

## Greater Sydney, Place and Infrastructure

IRF19/6928

### Gateway determination report

<b>LGA</b>	Hawkesbury
<b>PPA</b>	Hawkesbury City Council
<b>NAME</b>	42 Bells Lane, Kurmond (4 additional homes, 0 jobs)
<b>NUMBER</b>	PP_2019_HAWKE_003_00
<b>LEP TO BE AMENDED</b>	Hawkesbury Local Environmental Plan 2012
<b>ADDRESS</b>	42 Bells Lane, Kurmond
<b>DESCRIPTION</b>	Lot 40 in DP 7565
<b>RECEIVED</b>	27 September 2019
<b>FILE NO.</b>	IRF19/6928
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

## 1. INTRODUCTION

### 1.1 Description of planning proposal

The planning proposal (**Attachment A1**) seeks to amend the Hawkesbury Local Environmental Plan (LEP) 2012, by reducing the minimum lot size for land at 42 Bells Lane, Kurmond to allow the site to be subdivided into five rural residential lots with a minimum lot size of 4,000m<sup>2</sup>.

### 1.2 Site description

The site is legally known as Lot 40 DP 7565 (Figure 1), has an area of 2.9 hectares, is irregular in shape, has an average depth of 113m and significant road frontage of 298m to Bells Lane. The site is used for rural residential purposes and contains an existing dwelling, outbuilding and pool.

The vegetation is limited on the site with scattered vegetation in the north portion of the site surrounding a dam and in the south western portion near the existing dwelling. The site has been cleared previously for grazing activities.

Based on Council's slope mapping, the site contains some land having slopes in excess of 15% surrounding the dam and along the Bells Lane frontage. The planning proposal states the site varies in height from 102m AHD at the south west corner to 82m at the north east corner. The slope is gentle over the site and no extreme slope variations.

The site is located within the Council's draft Kurmond-Kurrajong Structure Plan area.



Figure 1: Aerial view of 42 Bells Lane, Kurmond

### 1.3 Existing planning controls

Under the Hawkesbury LEP 2012 the site is zoned RU1 Primary Production, has a minimum lot size of 10ha and comprises areas of significant vegetation (as identified on the Terrestrial Biodiversity Map). Excerpts of LEP mapping are shown in Figure 2.

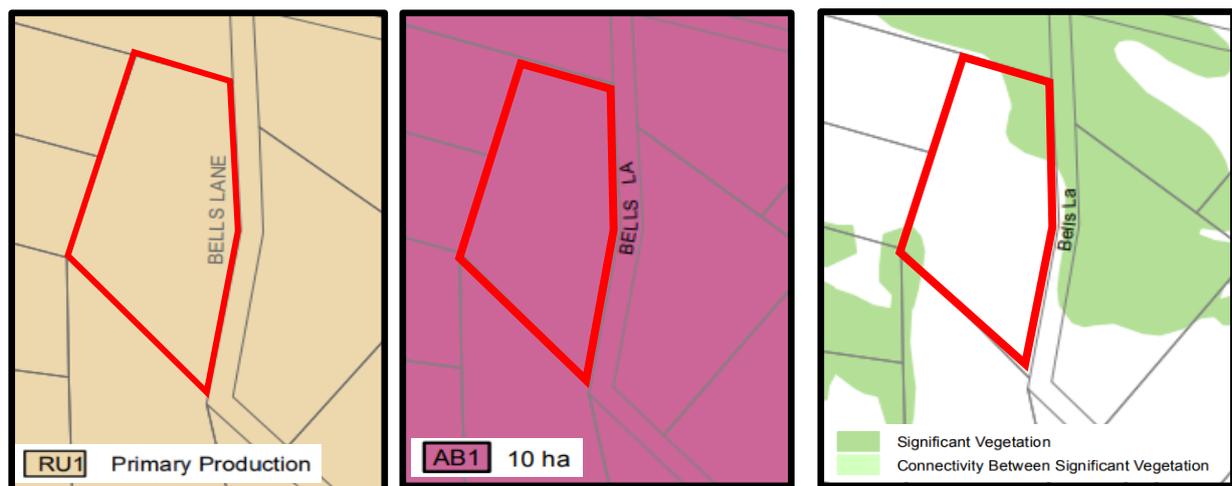


Figure 2: Extracts from HLEP 2012, sheets 008AA (L-R: Land Use Zoning Map, Lot Size Map, Terrestrial biodiversity Map)

### 1.4 Surrounding area

The site is located on the outskirts of Kurmond Village, approximately 720m from the town centre, and is approximately 7km from the township of Richmond. The area is predominately rural residential and is undergoing change with several allotments in the vicinity having been subject to recent lot size amendments and subsequent subdivision.

