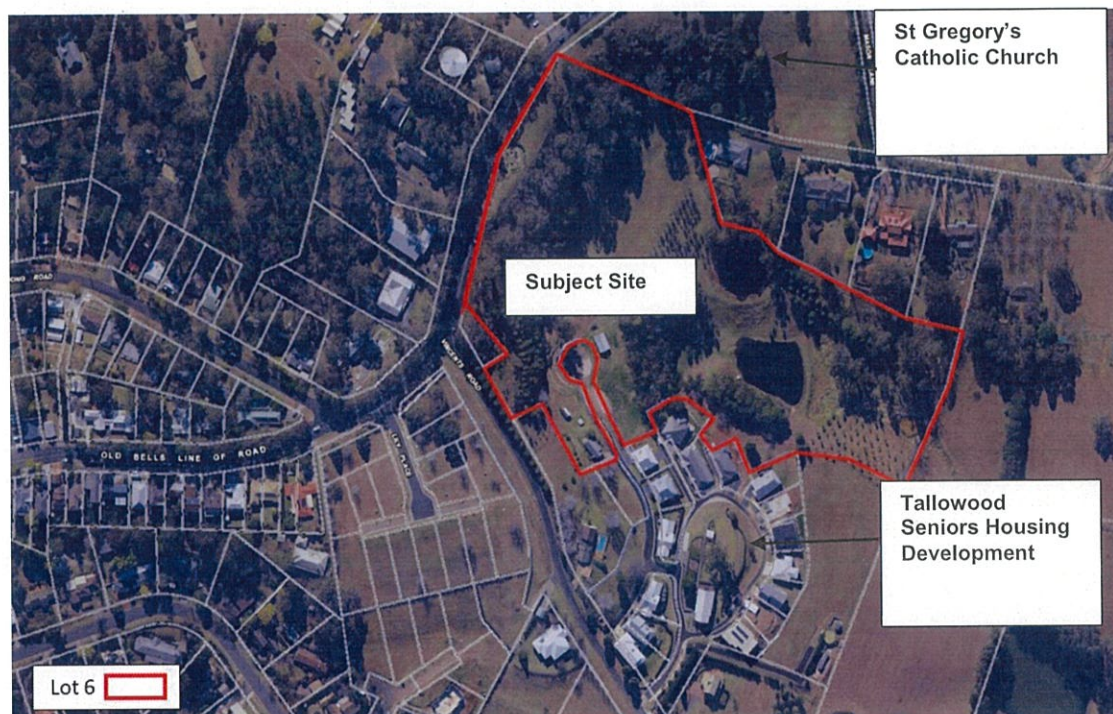


Figure 5: Aerial View of the Subject Site

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

The majority of the subject site 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.



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



## HAWKESBURY LOCAL PLANNING PANEL MEETING

### SECTION 1 – Reports for Advice

Meeting Date: 19 January 2023

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/Controls

The current planning provisions/controls that apply to the subject site under the Hawkesbury Local Environmental Plan 2012, and how the subject site complies/is affected by those 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

#### 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, site-specific merits, and the subject sites 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 focuses 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.



## HAWKESBURY LOCAL PLANNING PANEL MEETING

### SECTION 1 – Reports for Advice

Meeting Date: 19 January 2023

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 seeks 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.

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 an 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 residents 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 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 Land and Environment 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 has existing use rights as determined by the Land and Environment Court, the proposed seniors housing development can be accommodated on the subject site as an extension of the existing Tallowood 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 Land and Environment Court approved Development Application (DA0055/21) for seniors housing development confirmed that the subject 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 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 the 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 sites environmental capacity has been determined and approved by the Land and Environment Court. The proposed site-specific planning controls contained in the Planning Proposal are only to facilitate a community title subdivision of the Land and Environment Court seniors housing development, and therefore those planning controls are not considered to be unnecessary restrictive



**SECTION 1 – Reports for Advice**

**Meeting Date:** 19 January 2023

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.

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 2019, 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 subject 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.



## HAWKESBURY LOCAL PLANNING PANEL MEETING

### SECTION 1 – Reports for Advice

Meeting Date: 19 January 2023

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).

