



New South Wales Government  
Independent Planning Commission

# **Gateway Determination Review Request – 2 Inverary Drive, Kurmond**

## **Gateway Determination Advice Report**

Chris Wilson (Chair)

1 July 2021

July 2021 Final Report ©  
State of New South Wales through the Independent Planning Commission 2021

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## DEFINED TERMS

ABBREVIATION	DEFINITION
<b>Altered Gateway Determination</b>	The Department's determination that the Gateway determination should be altered, issued on 3 December 2020
<b>APZ</b>	Asset Protection Zone
<b>Commission</b>	Independent Planning Commission of NSW
<b>Council</b>	Hawkesbury City Council
<b>Department</b>	Department of Planning, Industry and Environment
<b>District Plan</b>	<i>Western City District Plan, 2018</i>
<b>Draft Structure Plan</b>	<i>Draft Kurmond and Kurrajong Investigation Area Structure Plan, 2015</i>
<b>EES</b>	Environment, Energy and Science (a Division of the Department)
<b>EP&amp;A Act</b>	<i>Environmental Planning and Assessment Act 1979</i>
<b>Gateway Determination</b>	The Department's first Gateway determination for the Planning Proposal, issued on 28 June 2018
<b>Gateway Report</b>	Department's Gateway Review Justification Assessment Report, received by the Commission on 27 May 2021
<b>Hawkesbury LSPS</b>	<i>Hawkesbury Local Strategic Planning Statement</i>
<b>HELP 2012</b>	<i>Hawkesbury Local Environmental Plan 2012</i>
<b>Interim Development Principles</b>	Council's 2015 <i>Interim Policy – Kurmond Kurrajong Development Principles</i>
<b>LGA</b>	Local Government Area
<b>Material</b>	The material set out in section 3.2
<b>MRA</b>	Metropolitan Rural Area
<b>Planning Proposal</b>	Proposal to amend the HLEP 2012 to reduce the minimum lot size standard from 10 hectares to 2,000 square metres on the Site.
<b>Region Plan</b>	<i>Greater Sydney Region Plan – A Metropolis of Three Cities, 2018</i>
<b>Site</b>	2 Inverary Drive, Kurmond (Lot 2 DP 600414)

# 1 INTRODUCTION

1. On 27 May 2021, the NSW Independent Planning Commission (**Commission**) received a request from the NSW Department of Planning, Industry and Environment (**Department**) to provide advice pursuant to section 2.9(1)(c) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* in relation to a Planning Proposal and Gateway Determination in respect of 2 Inverary Drive, Kurmond (Lot 2 DP 600414) (**Site**) within the Hawkesbury Local Government Area (**LGA**).
2. The landowner (**Proponent**) lodged a Planning Proposal with Hawkesbury City Council (**Council**) which was considered by the Sydney Western City Planning Panel and recommended for Gateway determination on 27 February 2018.
3. On 28 June 2018, the Department issued a Gateway determination for the Planning Proposal to proceed subject to conditions (**Gateway Determination**). Prior to undertaking public exhibition, Council was required to make a number of changes to the Planning Proposal, including:
  - review the maximum allotment sizes, and if amended, prepare a proposed lot size map for inclusion in the Planning Proposal;
  - amend the Planning Proposal to address the *Sydney Western City District Plan (District Plan)*; and
  - address the Planning Proposal's consistency with *Greater Sydney Region Plan – A Metropolis of Three Cities (Region Plan)*.
4. On 3 October 2019, Council provided a letter to the Proponent seeking additional information.
5. On 25 November 2019, Council requested the Department provide an extension to the timeframe for completion of the amendment to the *Hawkesbury Local Environmental Plan 2012 (HELP 2012)*. An extension was required as Council was awaiting outstanding information from the Proponent in response to its letter dated 3 October 2019.
6. The Planning Proposal was publicly exhibited in June through July 2020. The Commission understands that Council exhibited the Planning Proposal to progress its consideration despite ongoing concerns regarding consistency of the Planning Proposal with the conditions imposed by the Sydney Western City Planning Panel and the Gateway Determination.
7. On 3 December 2020, the Department determined that the Gateway Determination should be altered (**Altered Gateway Determination**). It is understood that while considering Council's request for a timeframe extension, the Department reviewed the exhibited material and determined that further work was required to address the conditions of the original Gateway, specifically, the requirement to review the lot sizes and address the District Plan. Consequently, the Altered Gateway Determination required the Proponent to:
  - demonstrate resolution of issues raised by Environment, Energy and Science Group (**EES**);
  - demonstrate how the landscape character of the area is maintained, as described by Council's 2015 *Interim Policy – Kurmond Kurrajong Development Principles (Interim Development Principles)* and in accordance with the draft 2019 *Kurmond and Kurrajong Investigation Area Structure Plan (Draft Structure Plan)*;

- consider a one hectare minimum lot size, as exhibited in the Draft Structure Plan, to address the requirements of the District Plan, including the objectives of the 'Metropolitan Rural Area' (MRA) and avoid fragmentation of significant vegetation;
  - consider retention of significant vegetation in single ownership or a biodiversity stewardship arrangement; and
  - identify a maximum residential lot yield.
8. The Department altered the Gateway Determination because the Planning Proposal was considered by the Department to be inconsistent with the objectives of the strategic planning framework established in the Region Plan and District Plan, which came into effect in March 2018.