The planning proposal states that the surrounding land uses, size of the site, the soil type, and proximity of residential development are all disincentives to any high order agricultural use.

## 1.5 Summary of recommendation

The planning proposal is not supported to proceed to Gateway as there is insufficient strategic or site-specific merit. The proposal was submitted for Gateway Determination after the Western City District Plan came into effect. The site is located within the Metropolitan Rural Area where rural-residential development is not generally supported. The cumulative impact of all proposals within the Kurmond Kurrajong area means this planning proposal cannot be determined due to the unjustifiable deviation from the District Plan.

Insufficient supporting strategic planning framework, including a Council Rural Lands Strategy and an updated Housing Strategy, means it is difficult to demonstrate how the planning proposal responds to the District Plan's Planning Priority W17 Better managing rural areas. It is not evident how the planning proposal supports this Priority's objective for 'environmental, social and economic values in rural areas are protected and enhanced'. As such, the proposal does not give effect to the Western City District Plan.

## 2. PROPOSAL

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### 2.1 Objectives or intended outcomes

The objective of the proposal is to allow the site to be subdivided into five rural residential lots.

### 2.2 Explanation of provisions

The planning proposal seeks to amend the Hawksbury LEP 2012 by decreasing the minimum lot size for the site from 10ha to 4,000m<sup>2</sup>. This would allow the site to be subdivided into five rural residential lots.

### 2.3 Mapping

The proposal seeks to amend the Lot Size Map (Sheet LSZ\_008AA).

The proposal includes the current and proposed Lot Size Map, an excerpt of the proposed lot size map is in Figure 3 below.



Figure 3: Proposed Lot Size Map

### **3. NEED FOR THE PLANNING PROPOSAL**

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The planning proposal (**Attachment A1**) states it has been prepared in response to Council's Residential Land Strategy 2011 to assist in meeting the LGA's 2031 housing target (previous subregional strategy). The Residential Land Strategy did not specifically identify Kurmond and Kurrajong for investigation but identified scope to review provisions for future development within and adjacent to existing rural villages. This proposal is in proximity to the existing Kurmond village.

In support of the provisions contained within the 2011 Residential Lands Strategy, Council resolved in 2013 to carry out investigations within the Kurmond Village large lot residential/rural-residential investigation area. In 2015, Council adopted development principles and a planning approach. This proposal is inconsistent with these principles.

Following the adoption of a planning approach, Council prepared a draft Kurmond-Kurrajong Structure Plan which was exhibited from 27 September to 7 November 2019. This proposal is inconsistent with the draft Structure Plan. The Department did not make a submission on the draft Structure Plan.

The draft Structure Plan outlines proposed new development controls for this investigation area to facilitate the implementation of the structure plan, including rezoning land to RU5 Village or E4 Environmental Living and amending the minimum lot size map. The draft Structure Plan as a whole, is inconsistent with the Western City District Plan and Greater Sydney Region Plan. Council has not requested the Department's review or endorsement of the Plan. However, the Department has provided advice during the Local Strategic Planning Statement process to Council officers and consultant directly regarding the apparent inconsistency of the Draft Structure Plan with the District and Region Plan.

At the time of this Gateway Assessment, the draft Structure Plan had not been reported to Council following exhibition and a timeframe for a planning proposal to implement the draft Structure Plan is unknown. It is surmised from the reporting that Council intends to prepare a planning proposal to amend the Hawkesbury LEP 2012 to give effect to the Structure Plan.

Given the above, this proposal is premature.

### **4. STRATEGIC ASSESSMENT**

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#### **4.1 District**

##### Western City District Plan

The Western City District Plan was released in March 2018, establishing a 20- year plan to manage growth through a set of planning priorities and actions. As the proposal was prepared in December 2014, the proposal addressed the applicable regional strategy at the time being the Draft North West Subregional Strategy.

