

Your Ref:
Our Ref: LEP002/15



15 April 2019

Mr Robert Montgomery
Montgomery Planning Solutions
P.O. Box 49
KURMOND NSW 2757

Dear Sir

Planning Proposal LEP002/15 – 79, 95 & 100 Bells Lane and 457 Bells Line of Road, Kurmond

I refer to your correspondence dated 23 January 2019 providing an amended planning proposal in relation to the subject sites at 79, 95 & 100 Bells Lane and 457 Bells Line of Road, Kurmond.

It is understood that the amended Planning Proposal seeks to amend the Hawkesbury Local Environmental Plan 2012 to permit subdivision of the subject sites into approximately 18 lots having minimum lot sizes of 4,000m², 1ha and 1.5ha.

I also refer to the meeting on 23 July 2018 with Council Officers to discuss the Gateway Determination issued by the Department of Planning and Environment on 23 June 2018, and the matters outlined at that meeting that needed to be addressed prior to the proposal being progressed to exhibition. A summary of those matters was provided to you at that meeting, and a copy is also attached to this letter.

Following an assessment of the amended proposal, please note the following:

Kurmond Kurrajong Investigation Area

As you would be aware, the Hawkesbury Residential Land Strategy 2011 was adopted by Council on May 2011. The Residential Land Strategy mapped investigation areas to identify the potential for general, low density or medium density residential zonings in nominated locations.

Through a Mayoral Minute on 3 February 2015, Council resolved to undertake Structure Planning within the Kurmond Kurrajong Investigation Area to determine the suitability of the identified lands for large lot residential and/or rural residential development.

More recently, in order to appropriately inform the Structure Planning process for the Kurmond Kurrajong Investigation Area, Council commissioned the preparation of a Landscape Character Study of Kurmond and Kurrajong. The purpose of the Study was to provide a landscape character assessment of Kurrajong and Kurmond that determines what aspects of the streetscapes, landscapes and building area positively contributes to make the area identifiable and unique. A report on the Kurmond Kurrajong Investigation Area Structure Plan was presented to Council's Meeting of 31 July 2018 and outlined the recommendations of the Kurmond and Kurrajong Landscape Character Study.

An assessment of the amended Planning Proposal in relation to the Kurmond and Kurrajong Landscape Character Study has been undertaken, and is discussed below.





In addition, Council also undertook the development of a suite of strategic biodiversity planning tools and supporting information in relation to biodiversity conservation. This was undertaken, in particular, to respond to the recent comprehensive changes to NSW biodiversity legislation.

As part of the development of this framework, vegetation mapping has been developed, including a 'Biodiversity Priority Rank' vegetation map for the Hawkesbury Local Government Area including the Kurmond Kurrajong Investigation Area. This Map identifies vegetation as having either low, moderate, high or very high biodiversity (habitat) priority. This mapping has been incorporated into the Kurmond and Kurrajong Landscape Character Study.

Kurmond and Kurrajong Landscape Character Study

The Kurmond and Kurrajong Landscape Character Study provides guidelines for future development within the Kurmond Kurrajong Investigation Area, including the following principles which are relevant to the subject planning proposal:

- *Prevent development and subdivision from sprawling and create a buffer between residential and active rural land uses.*
- *Ensure rural lot sizes maintain low density, optimise ecological corridors and open views.*
- *Retain, protect and regenerate vegetation corridors identified in mapping.*
- *Do not permit small lot (<0.5ha) development of land identified as high, very high priority (habitat).*
- *Prevent rezoning of critical land parcels that provide significant view corridors.*
- *Permit rezoning and subdivision of land deemed appropriate/lower order in terms of views.*
- *Prevent creation of small lot sizes.*
- *Document and maintain key regional and district views (see maps).*
- *Interpret views at key locations.*

The Kurmond and Kurrajong Landscape Character Study identifies 4 landscape character types which are identified on the Landscape Character Map. Two of these landscape character types occur on the subject sites, including:

Ridgeline streets: *The landscape character along the ridgeline is predominantly urban. Roads such as The Bells Line of Road, Old Bells Line of Road and Kurmond Road run along the ridgelines. Their elevated position provides views of the Richmond Lowlands and the Blue Mountains.*

Pastoral valleys: *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.*

Table 1 identifies the Landscape Character for each of the sites:



Table 1: Landscape Character

Site	Landscape Character	Location
457 Bells Line of Road, Kurmond	Ridgeline Street	Whole of site
79 Bells Lane, Kurmond	Ridgeline Street	Approximately rear third of site
	Pastoral Valley	Approximately front two thirds of site
95 Bells Lane, Kurmond	Ridgeline Street	Approximately rear third of site
	Pastoral Valley	Approximately front two thirds of site
100 Bells Lane, Kurmond	Pastoral Valley	Whole of site

The Kurmond and Kurrajong Landscape Character Study identifies that “*the pastoral character contributes to the scenic qualities of the area by virtue of the lack of buildings*”. In this regard it is considered that the subdivision layout as proposed for 100 Bells Lane, Kurmond would not be compatible with the identified ‘Pastoral Valley’ character of the area, especially when considering the scale and density of both existing and likely future development on the land. This matter is discussed further in this letter.

Areas within each of the subject sites are mapped as ‘Significant Vegetation’ under the Hawkesbury Local Environmental Plan 2012, and as a result the requirements of Clause 6.4 – *Terrestrial biodiversity* will apply to the future development of the land.

The ‘Biodiversity Priority Rank’ vegetation map included as part of the Kurmond and Kurrajong Landscape Character Study provides rankings for the subject sites as shown in Table 2:

Table 2: Significant Vegetation and Biodiversity Priority Ranking

Site	Significant Vegetation Location	Corresponding Biodiversity Priority Ranking
457 Bells Line of Road, Kurmond	Northern front corner (Bells Line of Road) of the site, as well as along the rear boundary.	Moderate
79 Bells Lane, Kurmond	Either side of the watercourse at the rear of the site, as well as in an area in the north west rear section of the land.	Moderate and Very High
95 Bells Lane, Kurmond	Either side of the watercourse at the rear of the site.	Moderate and Very High
100 Bells Lane, Kurmond	Either side of the watercourse at the rear of the site.	Moderate and Very High

The ranking of very high priority habitat, which corresponds to the areas around the existing watercourses reinforces the significance of the vegetation as identified under the Hawkesbury Local Environmental Plan 2012.

As identified in the Kurmond and Kurrajong Landscape Character Study, a minimum lot size of 5,000m² is required for sites within very high priority habitat. The sizes of proposed lots within the very high priority habitat areas of the sites are consistent with this requirement. However, to ensure that future development of the subject sites do not result in lot sizes less than 5,000m² within these areas, it is proposed that the Lot Size Map of the Hawkesbury Local Environmental Plan 2012 be amended to include a minimum lot size of 5,000m². The Planning Proposal is to be amended accordingly prior to its exhibition.

It is acknowledged that the Hawkesbury Local Environmental Plan 2012 does not currently provide for a minimum lot size of 5,000m², however this matter is being discussed with the Department of Planning and Environment with a view to including a minimum lot size of 5,000m² in the Hawkesbury Local Environmental Plan 2012.

The subject sites are located within identified significant view/vista corridors as shown in Table 3.