## 2 THE REVIEW REQUEST

### 2.1 Site and Locality

9. The Department's Gateway Review Justification Assessment Report (**Gateway Report**) describes the location of the Site, stating:

*The planning proposal applies to 2 Inverary Drive, Kurmond, legally known as Lot 2 DP 600414. This rectangular site has an area of 10.96 hectares and is approximately 1.5km south east of the village of Kurmond, approximately 3km east of the village of Kurrajong, and approximately 3.5km north of the township of Richmond.*

10. The Commission notes that the distance from the eastern edge of Kurmond village to the south-western corner of the Site is approximately 850 metres and the distance to the north-eastern corner of the Site is approximately 1.4 kilometres.
11. The Site is illustrated in **Figure 1** and its relationship to Kurmond is shown in **Figure 2**.

**Figure 1** Site Context (source: SixMaps)



12. The Gateway Report describes the Site as follows:

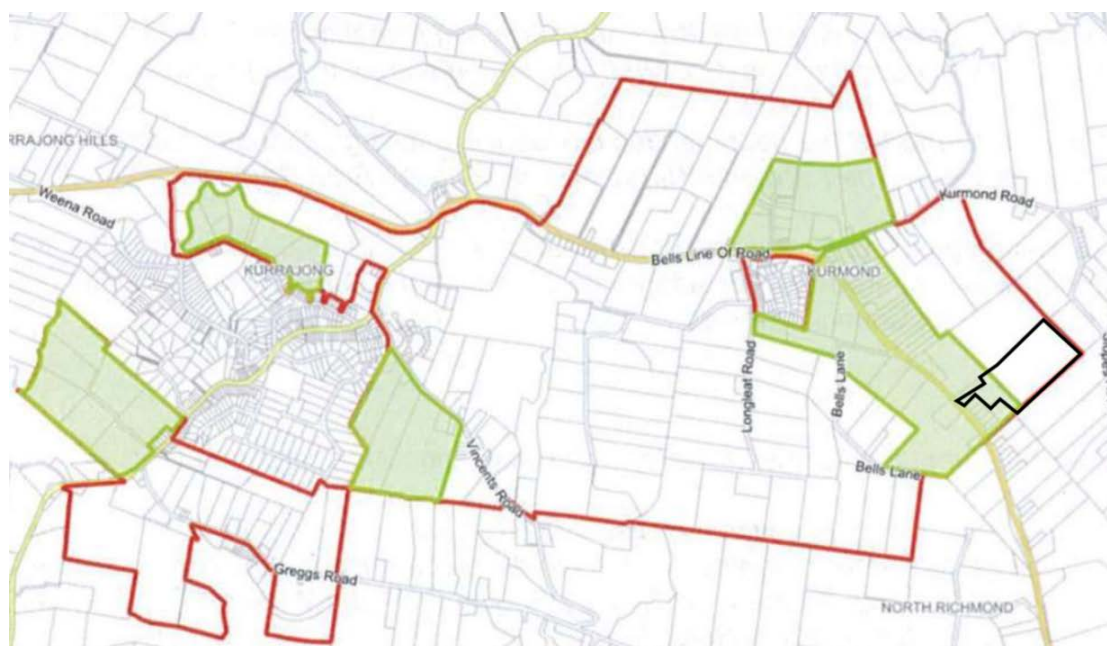
*The site is battle-axe in shape, occupied by a dwelling house in the south-west corner of the site and comprises of cleared pasture fronting Inverary Drive, substantial vegetation, two dams and a watercourse running through the centre of the property. The site contains Shale Sandstone Transition Forest, which is an endangered ecological community...*

13. The Site is zoned RU1 Primary Production. The Gateway Report states the Site and surrounding area is predominantly used for rural residential purposes.
14. The Commission notes that a plant nursery adjoins the Site to the south-east.
15. Regarding Site context, the Gateway Report states:

*The area is likely to see increased rural residential development with several allotments in the vicinity of Kurmond village recently being rezoned to allow for reduced minimum lot sizes and therefore further subdivision. The adjoining property (396 Bells Line of Road) will facilitate a development of 33 residential lots as approved by Council under DA0332/16 as a result of an LEP amendment in January 2017.*

16. The Commission notes that the Site is located within the boundary of the Draft Structure Plan, with the south-western part of the Site identified for minimum lot sizes of 4,000 square metres. The Commission notes that on 23 February 2021 Council resolved to not adopt the Draft Structure Plan.