The subject land is identified as being within the Region Plan's Metropolitan Rural Area (MRA), therefore Planning Priority W17 Better managing rural areas applies to this planning proposal. The objective supporting this planning priority states 'Environmental, social and economic values in rural areas are protected and enhanced'.

Council has not demonstrated how this planning proposal responds to the economic, social and environmental values of the area given the lack of sufficient and updated strategic planning framework, including a Rural Lands Strategy and Housing Strategy, to support this proposal. As such, the planning proposal does not give effect to Planning Priority W17 of the Western City District Plan.

Rural-residential development in the MRA is not generally supported. However, limited growth in the form of minor village expansion with a compact urban form is anticipated in the District and Region Plan to meet the needs of local growth. Circumstances for limited growth would rely upon no adverse impacts on the amenity of the local area and if development incentives are provided to maintain and enhance the environmental, social and economic values of the MRA. This has not been demonstrated in the planning proposal or in the supporting strategic framework this proposal relies upon.

A number of other proposals within the Kurmond Kurrajong Investigation Area were granted Gateway determinations before the Region and District Plans were introduced. Some have progressed to finalisation and others are still under consideration. The successful proposals will increase rural residential development and this planning proposal cannot be considered in isolation. As a result of the existing proposals within the locality, this planning proposal does not represent limited cumulative growth.

Given the above, the proposal does not give effect to the Western City District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*.

## **4.2 Local**

### Hawkesbury Residential Land Strategy 2011

The planning proposal was prepared in response to the Hawkesbury Residential Lands Strategy 2011 and the LGA 2031 housing target of an additional 5-6,000 dwellings (previous subregional strategy). As discussed previously, this Strategy did not specifically identify Kurmond and Kurrajong for investigation. It identified scope for considering provisions for future development within and adjacent to existing villages. The Strategy outlines the Hawkesbury Residential Development Model which includes 'Strategy for Rural Village Development'.

The Strategy states "*that future development in rural villages should be of low density and large lot dwellings which focus on proximity to centres and services and facilities. Rural village development should also minimise impacts on agricultural land, protect scenic landscape and natural areas, and occur within servicing limits or constraints*". Future rural residential development will be required to:

- be able to have onsite sewerage disposal;
- cluster around or on the periphery of villages;
- cluster around villages within services that meet existing neighbourhood criteria services as a minimum (within a 1km radius); and
- address environmental constraints and have minimal impact on the environment.

In response to the above, the proposal states that it seeks to provide large, lot residential development within proximity to the existing village of Kurmond and is generally consistent with the Hawkesbury Residential Land Strategy 2011. The

proposal also states that the 'site's location and its attributes are considered to meet the above criteria'. However, no consultant reports such as a bushfire report, flora and fauna report or on-site wastewater report/servicing report support the planning proposal.

The planning proposal is generally consistent with Hawkesbury's Residential Land Strategy 2011, however this local strategic framework is out-dated and should not be relied upon to support the planning proposal. Council is in the process of preparing an updated strategic planning framework including a Rural Lands strategy and Housing strategy which should be aligned with the Western City District Plan. This planning proposal needs to be supported by sufficient evidence within a Rural Lands strategy and Housing strategy.

Hawkesbury's draft Local Strategic Planning Statement does not refer to residential development within the Kurmond Kurrajong Investigation Area.

#### Kurmond-Kurrajong Investigation Area – development principles

The planning proposal does not address the development principles adopted by Council in July 2015 that are required to be considered in the assessment of planning proposals within the Kurmond-Kurrajong Investigation Area. Council's principles to be addressed include:

- essential services under LEP 2012 and fundamental development constraints are resolved;
- building envelopes, asset protection zones (APZs), driveways and roads are located on land with a slope less than 15%;
- removal of significant vegetation is minimised;
- fragmentation of significant vegetation is minimised;
- building envelopes, APZs, driveways and roads are outside of riparian corridors;
- road and other crossings of water courses is minimised;
- fragmentation of riparian areas is minimised; and
- removal of dams containing significant aquatic habitat is avoided.

