

23 January 2019

## Planning Proposal for Various Properties in Bells Lane Kurmond

Lot 31 DP 7565, Lot 38 DP 7565, Lot 12 DP 711049 and Lot 50 DP 7565

Assessment of Proposal Against the Objectives of the RU1 Primary Production Zone

### 1. Introduction

The purpose of this document is to provide additional information about the relationship of the development which would occur as a result of this planning proposal to the zone objectives. Several relevant matters are discussed in the following pages, including:

- Relationship and conflict between permissible land uses and zone objectives;
- Character of the locality;
- Suitability for primary industry;
- Urban / rural comparison; and
- Review of RU1 zone objectives.

It is concluded that Council can be satisfied that proposed future subdivision is consistent with the relevant objectives of the RU1 zone.

### 2. Relationship between permissible land uses and zone objectives

We note that Hawkesbury LEP 2012 does not contain any requirement that the development be consistent with the zone objectives. The only requirement is that the consent authority have regard to them when determining a development application in respect of land within the zone pursuant to clause 2.3(2).

Clearly, the Council must have regard to the objectives in determining a development application. However, there is no requirement that the objectives be given any weight, much less overriding weight, in the exercise of the planning discretion. Notwithstanding, the follow analysis is provided.

There are nine (9) objectives for the RU1 Primary Production zone. The objectives are reproduced below and numbered for reference. When these objectives are critically analysed it becomes apparent that four (4) of the objectives relate to agricultural pursuits and four (5) relate to non-specific uses. Specifically, objectives 1, 2, 5, and 8 relate to primary production activities, while the remainder are non-specific.

1. *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
2. *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
3. *To minimise the fragmentation and alienation of resource lands.*
4. *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

5. To encourage agricultural activities that do not rely on highly fertile land.
6. To ensure that development occurs in a way that does not have a significant adverse effect on water catchments, including surface and groundwater quality and flows, land surface conditions and important ecosystems such as waterways.
7. To promote the conservation and enhancement of local native vegetation including the habitat of threatened species, populations and ecological communities by encouraging development to occur in areas already cleared of vegetation.
8. To ensure that development retains or enhances existing landscape values including a distinctive agricultural component.
9. To ensure that development does not detract from the existing rural character or create unreasonable demands for the provision or extension of public amenities and services.

The RU1 land use table permits the following land uses with or without consent. The permissible use part of the table is reproduced below with the non-agricultural uses highlighted in yellow.

**2 Permitted without consent**

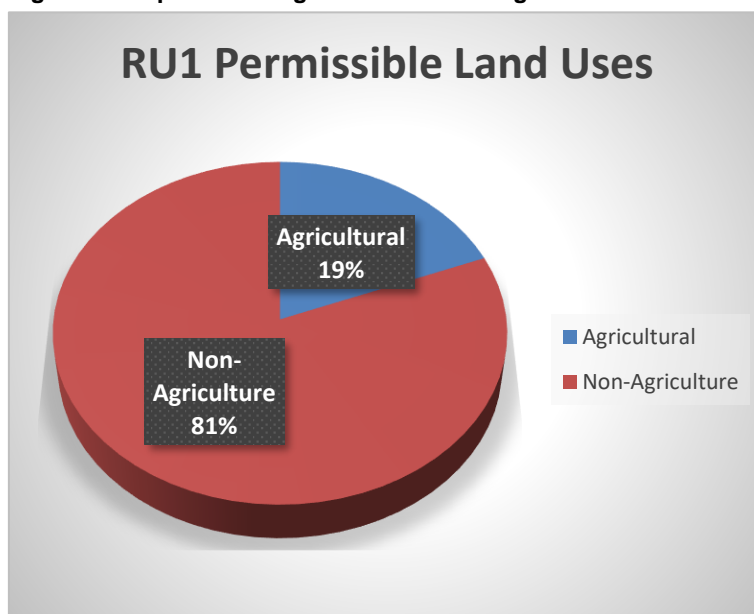
*Bed and breakfast accommodation; Environmental protection works; Extensive agriculture; Home occupations*