**Figure 2** Draft Kurmond and Kurrajong Investigation Area Structure Plan  
 (Plan area outlined in red; areas identified for a 4,000 square metre minimum lot size shown in green; Site outlined in black) (source: Department's Gateway Report)



## 2.2 The Planning Proposal

17. The Gateway Report states the current Planning Proposal (dated December 2020) is seeking to facilitate up to 36 rural residential lots on the Site by reducing the minimum lot size from 10 hectares to part 2 hectares and part 2,000 square metres. It is noted that the current indicative lot layout supporting the Planning Proposal includes 31 rural residential lots and one two-hectare lot to protect the riparian corridor.
18. The Commission notes that the Planning Proposal has a lengthy history. A detailed summary of the Planning Proposal's history is provided at **Appendix A**. In summary, the Planning Proposal was:
  - initiated with Council on 23 December 2014;
  - approved to proceed to Gateway by the Sydney Western City Planning Panel on 27 February 2018;
  - submitted to the Department for Gateway determination on 7 May 2018;
  - a Gateway determination was issued by the Department on 28 June 2018, which determined the Planning Proposal should proceed subject to conditions, as identified in paragraph 3 above;
  - Council requested the Department extend the timeframe to complete the LEP until 25 November 2019;
  - the Planning Proposal was exhibited from June through July 2020; and
  - the Department determined on 3 December 2020 that the Gateway Determination should be altered, as identified in paragraph 7 above.



## 2.3 Proponent's Request

19. This review of the Altered Gateway Determination was sought by the Proponent.
20. As part of the material considered by the Commission (described at paragraph 23 below), the Commission has reviewed the Proponent's justification for requesting a Gateway determination review. The Commission notes the Proponent's responses to the additional conditions inserted by the Department in the Altered Gateway Determination, as set out below:

- a) An indicative subdivision layout must be submitted to the Department for endorsement following exhibition of the Planning Proposal and resolution of the issues raised in the Environment, Energy and Science submission.

Proponent response: *An indicative subdivision layout has been prepared which provides for vegetation corridors through the land to link with the riparian corridor. Further flora and fauna assessment by Australian Wetlands Consulting Pty Ltd was based on that scheme. The further ecological assessment has taken some time to finalise due to the need to investigate species that are prevalent only during certain seasons including migratory fauna species. In particular, the report addresses issues of connectivity and fragmentation of habitat.*

- b) This subdivision layout is to demonstrate how the proposal adequately complies with all of the Hawkesbury Council's 2015 *Interim Policy – Kurmond Kurrajong Development Principles* and demonstrate how the proposal maintains the landscape character of the area as described in the draft 2019 *Kurmond Kurrajong Structure Plan*.

Proponent response: *The planning proposal has been revised to address the draft 2019 Kurmond Kurrajong Structure Plan, in particular the landscape character of the area. The planning proposal also specifically responds to the principles adopted in the 2015 Interim Policy – Kurmond Kurrajong Development Principles. The planning proposal finds that the landscape character as described by the Kurmond Kurrajong Structure Plan is maintained.*

- c) Consideration should be given to a 1-hectare minimum lot size as exhibited in the 2019 draft Kurmond Kurrajong structure plan to more appropriately address the values of the MRA and to avoid fragmentation of significant vegetation. Consideration should also be given to the retention of 'significant vegetation' in single ownership or a biodiversity stewardship agreement. A maximum residential lot yield is to be identified within the map Restricted Lot Yield.

Proponent response: *It is considered that the Planning Proposal adequately addresses the values of the MRA and through the work by Australian Wetlands Consulting Pty Ltd has responded to issues of vegetation fragmentation. A 1-hectare minimum lot size and a maximum residential lot yield is not considered necessary in light of the above and it is this aspect of the amended Gateway Determination to which a review is sought.*

21. As described at paragraph 17 above, the Proponent is seeking to facilitate up to 36 rural residential lots on the Site. The Proponent's indicative lot layout, as revised in August 2020, is shown in **Figure 3** below.

**Figure 3** Revised Indicative Lot Layout  
 (source: Gateway Report attachment A3, prepared by Enlaco, dated 2 August 2020)



### 3 THE COMMISSION'S CONSIDERATION

#### 3.1 The Commission's Meetings

22. In preparation of its advice, the Commission met with various persons as set out in Table 1 below. All meeting and site inspection notes were made available on the Commission's website.