#### Kurmond-Kurrajong Investigation Area – Draft Structure Plan

The Draft Kurmond-Kurrajong Structure Plan aims to provide a framework to guide land use planning while maintaining the biodiversity, ecological, scenic, character and amenity values of the locality.

To ensure the protection of the above qualities, the draft Structure Plan proposes a minimum lot size for subdivision of 1ha or 4,000m<sup>2</sup> depending on locality (Figure 4). The light green areas represent land to have a minimum lot size of 4,000m<sup>2</sup> while the remainder of the investigation area is to have a minimum lot size of 1ha. The proposal is inconsistent with the draft Structure Plan in respect of minimum lot size.

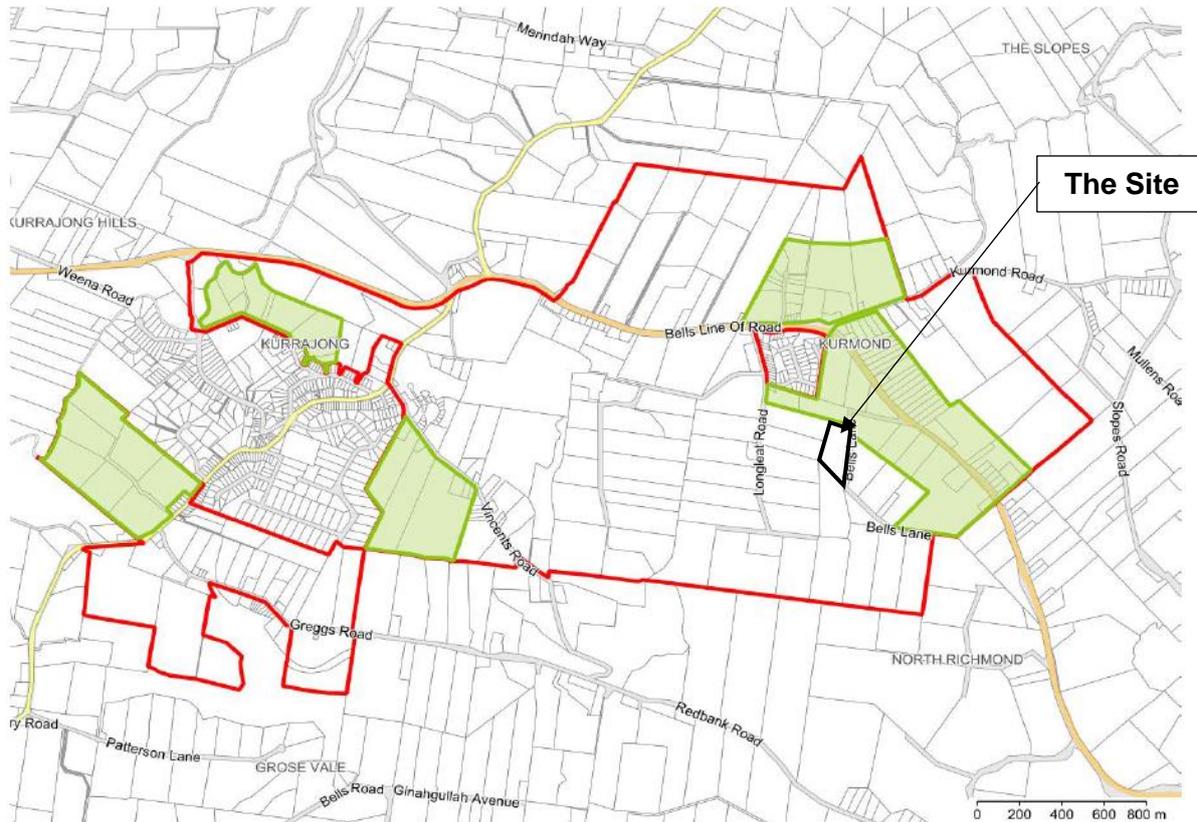


Figure 4: draft Kurmond-Kurrajong Structure Plan (site outlined in black)

In addition, the Hawkesbury Local Planning Panel stated in its meeting on 18 October 2018 (**Attachment A2**):

*‘This planning proposal raises a number of issues with regards to balancing long term strategic objectives with individual interests.*

*The Panel finds itself being asked to advise Council on the merits of individual planning proposals whilst the strategic overview of the Kurmond Kurrajong Investigation Area is still undergoing investigation.*