**3 Permitted with consent**

*Animal boarding or training establishments; Boarding houses; Boat sheds; Building identification signs; Business identification signs; Camping grounds; Caravan parks; Cemeteries; Centre-based child care facilities; Charter and tourism boating facilities; Community facilities; Correctional centres; Crematoria; Dual occupancies (attached); Dwelling houses; Educational establishments; Entertainment facilities; Environmental facilities; Extractive industries; Farm buildings; Flood mitigation works; Food and drink premises; Forestry; Funeral homes; Health consulting rooms; Helipads; Heliports; Home-based child care; Home industries; Hospitals; Intensive livestock agriculture; Intensive plant agriculture; Jetties; Landscaping material supplies; Moorings; Open cut mining; Places of public worship; Plant nurseries; Public administration buildings; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Registered clubs; Respite day care centres; Roads; Roadside stalls; Rural industries; Rural supplies; Rural workers' dwellings; Tourist and visitor accommodation; Truck depots; Veterinary hospitals; Water recreation structures; Water storage facilities*

Of the 58 permissible uses, only 11 or (19%) are specifically related to agriculture. The majority of the permissible uses, ie 81% are not related to agriculture. Indeed the 47 non-agricultural permissible uses include commercial premises, retail premises, residential, industrial premises, tourist accommodation, hospitals and a variety of other uses.

**Figure 1: Proportion of Agricultural & Non-Agriculture Permissible in RU1 Zone**



When the land use table is examined in conjunction with the objectives, it is clear that the author of the LEP intended that the objectives would contain sufficient flexibility to allow not just a few non-agricultural uses, but 81% of the permitted land uses.

Other clauses within the LEP also support this observation, in particular clause 4.1B, which relates to subdivision within the RU1 zone (and other rural zones):

### **Clause 4.1B(2)**

*Development consent must not be granted to a subdivision of land to which this clause applies unless:*

- (a) the pattern of lots created by the subdivision and the location of any buildings on those lots is not likely to have a significant impact on any threatened species, populations or endangered ecological community or regionally significant wetland, waterways, groundwater or agricultural activities in the locality, and*
- (b) the consent authority is satisfied that each lot to be created contains a suitable area for a dwelling house, an appropriate asset protection zone relating to bush fire hazard and an adequate sewage management system if sewerage is not available, and*
- (c) if sewerage is not available—the consent authority has considered a geotechnical assessment that demonstrates the land is adequate for the on-site disposal of effluent, and*
- (d) the consent authority is satisfied that there is a satisfactory ratio between the depth of each lot and the frontage of each lot, having regard to the purpose for which the lot is to be used.*

There is only one mention of impact on agriculture and this relates to “*agricultural activities in the locality.*” This clause does not require any other consideration in terms of agriculture. The focus of this clause is impact on the natural environment and protection of dwellings from bushfire threat. Indeed, it may be argued that many of the permissible agricultural uses, for example intensive livestock agriculture, would not be able to satisfy the provisions of this clause on a 10 hectare lot.

It should be noted that our planning proposal concepts and accompanying environmental reports clearly demonstrate that future subdivision as a consequence of this planning proposal would be satisfy these requirements.

The minimum lot sizes for the subject land are proposed to be 4,000m<sup>2</sup>, 1ha and 1.5 hectares. This will be achieved by amending the minimum lot size map for Hawkesbury LEP 2012. It must, almost inevitably, be the case that the subdivision of the subject land in accordance with the proposed minimum lot size is generally consistent with the relevant objectives of the zone of the land to which it applies. The principles of statutory interpretation require an interpretation of HLEP 2012 that harmonises the provisions of the instrument rather than an interpretation which results in inconsistency within the Instrument.

Finally, the strategic documents which underlay the change to the minimum lot size, particularly those that have been the subject of public consultation, can also be weighed under s79C(1)(e) of the EPA Act (per the public interest) against any adverse conclusion that might still follow from any residual inconsistency with the zone objectives.

### **Clause 4.1C**

Provides for lot averaging, which is a type of subdivision which permits much smaller lots than would otherwise be permitted under Clause 4.1. The trigger for this clause is “*that*

*at least 20% of the original lot for the land being subdivided is occupied by an endangered ecological community or is a regionally significant wetland*”.

The clause applies to land within the RU1 Primary Production zone, however, the primary focus of this clause is protection of environmental features, rather than on agriculture.