**Table 1** Commission's Meetings

Meeting	Date of Meeting	Transcript/Notes Available on
Site Inspection	8 June 2021	10 June 2021
Department	10 June 2021	15 June 2021
Proponent	10 June 2021	15 June 2021
Council	10 June 2021	15 June 2021

### 3.2 Material Considered by the Commission

23. In this determination, the Commission has carefully considered the following material (**Material**):

- the Department's request for Gateway determination review letter, received by the Commission on 27 May 2021;
- the Department's Gateway Report, received by the Commission on 27 May 2021, including the following attachments:
  - Attachment A1 – Gateway Determination Review covering letter prepared by the Proponent, dated 6 December 2021;
  - Attachment A2 – Planning Proposal (revised) prepared by the Proponent, dated December 2020;
  - Attachment A3 – Amended Lot layout prepared by Enlaco, dated 2 August 2020;
  - Attachment A4 – Ecological Assessment Report prepared by Australian Wetlands Consulting Pty Ltd, dated 9 December 2020;
  - Attachment A5 – Planning Proposal (superseded) prepared by the Proponent, dated May 2020;
  - Attachment A6 – Gateway review application form, prepared by the Proponent;
  - Attachment B1 – Gateway Determination, dated 28 June 2018;
  - Attachment B2 – Gateway Determination Report, dated 28 June 2018;
  - Attachment B3 – Alteration Gateway determination, dated 3 December 2020;
  - Attachment B4 – EES Submission, dated 24 April 2021;
  - Attachment C1 – Council's Gateway Determination review comments, dated 4 March 2021;
  - Attachment C2 – Letter from Council to the Proponent, dated 3 October 2019;
  - Attachment C3 – EES Submission, dated 18 June 2020;
  - Attachment D1 – Flora & Fauna Assessment Report, prepared by Envirotech, dated 9 June 2016;
  - Attachment D2 – Sydney Western City Planning Panel Rezoning Review Determination, dated 27 February 2018;
  - Attachment D3 – Planning Proposal timeline; and
  - Attachment D4 – Draft Kurmond-Kurrajong Investigation Area Structure Plan 2019.
- the transcripts of the Commission's meetings outlined in **Table 1**;
- the Region Plan;
- the District Plan;
- Interim Development Principles (adopted by Council on 23 February 2021 for consideration of remaining Planning Proposals), including the supporting Landscape Character Study prepared by Clouston Associates, dated 13 April 2018;
- *Hawkesbury Local Strategic Planning Statement (Hawkesbury LSPS)* (adopted by Council on 10 November 2020);
- *Hawkesbury Local Housing Strategy* (adopted by Council on 8 December 2020);
- *Hawkesbury Rural Lands Strategy* (adopted by Council on 30 March 2021);
- the notes and photographs of the Site inspection;

- all comments made during the Commission’s meetings with the Proponent, Council and Department (published in Meeting Transcripts);
- the Proponent’s response to questions taken on notice, dated 16 June 2021; and
- the Department’s response to questions taken on notice, received by the Commission on 18 June 2021.

### 3.3 Council’s View

24. At its meeting with the Commission on 10 June 2021, Council described the history of the Planning Proposal, noting that it had “morphed since it was originally... lodged with Council” (page 2, Meeting Transcript).

25. Council also described the context of the changes to the strategic planning framework. With regard to the status of the Draft Structure Plan, Council stated:

*...Council resolved in February of this year to not adopt the Structure Plan, but instead to – to process remaining planning proposals within the Kurmond Kurrajong Investigation Area basically against the – the interim development principles that were prepared in 2015 at the start of – of the structure planning process... (page 3, Meeting Transcript).*

26. With regard to the subject Planning Proposal, Council stated:

*In terms of strategic merit... we consider the planning proposal... is inconsistent with the – with the Sydney Region Plan and District Plan on... the Metropolitan Rural Area context... we think that the – the proposal has an adverse impact on the rural character and amenity of the area (page 4, Meeting Transcript).*

27. Council stated that it considers the proposed 2,000 square metre lots to be inconsistent with the existing open pastoral character of the area and that this would create more of an urban as opposed to rural character. Council stated that it considers the proposed 2,000 square metre lots to be inconsistent with the adjoining lots, that this would not provide an appropriate transitional buffer to larger adjoining lots and may lead to land use conflict issues (pages 4 and 5, Meeting Transcript).

28. Council also raised concerns about the proposed removal of existing vegetation on the Site; impacts to the environmental values of the locality; fragmentation of significant vegetation; impacts to riparian corridors and lack of management of watercourses; changes to the pastoral character of the Site; and reduction of the environmental, social and economic values of the area (page 5, Meeting Transcript).