*The Panel does not think this is the appropriate approach to effective management of the Kurmond Kurrajong Investigation Area...*

*...the proposal is not in a form that can be supported for Gateway. This includes concerns with respect to the desired future character of the area, the actual subdivision being proposed, the appropriate zoning of the site (and other sites seeking similar subdivision) and the preparation of sufficient supporting documentation to address environmental matters.*

*In the Panel’s view, the public interest is best served by coordinated decisions that take into consideration a broader context, and evaluate outcomes above the specific interest of individuals. The Panel considers that long term strategy planning should have been completed before these planning proposals were considered”.*

Council’s report (**Attachment A3**) states:

*Planning Proposal is considered to be inconsistent with the recommendations of the Kurmond Kurrajong Landscape Character Study and Draft Kurmond and*

*Kurrajong Structure Plan in regard to the protection of the pastoral character of the locality and the significant views/vista corridor in which the subject site is situated. For this reason it is further considered that a minimum lot size of 1ha should be applied to the proposal.*

*In addition, the proposal does not meet the requirements of Council's adopted development constraints principles in respect to access and slope. Further, the planning proposal does not demonstrate, through lack of appropriate studies, consistency with these principles in respect to significant vegetation, asset protection areas and on site effluent disposal'.*

Regardless of the status of this structure plan, it will be recommended this planning proposal is not supported. It requires an updated strategic planning framework with sufficient evidence to support rural residential development in this area. In addition, the draft structure plan does not identify or consider the cumulative impacts from the existing planning proposals increasing residential development within this area.

#### **4.3 Section 9.1 Ministerial Directions**

The proposal is inconsistent with the following Directions listed below. As it will be recommended the planning proposal does not proceed, additional reporting is not required to ensure the planning proposal complies with the Directions:

##### Direction 1.2 Rural Zones

The objective of this Direction is to protect the agricultural production value of rural land. This Direction applies as the proposal affects land within an existing rural zone. The proposal seeks to increase the permissible density on the subject land within an RU1 Primary Production rural zone and as such is inconsistent with this Direction.

The inconsistency is justified if:

- increasing permissible density of land within a rural zone is within an existing town or village;
- justified by a strategy which:
  - gives consideration to the objectives of this direction;
  - identifies the land which is the subject of the planning proposal; and
  - is approved by the Director-General of the Department of Planning, or
- justified by a study prepared in support of the planning proposal which gives consideration to the objectives, or
- in accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to this direction, or
- is of minor significance.

Council's report (**Attachment A3**) states the site is shown as being Agriculture Land Classification 3 on maps prepared by the former NSW Department of Agriculture. These lands are described as:

*"Grazing land or land well suited to pasture improvement. It may be cultivated or cropped in rotation with sown pasture. The overall production level is moderate because of edaphic factors or environmental constraints. Erosion hazard, soil*

*structural breakdown or other factors including climate may limit the capacity for cultivation, and soil conservation or drainage works may be required.”*

Council’s report also states that “*given the proximity of the site to surrounding rural residential properties, the size and slope of the site and its proximity to Kurmond village, it is considered that it is unlikely the site could support a commercially sustainable agricultural enterprise”.*

The subject site is located on the edge of an existing village and not exempt on this basis. The planning proposal (**Attachment A1**) states the site has been used for low-key rural/residential purposes and has been maintained by limited grazing activities and mechanical slashing for many years. The subdivision of the land as proposed would have no impact on primary production capacity in the locality.

However, given the absence of an updated strategic planning framework, specifically a Rural Lands strategy and Housing Strategy, to support this proposal it is recommended this proposal does not proceed. In addition, this inconsistency cannot be viewed as of minor significance given the number of proposals seeking to increase residential development in this area.

#### Direction 2.6 Remediation of Contaminated Land

This Direction seeks to ensure planning proposal authorities consider contamination and remediation of certain lands as set out in this Direction.

As the site has been previously used for rural-residential purposes, any intensification for residential purposes should be supported by a contamination assessment. If the proposal was to proceed, this could be addressed by a condition of Gateway.