Table 3: Significant View/Vista Corridors

Site	Corridor	Description	Significance	Action
457 Bells Line of Road, Kurmond	I	Gently sloping pastoral landscape	Medium	Retain and protect view
79 Bells Lane, Kurmond	E	Pastoral landscape with views to Blue Mountains	High	Retain and protect view
	G	Rural residential with glimpses of Blue Mountains	Medium	Retain and protect view
95 Bells Lane, Kurmond	E	Pastoral landscape with views to Blue Mountains	High	Retain and protect view
100 Bells Lane, Kurmond	B	Dense vegetation in foreground with views to the Blue Mountains	High	Retain and protect view
	C	Frontage road with views to Blue Mountains	Medium-High	Retain and protect view

The Kurmond and Kurrajong Landscape Character Study requires that district and regional views be maintained. In this regard, it is considered that the proposed number of lots for 100 Bells Lane, Kurmond would result in future development that would be not be compatible with the identified 'pastoral valley' or 'rolling landscape' character, especially when viewed from View/Vista Corridors B & C which are of high significance.

In this regard, it is considered that a reduction of the number of lots to a maximum of three is warranted by potentially consolidating proposed Lots 1 & 2, and proposed Lots 3 & 4, as this would:

- Allow for greater separation between future development to be more consistent with the Pastoral Valley character; and
- Provide for more appropriate, larger lot sizes to facilitate future development having regard to the constraints of the site.

Flora and Fauna

The subject sites contain Shale Sandstone Transition Forest and/or Shale Plains Woodland, which are critically endangered ecological communities. In addition, these communities are mapped as being in an area of biodiversity value on the Office of Environment and Heritage's Biodiversity Values Map. The requirements of the *Biodiversity Conservation Act 2016* for development assessment do not come into effect within the Hawkesbury Local Government Area until 24 November 2019 however this will likely apply to future applications for subdivision and subsequent development.

The Flora and Fauna Assessment Report submitted with the amended Planning Proposal concludes that the planning proposal would have no significant impact based on areas along the watercourse being retained. However, it is unclear how this conclusion was made given that:

- the Report does not provide mapping to clearly show where the retained vegetation along watercourses is located, what trees or vegetation are likely to be removed as a consequence of future residential development, or where potential habitat for the individual identified flora and fauna species occur.
- the planning proposal involves 4 separate properties, however the Report discusses these as one, and as such it is unclear as to what information relates to what properties.
- a total survey effort of 4 hours is considered to be unsatisfactory to adequately assess conditions within the 4 separate properties.



- consideration of the impact of future subdivision and subsequent development of the lots from the key threatening processes of clearing of native vegetation and invasion of exotic perennial grasses, and escaped garden plants, including weeds has not been undertaken.
- 7 part tests for all species identified as having habitat on the subject sites have not been provided.

The Flora and Fauna Assessment is to be amended to provide appropriate mapping (as discussed above), 7 part tests for all species identified as having habitat on the site, details of vegetation to be removed/retained, and habitat areas on site, and identification of applicable key threatening processes.

As discussed further in this letter, riparian corridors are to be provided around all watercourses, and this should be reflected within the Flora and Fauna Assessment Report. In addition, please ensure that the Flora and Fauna Assessment Report is consistent with the Bushfire Hazard Assessment Report, as discussed further in this letter.

Asset Protection Zones

As a reminder, Council at its meeting of 28 July 2015 resolved to adopt an Interim Policy relating to a suite of development constraint principles for planning proposals in the Kurmond and Kurrajong Investigation Area. Part B of this policy contained the following development constraint principles:

Part B - Development Constraints

Planning proposals will not be supported by Council unless:

1. *Essential services under LEP 2012 and fundamental development constraints are resolved.*
2. *Building envelopes, asset protection zones (APZs), driveways and roads are located on land with a slope less than 15%.*
3. *Removal of significant vegetation is avoided.*
4. *Fragmentation of significant vegetation is minimised.*
5. *Building envelopes, APZs, driveways and roads (not including roads for the purposes of crossing watercourse) are located outside of riparian corridors.*
6. *Road and other crossings of water courses is minimised.*
7. *Fragmentation of riparian areas is minimised.*
8. *Removal of dams containing significant aquatic habitat is avoided.*

In this regard, the Planning Proposal needs to demonstrate that the above matters can be achieved to warrant support of the application.