29. Regarding the Site’s ecological value, Council stated:

*The proposal essentially relies on offsetting vegetation loss, rather than designing the – the development or proposal to protect and enhance biodiversity. [As detailed] in the responses from the state agency, that, you know, the ecological assessment report is – is unsatisfactory and it fails to recognise the vegetation on site as endangered ecological communities, the riparian – riparian areas have not been provided for or watercourses, and that the buffer plantings are inadequate in relation to the size or in providing adequate habitat or corridors (Page 5, Meeting Transcript).*

30. In its letter to the Department dated 4 March 2021, Council responded to the Department’s request for comments in relation to the Proponent’s Gateway review request and provided comments to each of the points raised in the Proponent’s justification for the Gateway determination review. In its letter, Council stated:

Council Officers support the Department of Planning, Industry and Environment's altered Gateway Determination and considers that the Planning Proposal in its current form does not sufficiently demonstrate how the proposal is consistent with:

- Council's Interim Policy – Development Principles for the Kurmond Kurrajong Investigation Area
- Council's Draft Structure Plan (Note – as detailed later in this correspondence, Council resolved not to adopt the Draft Structure Plan at its Ordinary Meeting on 23 February 2021)
- the values of the Metropolitan Rural Area
- the existing and desired character of the locality.

31. In its letter, Council noted that "the Planning Proposal has not been formally considered by Council, given the matter proceeded to Gateway via the Rezoning Review process".

### 3.4 The Department's Consideration

32. The Department is of the view that the Planning Proposal does not demonstrate strategic merit or site-specific merit. The Department's position is that this Planning Proposal should not proceed.

33. The Commission notes the Department's view as set out in its review request received by the Commission on 27 May 2021:

*The Department considers that the proposal is inconsistent with the objectives of the Metropolitan Rural Area, not supported by an updated strategic planning framework and inconsistent with section 3.8(2)(a) of the EP&A Act.*

*A second Gateway alteration in December 2020 replaced an existing condition which required the review of the lot sizes with a new condition requiring the following:*

- resolution of issues raised by Environment, Energy and Science;
- demonstration of how the landscape character of the area is maintained, as described by Council's development principles and the draft Kurmond Kurrajong Structure Plan;
- consideration of a one hectare minimum lot size as exhibited in the 2019 draft Kurmond Kurrajong Investigation Area structure plan to more appropriately address the values of the Metropolitan Rural Area (MRA) and to avoid fragmentation of significant vegetation;
- consideration to the retention of 'significant vegetation' in single ownership or a biodiversity stewardship agreement; and
- identification of a maximum residential lot yield.

34. The Commission notes the Department's comment in the Gateway Report that it agrees with Council's comments.

35. The Commission notes the Department's assessment of the Planning Proposal's strategic merit against the Region and District Plans, local strategic planning framework and Section 9.1 Directions, and its assessment of the Planning Proposal's site-specific merit.

### 3.5 Strategic Context

36. The Site is subject to the Region Plan and District Plan, which came into effect in March 2018.
37. The Commission notes relevant objectives of the District Plan are to protect and enhance bushland and biodiversity (Planning Priority W14), protect and enhance scenic and cultural landscapes (Planning Priority W16) and to better manage rural areas by protecting environmental, social and economic values (Planning Priority W17).
38. The Site is identified within the MRA under the District Plan, which states:

*The Western Parkland City is a place that meets the country and where the Metropolitan Rural Area, Western Sydney Parklands and the national parks and reserves of the Protected Natural Area including the Greater Blue Mountains World Heritage Area frame the city. This unique setting provides the opportunity to derive tourism benefits linked to the District's natural, recreational and agricultural assets.*
39. The objectives of the MRA are to maintain and enhance the environmental, social and economic values of the district by contributing to habitat and biodiversity; supporting productive agriculture; providing mineral and energy resources; sustaining rural towns and villages; and encouraging tourism to the district's assets.
40. With regard to Sydney's future housing needs, the Commission notes the District Plan states "rural-residential development is not an economic value of the District's rural areas and further rural-residential development is generally not supported".
41. The Commission understands the Planning Proposal was considered by the Sydney Western City Planning Panel as part of the rezoning review process and recommended that the Planning Proposal proceed to Gateway on 27 February 2018, noting that this occurred after the exhibition of the then draft Region and District Plans (2017) but prior to their adoption in March 2018.
42. The Commission notes that the Sydney Western City Planning Panel did not require the Proponent to demonstrate consistency with the District Plan, however it did require the Proponent to undertake additional consideration of lot sizes, among other matters. The Gateway Report states, "the Panel saw the Gateway processes as an appropriate means to consider the appropriate lot sizes to ultimately be included in the exhibition draft". The Commission notes the Department's view in the Gateway Report that "the amended proposal has not met the Panel recommendations".
43. The Commission notes the conditions of the Gateway Determination required the Proponent to address the District Plan. At its meeting with the Commission on 10 June 2021, the Proponent stated that it considered the Planning Proposal to be consistent with the priorities of the MRA (page 13, Meeting Transcript).
44. The key strategic plan governing the preparation of the Planning Proposal was Council's 2015 Draft Structure Plan, which identifies specific areas adjoining Kurmond and Kurrabung villages as being potentially suitable for a 4,000 square metre minimum lot size, and the remaining areas as suitable for a one-hectare minimum lot size (refer to Figure 2 above).