#### Direction 4.1 Acid Sulfate Soils

This Direction seeks to avoid significant adverse environmental impact from the use of land that contains acid sulfate soils. The Direction applies as the subject land is identified as comprising Acid Sulfate soil, Class 5.

The Class 5 category is considered the least constrained class and the Hawkesbury LEP 2012 contains clause 6.1 Acid Sulfate Soils, which provides controls to ensure any future development does not disturb, expose or drain acid sulfate soils and cause environmental damage.

Any inconsistency with this Direction is considered to be of minor significance.

#### Direction 4.4 Planning for Bushfire

This Direction seeks to protect life, property and the environment from bushfire hazards. In accordance with the terms of the Direction, a planning proposal must have regard to Planning for Bush Fire Protection 2006 and introduce controls that avoid placing inappropriate developments in hazardous areas. The site is identified as bushfire prone land as shown in Figure 5 below.

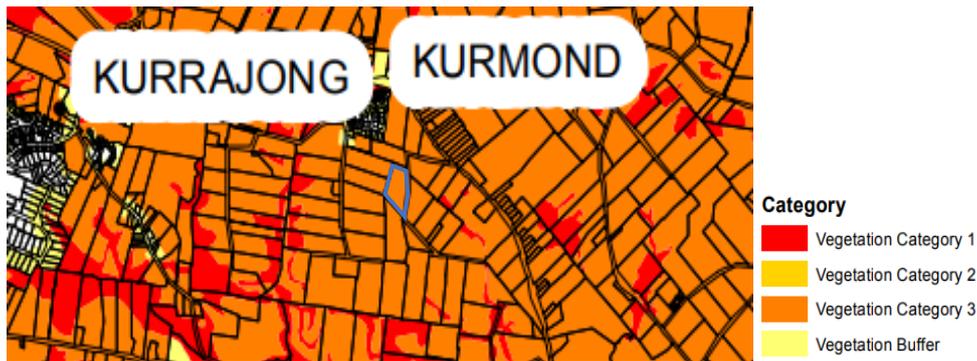


Figure 5: Hawkesbury City Council Bushfire Prone map (site outlined in blue)

A planning proposal may only be inconsistent with this Direction if the council has obtained written advice from the Commissioner of the NSW Rural Fire Service that it does not object to the proposal. It is noted that the planning proposal was also not supported by a Bushfire Hazard Assessment.

#### 4.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with the relevant SEPPs except as discussed below. As it will be recommended the planning proposal does not proceed, additional reporting is not required to ensure the planning proposal complies with the SEPPs:

State Environmental Planning Policy (Koala Habitat Protection) 2019 (replaced State Environmental Planning Policy No 44—Koala Habitat Protection)

The site contains areas of significant vegetation as identified under the Hawkesbury LEP 2012 Terrestrial and Biodiversity Map (Sheet\_BIO008AA). The planning proposal states a formal assessment of the site against the SEPP has not been completed however would be included in any subsequent flora and fauna report.

It is noted that under the SEPP, the site is identified on the Koala Development Application Map therefore may contain koala habitat.

Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2-1997)

The aim of SREP 20 (a deemed SEPP) is to protect the Hawkesbury-Nepean River system and Part 2 of the SREP provides general planning considerations, specific planning policies and recommended strategies to achieve this outcome.

The site contains a small area of significant vegetation. In order to demonstrate consistency with this deemed SEPP the proposal, NSW Office of Water should be consulted for comment and a flora and fauna report when prepared is to take into consideration the general planning considerations, specific planning policies and recommended strategies of this deemed SEPP.

As it will be recommended this planning proposal does not proceed, the above actions to ensure the planning proposal's compliance with SREP 20 are not required.

## 5. SITE-SPECIFIC ASSESSMENT

### 5.1 Social and Economic

The planning proposal states there are no identified negative social or economic effects arising from this proposal. Positive outcomes are identified in terms of the following:

- assisting local commercial and retail outlets;
- assisting in maintaining local primary school student numbers;
- consistency with Council's Residential Lands strategy;
- creation of additional housing opportunities; and
- creation of jobs during construction.

## 5.2 Environmental

The planning proposal identifies four potential environmental impacts including water quality/on-site wastewater treatment, bushfire prone land, traffic and access and site contamination. The Department notes that the Draft Kurmond Kurrajong Landscape Character Study identifies the site contains small areas of Shale Sandstone Transition Forest (low sandstone influence) and Alluvial Woodland.