It becomes clear when examining all relevant clauses of HLEP 2012 in conjunction with the objectives, that the focus of the RU1 Primary Production zone is not in fact on agriculture. It appears that the RU1 zone is primary production in name only.

### 3. Character of the Locality

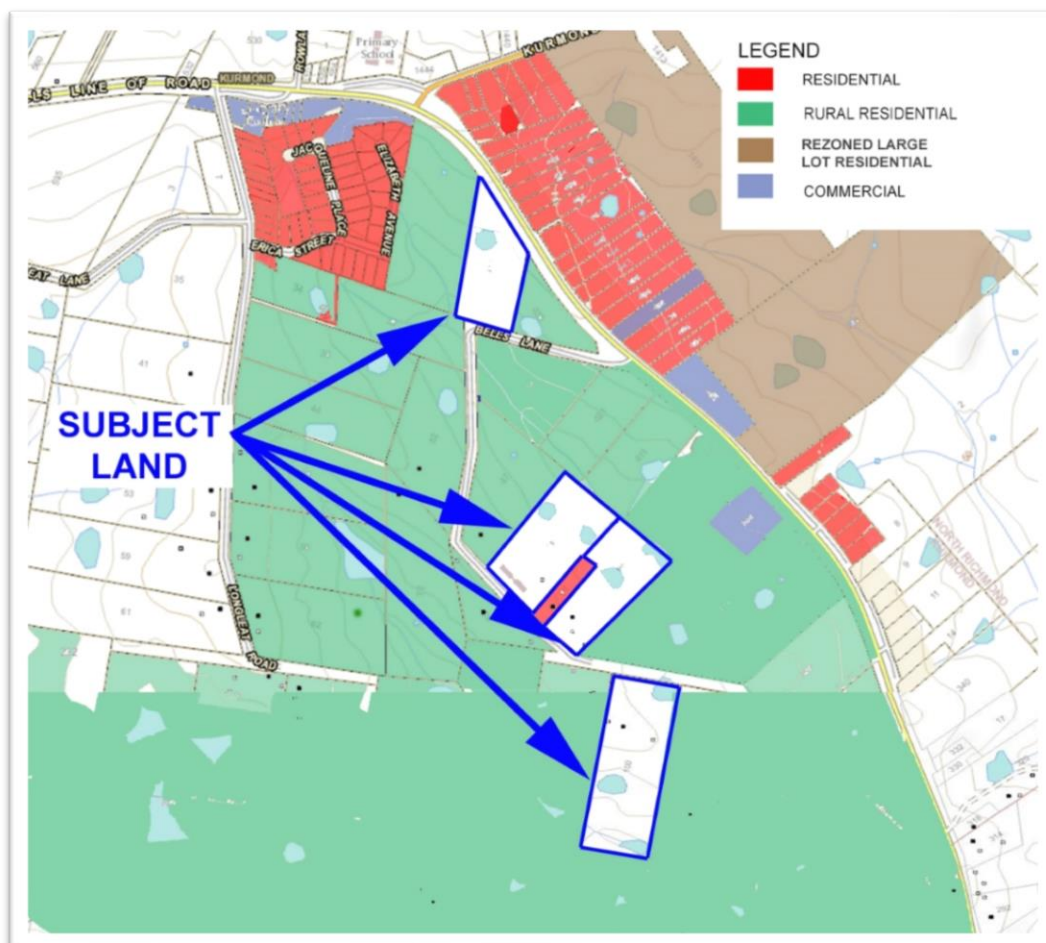
Land immediately adjoining the subject land on the south-west side of Bells Line of Road comprises rural residential allotments of similar size to the subject land. There is no agriculture in the immediate vicinity of the land.

Several residential lots of approximately 2,000m<sup>2</sup> in area are located along the northern side of Bells Line of Road and the Kurmond residential village (off Longleat Road) is located within close proximity. Commercial development in the locality includes the Kurmond Village Centre, child care centre, veterinary hospital and restaurant.

Three properties located within the immediate vicinity of the subject land are the subject of current planning proposals for large residential lots, which were supported by Council. While land on the northern side of Bells Line of Road has been rezoned to allow minimum allotment sizes of 2,000m<sup>2</sup> and 4,000m<sup>2</sup>.