45. The Draft Structure Plan was supported by the Interim Development Principles, which sought to assist in determining whether rural residential development and the associated lot sizes could be achieved on individual sites within the Investigation Area. The Commission accepts that the Draft Structure Plan was a locality-specific rural residential strategy. It was not governed by broader land use policies and was not endorsed by the Department.
46. The Commission understands that at its Ordinary Meeting on 23 February 2021, Council resolved not to adopt the Draft Structure Plan and for any remaining Planning Proposals to be considered against the Interim Development Principles, as well as the Region Plan and District Plan. Council's resolution was as follows:
- *Not adopt the Kurmond-Kurrajong Investigation Area Structure Plan.*
  - *Assess remaining individual Planning Proposals within the Kurmond-Kurrajong Investigation Area against the interim development constraints principles and the NSW Planning Framework (Sydney Region Plan and Western City District Plan including Metropolitan Rural Area).*
  - *Not encourage the lodgement of additional individual Planning Proposals within the Kurmond-Kurrajong Investigation Area for rural residential development.*
47. The Commission accepts that the progression of the subject Planning Proposal is now fundamentally governed by the current strategic planning framework outlined above and the Interim Development Principles adopted by Council.
48. In its meeting with the Commission on 10 June 2021, the Department made the following comments regarding the Draft Structure Plan:
- It's important to assess the development against the interim principles in considering the strategic planning context but we certainly think that the resolution of February and the inclusion of the metropolitan rural area consideration in that resolution significantly diminishes the weight provided to that plan in the consideration of strategic merit (page 5, Meeting Transcript).*
49. The Commission generally agrees with the Department's view regarding the Draft Structure Plan. However, the Commission considers that some limited weight can be afforded to the strategic approach adopted in the Draft Structure Plan, particularly where the Interim Development Principles have been addressed and the objectives of the District Plan regarding the values of the MRA would not be compromised. It is also noted that the altered Gateway determination specifically refers to the Structure Plan and its objectives and further, that the one-hectare recommendation originally adopted by the Department is seemingly derived from the Structure Plan.

### **3.6 Strategic Merit**

50. The Commission understands that both the Department and Council consider the Planning Proposal to be inconsistent with the current strategic planning framework, including the relevant objectives of the District Plan, described in paragraph 37 above, and the values of the MRA.
51. The Commission notes the Department's comments in the Gateway Report that the Kurmond-Kurrajong area is not identified as an area suitable for residential intensification, other than natural or organic growth. The Department recently reviewed all determined and pending Planning Proposals near Kurmond village to ascertain whether additional LEP amendments are required to support the organic growth of Kurmond village.

52. The Commission notes Council's comments during its meeting with the Commission on 10 June 2021 that Council's planning strategies, including the Local Housing Strategy and Rural Lands Strategy, do not require rural residential development to achieve housing targets. In areas surrounding Kurmond village, Council considered that housing supply should be provided through organic growth around the village graduating to larger lots further from the village centre. Council stated that it views the Planning Proposal to be inconsistent in that regard (page 9, Meeting transcript).
53. The Department found that current live Planning Proposals around Kurmond village equate to 110 additional residential lots, which is considered well in excess of organic growth. The Commission understands that organic growth is considered by the Department to be approximately 1% per annum of residential lot growth on the edge of a village. To put this in context, Kurmond currently contains 52 residential allotments. 1% of 52 is just over 0.5 allotments per year. The subject Planning Proposal would deliver 30 lots which reflects an increase of approximately 60% in residential allotments around Kurmond, or 60 years of organic growth. Notably, this does not include any of the other active Planning Proposals around Kurmond that may proceed.
54. The Commission notes the Proponent's justification for the proposed number of lots and the indicative lot layout, as described in its Gateway Determination review cover letter, dated 6 December 2021:
- It is considered that the Planning Proposal adequately addresses the values of the MRA and through the work by Australian Wetlands Consulting Pty Ltd has responded to issues of vegetation fragmentation.*
- A 1 hectare minimum lot size and a maximum residential lot yield is not considered necessary in light of the above and it is this aspect of the amended Gateway Determination to which a review is sought.*
55. The Commission notes the Proponent's comments during its meeting with the Commission on 10 June 2021:
- ...there needs to be some planning response to growth in this area and that's precisely what we're doing. While it may not be organic in terms of just sort of letting things happen as they go... what we're doing here is responding to those values of the MRA... I just don't know how organic growth can take place without starting to look towards reducing lot sizes and allowing some form of growth, because otherwise the current controls don't facilitate that (page 13, Meeting Transcript).*
56. With regard to the condition imposed by the Department in the Altered Gateway Determination that requires the Proponent to consider "a 1 hectare minimum lot size as exhibited in the 2019 draft Kurmond Kurrajong structure plan to more appropriately address the values of the MRA and to avoid fragmentation of significant vegetation", the Commission notes the Proponent's response in its letter to the Commission dated 16 June 2021, which states:
- We have considered the 1ha minimum lot size as suggested by the Alteration of Gateway Determination of 3 December 2020 and consider that outcome to be unnecessary to ensure the retention of vegetation over the land.*
- It is not necessary to impose a 1ha minimum lot size to achieve outcomes that can be met on smaller lots through sensible planning and appropriate controls.*