Council's report (**Attachment A3**) stated *'the proposal does not meet the requirements of Council's adopted development constraints principles in respect to access and slope. Further, the planning proposal does not demonstrate, through lack of the appropriate studies, consistency with these principles in respect to significant vegetation, asset protection areas and on-site effluent disposal'*.

The Panel (**Attachment A2**) recommended that Council request the Applicant to amend the planning proposal to complete the following site-specific studies:

- environmental design/site capacity;
- bush fire assessment;
- flora and fauna report assessment;
- traffic impact assessment;
- wastewater feasibility; and
- infrastructure requirements and funding.

No consultant reports were submitted in support of this proposal, these environmental effects have not been satisfactorily addressed.

The site is identified in Council's Kurmond and Kurrajong Landscape Character Strategy, supporting the draft Kurmond Kurrajong Structure Plan, as being within the 'Pastoral Valleys' landscape character. This landscape character is described as:

*"the rural character of the region is defined by the lightly sloping open pastures with scattered trees over gently sloping terrain. Significant areas of land have been cleared for grazing and agricultural uses. Properties are dotted amongst the hills and valleys of the landscape situated between groupings of trees"*.

Council's report (**Attachment A3**) stated that the planning proposal is inconsistent with the recommendations of the character study having regard to the protection of the pastoral character of the locality and the subject site being within a significant view/vista corridor. The key views and vistas from the Character Study are shown below in Figure 6.

As shown in Figure 6, the subject site may be within significant view corridors. The planning proposal does not address the findings of the character study as it was prepared prior to Council endorsing the Landscape Character study report. Sufficient

justification has not been provided to understand how the proposed lot sizes would not adversely impact the landscape character and the view corridors.

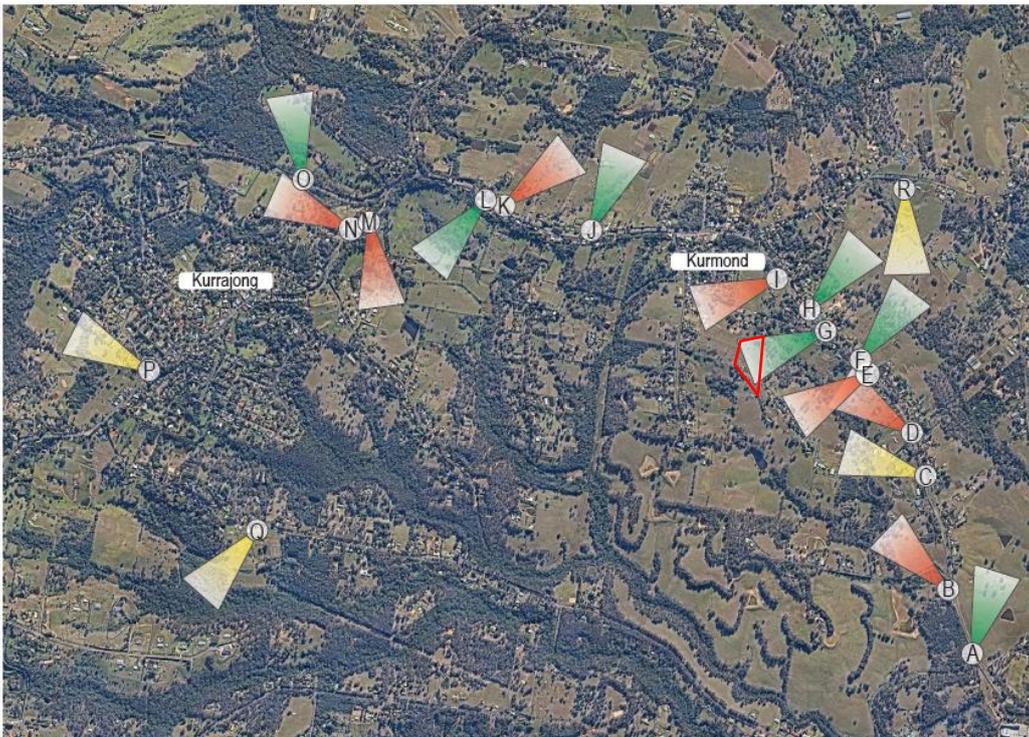


Figure 8. Significant views and vistas

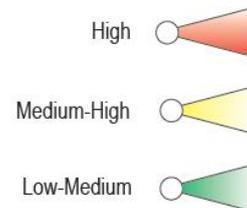


Figure 6: Significant views and vistas - Kurmond Kurrajong Landscape Character Study (site outlined in red)

### 5.3 Infrastructure

#### Services

The planning proposal states the site has access to electricity, telecommunication, garbage and recycling services. The site does not have access to reticulated water or sewer.