Figure 2 below shows the established subdivision pattern in the locality, surrounding land use and land which is the subject of residential planning proposals approved by Council.

**Figure 2: Surrounding Land Use**



With the history of earlier rural village subdivisions and the more recent implementation of the Hawkesbury Residential Land Strategy through various planning proposals, the locality is essentially a transition between rural and residential areas. This transition will continue to evolve as existing planning proposals progress and new proposals are submitted in accordance with the HRLS.

#### 4. Suitability for primary industry

It is considered that the land and the immediate surrounds is unsuitable for intensive agriculture due to:

- Soil type being predominantly shale/sandstone with very limited suitability for cropping;
- the close proximity of residential development; and
- the relatively small existing lot sizes (in terms of agricultural production).

It is acknowledged that one of the objectives of the zone is to: “*To encourage agricultural activities that do not rely on highly fertile land*”. This would include land uses such as poultry farms, rural industries, mushroom sheds, feed lots and hydroponic poly tunnels.

However, these agricultural activities represent a more intensive use of agricultural land and usually generate a significant level of complaint even from rural neighbours. Also, the presence of large shed buildings and/or poly tunnels associated with these intensive agricultural uses have the potential for significant visual impact, particularly when sited on 10ha lots or smaller.

Hawkesbury Council has seen many conflicting situations with orchards, market gardens and the like. Most of the lots in this locality are well below the minimum lot size. The lots which do meet the minimum lot size, including the subject land, are not large enough to support viable agriculture or to provide sufficient buffers between agriculture and residential uses.

In our submission the subject land and other land within the immediate vicinity of Kurmond Village is simply unsuitable for the agriculture uses suggested by the zone objectives.

#### 5. Urban / rural comparison

In assessing the character of the proposed rural/residential subdivision it is instructive to compare a number of features with residential subdivision. The table below provides this information to show the distinction between the planning proposal and a residential subdivision.

For comparison, two areas covering 37 residential lots were measured in the established and new areas of North Richmond<sup>1</sup>

Element	Planning Proposal	Residential Subdivision: Established Nth Richmond	Residential Subdivision: Newer Nth Richmond
Lot size	4,000m <sup>2</sup> – 1.5ha	600m <sup>2</sup> – 1,000m <sup>2</sup> (approx.)	450m <sup>2</sup> – 800m <sup>2</sup> (approx.)
Density	1.4 dwg/ha (avg)	11.0 dwg/ha	15.4 dwg/ha
Percentage built area	5% -10%	44%	49%

<sup>1</sup> Established area in Vicinity of Rohan Place and Tyne Crescent  
New area in vicinity of Townsend Road and Stapleton Street.

<b>Percentage landscape</b>	90% -95%	56%	51%
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Note: All figures are approximate

It is clear that the subdivision as a consequence of this planning proposal will have very different characteristics compared to residential estates. The elements of lot size, density and percentage of built area vs landscaped area are all vital factors in establishing the character of a subdivision.

In this comparison, these vital factors distinguish the proposal as different from either traditional or new residential subdivision.

It is submitted that the proposed subdivision is accurately described as a rural / residential subdivision and is consistent with the character of the locality.

## 6. Review of RU1 objectives

The following commentary is provided in relation to the objectives. Note that the non-agriculture objectives are highlighted yellow.

### **1. To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.**

It is submitted that this objective is not relevant to the proposal. Indeed, the objective has no relevance to 81% of permissible uses within the zone as detailed in section 3 of this document. It may be argued that the proposal is inconsistent with this objective. However, any inconsistency is outweighed by the clear objective created by the proposed reduction to the minimum lot size for the subject land and the strategic studies which underlay it.

The immediate locality is characterised by rural residential development, with no primary industry. The locality is unsuitable for primary production due to the number of existing dwellings and the potential for land use conflict. In terms of the natural resource base, this proposal will retain and enhance the native vegetation along an expanded riparian corridor through the properties.

### **2. To encourage diversity in primary industry enterprises and systems appropriate for the area.**

This objective is not relevant to the proposal. Refer to above comments.

### **3. To minimise the fragmentation and alienation of resource lands.**

The locality is unsuitable for primary industry due to the close proximity of dwellings and the village environment. Similarly, the land is not suitable for any form of intensive agriculture.