### *Commission's Findings*

57. The Commission agrees with the Department that the current State, regional and local strategic planning framework has evolved significantly since the Planning Proposal was initiated in 2014 and eventually submitted for Gateway Determination in 2018.
58. The Commission notes that the District Plan generally does not support additional rural-residential development in the MRA.
59. The Commission accepts the Department's finding that the Planning Proposal does not give effect to the District Plan, in particular Planning Priorities W14, W16 and W17, as set out below:
  - The Commission generally agrees with the Department that the Planning Proposal is inconsistent with Planning Priority W14, which requires development to protect and enhance bushland and biodiversity. The Commission is of the view that the indicative lot layout, particularly in the north, has not meaningfully considered reducing the lot yield to assist in retaining vegetation and reducing vegetation fragmentation – specifically the critically endangered ecological communities identified on the Site.
  - The Commission also generally agrees with the Department that the Planning Proposal is inconsistent with Planning Priority W16, which aims to protect and enhance scenic and cultural landscapes, including view corridors. The Commission considers that the proposed lot yield would adversely impact view corridors and landscape character, particularly to the north of the Site.
  - The Commission also agrees with the Department's views in the Gateway Report with regard to Planning Priority W17, which aims to protect environmental, social and economic values in rural areas. The Commission agrees with Council and the Department that the Planning Proposal does not constitute organic growth of Kurmond village.
60. The Commission also accepts that the overriding strategic planning objective for the Kurmond-Kurrajong area should be to ensure consistency with the Region Plan and the District Plan, specifically the values of the MRA.
61. However, the Commission is of the view that some limited weight can be afforded Council's former Draft Structure Plan, including the Landscape Character Study, given:
  - the Planning Proposal was prepared in response to Council's Draft Structure Plan, which included the Site and proposed a minimum lot size of 4,000 square metres for land fronting Inverary Drive with the remainder (majority of the site) identified as one hectare;
  - the Planning Proposal was approved to proceed to Gateway by the Sydney Western City Planning Panel subject to conditions;
  - the Minister for Planning's delegate issued a Gateway Determination in 2018 having determined that the Planning Proposal had sufficient strategic merit and should proceed subject to conditions;
  - the Altered Gateway Determination also deemed the Planning Proposal to have sufficient strategic merit to proceed subject to conditions and specifically refers to the objectives of the draft Structure Plan; and
  - it was the provisions of the draft Structure Plan that informed the Department's requirement to consider a one-hectare minimum lot size.

62. The Commission does not support the lot yield proposed by the Proponent for the reasons set out at paragraph 59. However, the Commission is of the view that some limited additional development of the northern portion of the Site may be justified consistent with draft Structure Plan and subject to more detailed consideration of the Interim Development Principles, specifically slope considerations.
63. Notwithstanding, the Commission generally supports both Council's and the Department's positions that the more sensitive areas of the Site to the north cannot sustain the density proposed in the Planning Proposal and a one-hectare minimum lot size consistent with the draft Structure Plan may be more appropriate. This is discussed in more detail in section 3.7 below.

### 3.7 Site Specific Merit

64. The biodiversity value of the Site and the potential biodiversity impacts of rural residential subdivision are key considerations in determining site specific merit.
65. Figure 4 below shows the proposed indicative lot layout overlaid with the existing ecological communities at the Site.
66. EES summarised the key biodiversity values of the Site in its advice to the Department, dated 28 April 2021, as follows:
  - *a remnant patch of the critically endangered ecological community, Shale/Sandstone Transition Forest*
  - *habitat for several threatened species. Five threatened fauna species were recorded on site during the snapshot survey. The site may provide habitat for other species that weren't observed during surveys*
  - *the condition of vegetation is variable, but is classed as mostly in moderate condition, with some areas in good condition.*

**Figure 4** Ecological communities and proposed lot layout  
(source: Proponent's Ecological Assessment Report, December 2020)



67. EES raised significant concerns regarding the potential biodiversity impacts of the proposal and advised that the proposed subdivision layout has not been designed to avoid biodiversity values within the Site. Concerns raised by EES, in its advice dated 28 April 2021, included:

- deficiencies in the Proponent’s ecological assessment of the Site;
- underestimation of the impact of rural residential development on the biodiversity of the Site, noting the high incidence of clearing in these types of development;
- potential inadequacy of the proposed protection mechanisms (restrictions or covenants under a section 88B instrument);
- lot layout not providing appropriate riparian corridor widths; and
- conservation areas should be zoned E2 Environmental Conservation.