#### Contributions

Council stated in its report that should the planning proposal proceed, it will be subject to either a Section 7.11 Developer Contributions Plan or a Voluntary Planning Agreement. It appears from Council's report (**Attachment A3**) that the applicant has acknowledged this requirement.

#### Road Infrastructure

Bells Lane connects to Bells Line of Road which is the main east – west vehicle thoroughfare through the area and is managed by NSW Transport for NSW.

#### Wastewater Disposal

The Kurmond Kurrajong Investigation Area is not currently serviced by a reticulated sewer service. Without this service Council's current policy is that all new allotments if not serviced by developer funded reticulated sewer systems would need to provide onsite treatment and disposal of wastewater. The planning proposal states that the lots are of sufficient size to accommodate on-site wastewater management however the planning proposal was not supported by an appropriate specialist report.

## **6. CONSULTATION**

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Consultation is not required as the proposal is not recommended to proceed.

## **7. TIME FRAME**

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No timeframe is required as the proposal is not recommended to proceed.

## **8. LOCAL PLAN-MAKING AUTHORITY**

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There is no requirement to appoint a local plan-making authority as it is not recommended for the proposal to proceed.

## **9. CONCLUSION**

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It is recommended that the delegate of the Minister determines that the planning proposal should not proceed. The proposal was submitted for Gateway Determination after the Western City District Plan came into effect. The site is located within the Metropolitan Rural Area where rural-residential development is not generally supported. The cumulative impact of all proposals within the Kurmond Kurrajong area means this planning proposal cannot be determined as a minor and justifiable deviation from the District plan.

The lack of a sufficient and updated strategic planning framework, including a Council Rural Lands Strategy and an updated Housing strategy, means the inconsistency with the Western City District Plan's Planning Priority W17 Better managing rural areas cannot be justified. There is no evidence that the planning proposal supports this Planning Priority's objective, 'environmental, social and economic values in rural areas are protected and enhanced'. As such, the proposal does not give effect to the Western City District Plan.

The proposal is not supported by an updated strategic local planning framework including appropriate references in Council's draft Local Strategic Planning Statement, an updated Housing Strategy and Rural Lands strategy, to guide appropriate development in this area. Piece meal planning proposals such as this one undermine the strategic planning framework Council is the process of preparing to support its Local Strategic Planning Statement, including Council's review of this area holistically.

Therefore, this is planning proposal is premature, is not supported by sufficient strategic merit or site-specific merit and is inconsistent with the provisions of the Metropolitan Rural Area in the Western City District Plan. As such, the planning proposal does not give effect to the Western City District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*.

## 10. RECOMMENDATION

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It is recommended that the delegate of the Minister determine that the planning proposal should not proceed as it is not supported by sufficient strategic merit or site-specific merit as follows:

- The proposal contains unresolved inconsistencies with Section 9.1 Directions 1.2 Rural Zones and 4.4 Planning for Bushfire Protection.
- The proposal contains unresolved inconsistencies with State Environmental Planning Policy (Koala Habitat Protection) 2019 and State Regional Environmental Plan No 20 – Hawkesbury-Nepean River.
- The proposal does not give effect to the Western City District Plan, in particular Planning Priority W17 Better managing rural areas.
- The proposal is not supported by an updated local strategic planning framework, including sufficient references in Hawkesbury Council's draft Local Strategic Planning Statement to support this proposal, an updated Rural Lands strategy and Housing Strategy.
- The proposal does not adequately demonstrate the site has no potential to accommodate agricultural uses under its current zoning.
- The proposal does not adequately demonstrate strategic or site-specific merit.



**24 April 2020**  
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