Land within the locality has been fragmented by small lot subdivisions over many years. In terms of resource lands, the locality is already fragmented beyond repair.

The proposal is not inconsistent with this objective.

### **4. To minimise conflict between land uses within this zone and land uses within adjoining zones.**

The subject land and surrounding properties are all located within the RU1 zone. Notwithstanding the zone, the locality is characterised by large lot residential and rural residential development with lot sizes ranging from approximately 2,000m<sup>2</sup> to 13ha.

Reference to the LEP zone map shows that the closest boundaries are with the *RU4 Primary Production Small Lots* located approximately 350 metres to the west of 100 Bells Lane and the *R2 Low Density Residential* located some 130m to the west of 457 Bells Line of Road. The proposed large lot residential subdivision will not conflict with the residential development in the adjoining zones.

The proposal is therefore consistent with this objective.

**5. To encourage agricultural activities that do not rely on highly fertile land.**

This objective does not apply to the proposal. Alternatively, it may be argued that the proposal is inconsistent with this objective. However, any inconsistency is outweighed by the clear objective of the proposed change to the minimum lot size for the subject land and the strategic studies which underlay it.

**6. To ensure that development occurs in a way that does not have a significant adverse effect on water catchments, including surface and groundwater quality and flows, land surface conditions and important ecosystems such as waterways.**

The proposed subdivision will be connected to reticulated water. The assessment prepared by Envirotech demonstrates that wastewater can be disposed on-site without impact to the catchment. Surface water will be properly managed through the subdivision development process in accordance with Council's requirements. The small watercourses within two of the properties will be protected and enhanced by introducing an E4 Environmental Living zone.

The proposal is therefore consistent with this objective.

**7. To promote the conservation and enhancement of local native vegetation including the habitat of threatened species, populations and ecological communities by encouraging development to occur in areas already cleared of vegetation.**

The proposal includes protection of the riparian corridor where possible. The final design will be a product of detailed survey and assessment, consideration through the development application process. Proposed dwelling sites are located within existing cleared areas.

The proposal satisfies this objective.

**8. To ensure that development retains or enhances existing landscape values including a distinctive agricultural component.**

It is considered that the landscape values of this rural village area will be retained with a combination of large residential lots designed to fit the topography and larger lots which include the riparian corridor. The distinctive agricultural component is retained through proposed minimum lot size restrictions and the E4 Environmental Living zone where appropriate.

Notwithstanding the consistency with this objective, it is not entirely relevant to the proposal.

**9. To ensure that development does not detract from the existing rural character or create unreasonable demands for the provision or extension of public amenities and services.**

It is considered that the development will not detract from the existing rural character, which may be described as large lot residential associated with the rural village. Section 4 of this document provides a detailed description of the character of the locality.

Any future subdivision will be required to make arrangements with the relevant authorities for water, electricity and communications as part of the development consent process. The owners agree to enter into a voluntary planning agreement which will provide funds to Council for the provision of public amenities.

The proposal satisfies this objective.

## 7. Conclusion

The purpose of this document is to provide information about the relationship of this proposal to the RU1 zone objectives, as suggested by the Sydney Western City Planning Panel.

Through close analysis of the objectives, the RU1 land use table and the character of the locality we have clearly demonstrated that:

1. At least four of the objectives of the RU1 zone are no longer relevant to the subject land and surrounding locality;
2. Any potential inconsistency with agricultural objectives is outweighed by the clear objective of the change to the minimum lot size for the subject land and the strategic studies which underlay it;
3. There is a level of disconnection and conflict between the RU1 zone objectives and RU1 land use table;
4. Contrary to popular belief, the RU1 zone focusses more on non-agricultural uses than agriculture (in other words the land use table is heavily unbalanced in favour of permitting non-agricultural uses);
5. The minimum permissible lot size of 10ha in the locality is not conducive to sustainable agriculture; and
6. The presence of numerous residential-sized lots with dwellings established in the locality ensures that any form of agriculture will cause conflict.

The proposal is consistent with the five relevant non-agricultural objectives of the RU1 zone and satisfies all State, Regional and Local statutory requirements.

It is concluded that Council can be satisfied that the proposal is consistent with the relevant objectives of the RU1 zone.



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