#### *Direction 8.1 Rural Zones*

The objective of this direction is to protect the agricultural production value of rural land. The Direction requires councils to 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 6 of the Hawkesbury Local Environmental Plan 2012 to allow a community subdivision of the Land and Environment 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 Land and Environment Court approved seniors housing development containing 19 self-contained dwellings and attached garages. Currently, the subject site 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 Land and Environment Court approved seniors housing development on the subject site, and there are no other options to achieve this; and
- the proposed local provision ensures that no further increased density other than the Land and Environment 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 resolves 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 PLANNING PANEL MEETING

### SECTION 1 – Reports for Advice

Meeting Date: 19 January 2023

#### Hawkesbury Local Housing Strategy (December 2020)

The Hawkesbury Local Housing Strategy provides a clear plan to deliver the housing vision in the 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.*”

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 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 Rural Lands Strategy.

#### Hawkesbury Community Strategic Plan 2022-2042

The Hawkesbury Community Strategic Plan 2022-2042 outlines the key aspirations of the Hawkesbury Local Government Area and sets the essential direction for future Council activities and decision making. The Planning Proposal is consistent with the following long-term objective:

*Great place to live*

1.5 Provide the right places and spaces to serve our community

#### Hawkesbury Local Environmental Plan

*Land Zoning*

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



# HAWKESBURY LOCAL PLANNING PANEL MEETING

## SECTION 1 – Reports for Advice

Meeting Date: 19 January 2023

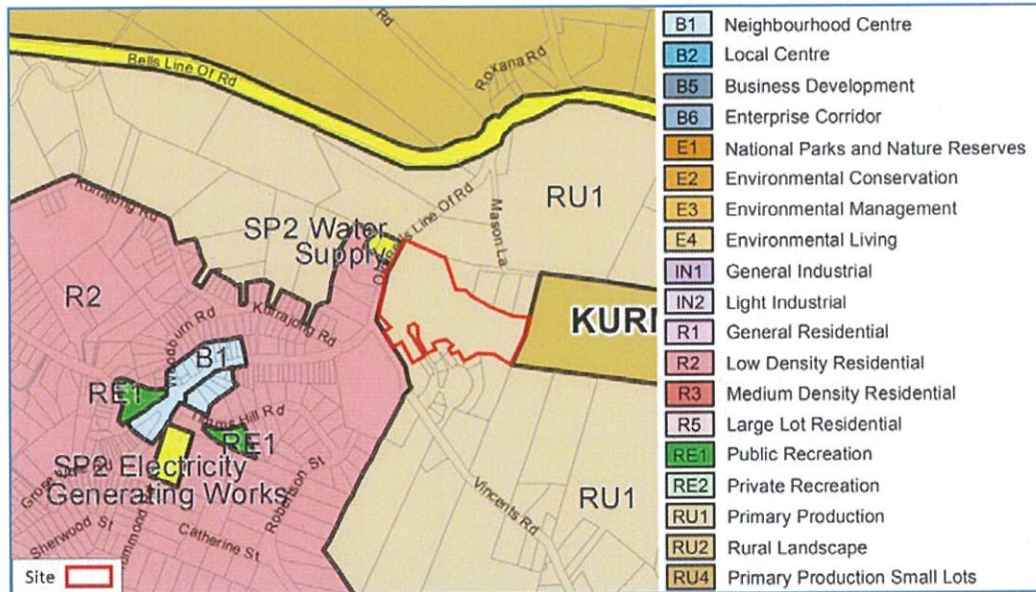


Figure 7: Extract of the Land Zoning Map

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

### Lot Size Map

The current minimum lot size for subdivision of the subject site is 10ha as shown in Figure 8. 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 a minimum lot size not less than 360m<sup>2</sup>.