A 2nd order watercourse runs along the rear northern boundary of 79 Bells Lane, Kurmond, partially within the subject site and partially within the adjoining property. A riparian corridor of 20m is applicable and has not been provided on the subject site.

A 1st order watercourse is located at the rear of 100 Bells Lane, Kurmond. A riparian corridor of 10m on either side of this watercourse is applicable. It is understood that an area of vegetation is to be retained adjacent to this watercourse. It is noted that the Bushfire Hazard Assessment Report (Figure 21) identifies this area as being 25m in width, whilst the Flora and Fauna Assessment



Report (Figure 8) nominates a width of 20m. This anomaly is to be clarified and the Reports amended accordingly.

The Council adopted development constraint principles require the location of asset protection zones outside of riparian corridors. In addition, it is a usual requirement for development of land containing a watercourse to include the regeneration/revegetation of the riparian corridor on the site.

Appropriate riparian corridors are to be provided around each watercourse. Any Asset Protection Zone is to be located outside of the riparian corridor and any vegetation retention areas. As a consequence, the Bushfire Hazard Assessment of the subject sites are to be reviewed and amended accordingly, including clarification that any nominated asset protection zones are appropriate should revegetation of the riparian corridors occur.

This may result in the proposal being amended to cater for a higher BAL level for proposed lots 4 & 5 on 79 Bells Lane, Kurmond, if appropriate, or the consolidation of these lots into one lot.

Planning Proposal Document

Reference is made to Pages 10-11, Part 2 – Explanation of Provisions of the Planning Proposal document. The Sydney Western City Planning Panel required consideration of an environmental zone to protect significant features such as watercourses and endangered/threatened vegetation and habitat. In this regard, it was envisioned that the E2 Environmental Conservation zone would be used and applied only to those areas where watercourses, riparian areas and endangered/threatened vegetation and habitat exist.

The amended Planning Proposal proposes to rezone part of the subject sites to E4 Environmental living. The use of the proposed E4 Environmental Living zone on 95 & 100 Bells Lane, Kurmond is not supported as it does not afford a greater level of protection of the watercourses and associated riparian/endangered vegetation than the current RU1 Primary Production zone.

Regardless, Council Officers are of the opinion that the determination of the appropriate zones in the locality is a matter to be considered with the strategic planning framework for the Kurmond Kurrajong Investigation Area as a whole. At present the protection of significant environmental features can be afforded through appropriate lots sizes and development controls.

As a result, it is requested that the Planning Proposal be amended to retain the RU1 Primary Production zone for the subject sites.

In Summary

To enable progression of the Planning Proposal, the following amendments/additional information is required:

1. The Planning Proposal is to be amended to permit subdivision of 100 Bells Lane, Kurmond into a maximum of three lots;
2. The Planning Proposal is to be amended to incorporate a minimum lot size of 5,000m² on the proposed Lot Size Map for proposed lots 4 & 5 on 79 Bells Lane, Kurmond;
3. The Planning Proposal is to be amended to remove the proposed introduction of the E4 Environmental Living zone;
4. The Planning Proposal is to be amended to provide appropriate riparian corridors on 79, 95 & 100 Bells Lane, Kurmond;



5. The Planning Proposal is to be amended to provide appropriate asset protection zones on 79 and 100 Bells Lane, Kurmond outside of the riparian corridors. The Bushfire Hazard Assessment Report is to be amended accordingly;
6. The Flora and Fauna Assessment Report is to be amended to address the issues raised in this letter.

Prior to the matter proceeding to exhibition, you are requested to provide additional information and an amended Planning Proposal to address the above matters and provide lot sizes that ensure the creation of developable lots whilst protecting significant natural assets, including views and vistas, watercourses, riparian/native vegetation, and the character of the locality.

Should you have any questions in regard to this matter, please contact Colleen Haron, Senior Town Planner on (02) 4560 4564.

Yours faithfully

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