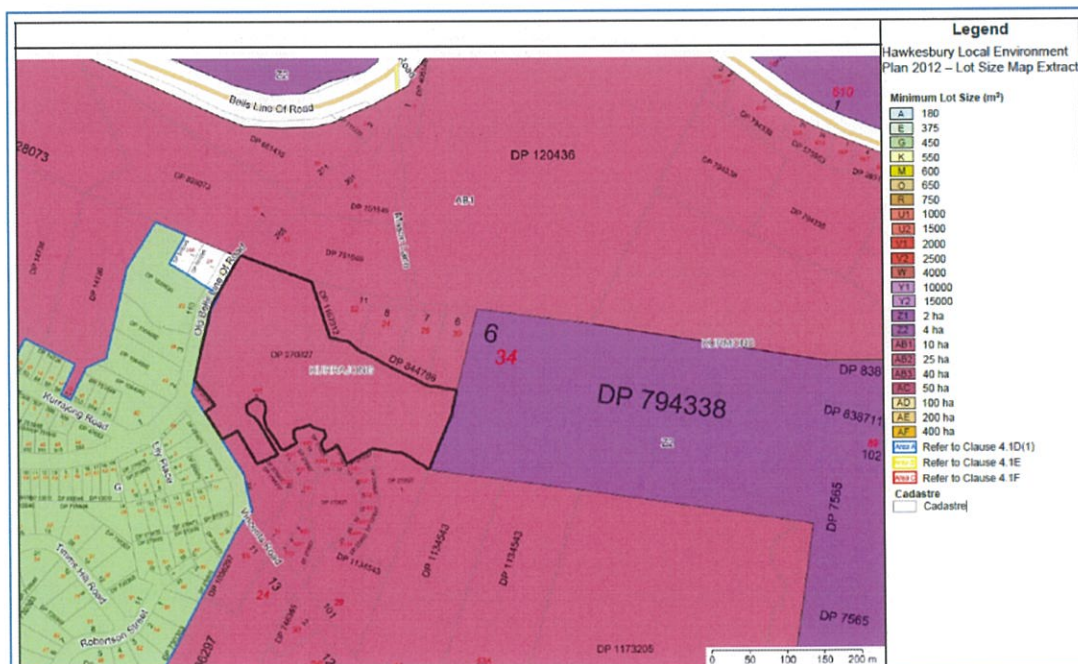


Figure 7: Extract of the Lot Size Map



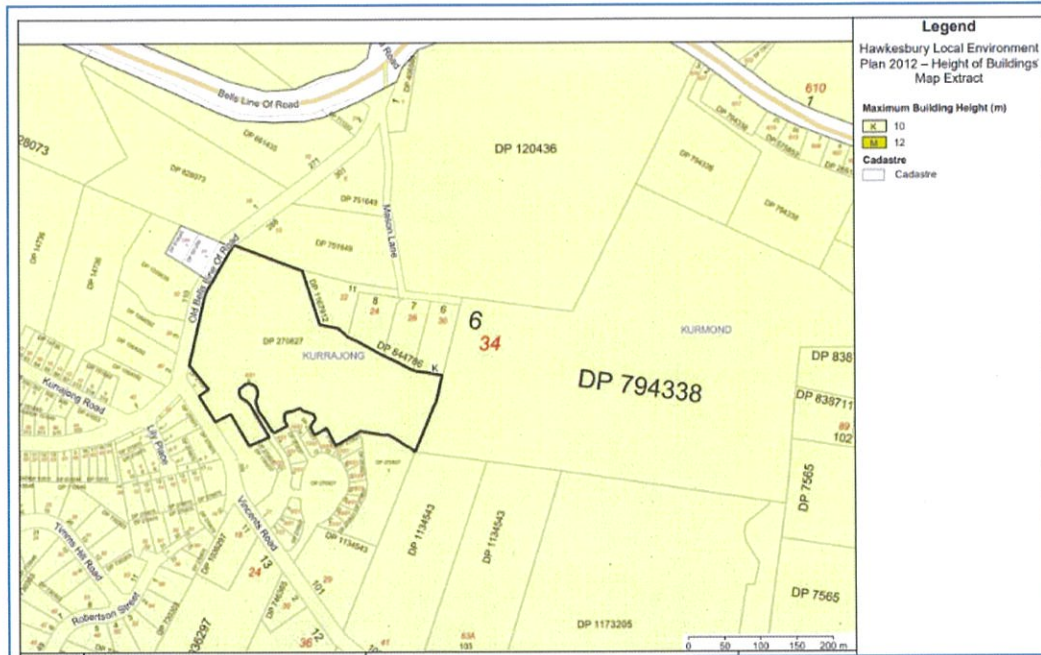
## HAWKESBURY LOCAL PLANNING PANEL MEETING

### SECTION 1 – Reports for Advice

Meeting Date: 19 January 2023

#### *Height of Buildings Map*

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



**Figure 8: Extract of the Height of Buildings Map**

The architectural plans of the proposed development prepared by Environa 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.







**Environmental, Social and Economic Impacts**

The proposed development will not adversely impact the natural environment as determined by the Land and Environment 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 Land and Environment Court stated that there will be appropriate measures in order to ensure that there are no adverse impacts resulting from the proposed development on the natural environment. A Bushfire Assessment Report prepared by Building Code and 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.

**Discussion**

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 360m<sup>2</sup>.

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 360m<sup>2</sup> 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.

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 Tallwood 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.



## HAWKESBURY LOCAL PLANNING PANEL MEETING

### SECTION 1 – Reports for Advice

Meeting Date: 19 January 2023

Therefore, consideration of the inclusion of an additional subclause (3d.) 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 360m<sup>2</sup> 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.*

#### **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 management and improved economic viability of the Kurrajong Neighbourhood Centre.

#### **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