68. In its meeting with the Commission, the Proponent responded to a number of the concerns raised by EES, commenting that:

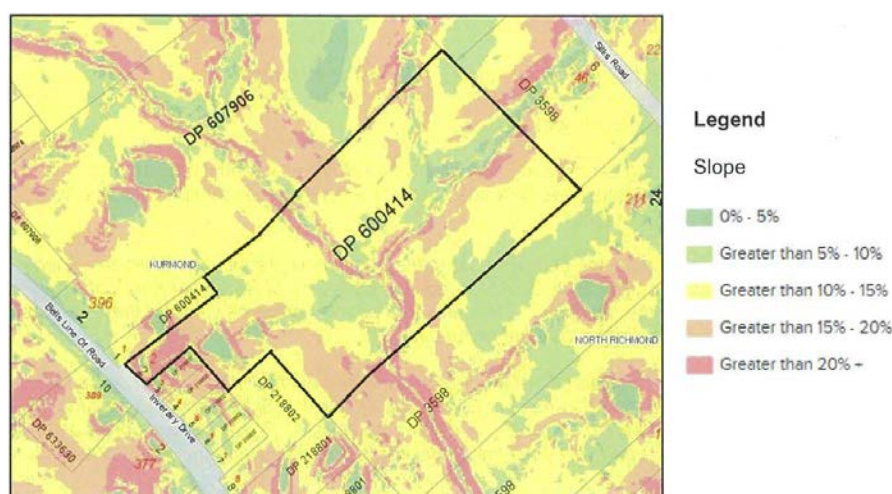
- the Planning Proposal attempts to avoid and minimise impacts on vegetation within the riparian zone;
- alternative measures to safeguard vegetation in riparian corridors, other than 88B instruments, can be considered;
- whilst no evidence of koala activity was identified, it does not rule out their occurrence at the Site, and additional restrictions could be imposed for the protection of koalas, such as prohibiting domestic pets;
- loss of bat habitat is expected, but the loss is considered minor relative to the overall foraging ranges of the bats; and
- it is prepared to offset residual biodiversity impacts through appropriate mechanisms.

69. Regarding the range of slopes at the Site, the Department’s Gateway Report found:

*The planning proposal has not currently demonstrated that future development will enable all building envelopes, asset protection zones (APZs), driveways and roads to be located on land within a slope less than 15%; and avoid the removal or fragmentation of significant vegetation.*

70. The range of slopes at the site is provided in Figure 5 below:

**Figure 5** Slope mapping  
(source: Council’s Gateway Determination Review Comments, March 2021)



71. Regarding the view impacts of the Planning Proposal, Council's Gateway Determination Review Comments, dated March 2021, stated:

*In consideration of the significance of the view/vista corridors described in Table 1 above, and the landscape character of the subject site, it is considered that the impacts of future development on that character and the view/vista corridor is unacceptable due to the likely scale and density of future buildings.*

72. The Department's Gateway Report found that the proposal is inconsistent with *Planning Priority W16 Protecting and enhancing scenic and cultural landscapes* as it would have unacceptable view impacts, stating:

*It is concluded the proposal has not adequately demonstrated how it ensures the significant view corridors and landscape character will not be adversely impacted by the resultant rural residential development. The proposal is inconsistent with this planning priority.*

73. The Gateway Report concludes that:

*The planning proposal does not demonstrate strategic merit or site-specific merit. The Department's position is that this planning proposal should not proceed.*

### *Commission's Findings*

74. During its Site inspection, the Commission noted that the Site includes extensive tree cover, which appears most dense around watercourses. A notable exception is the south-western portion of the Site, where the north-east facing slope is predominantly cleared.
75. The Commission notes that significant clearing would likely be necessary in order to accommodate future residences and ancillary infrastructure at the Site. The scope for minimising such impacts appears limited. The Commission is of the view that the Proponent's revised indicative lot layout and Ecological Assessment has not demonstrated adequate avoidance of biodiversity impacts nor adequate protection of the Site's biodiversity.
76. Advice from EES dated 28 April 2021 stated that a section 88B instrument (Section 88B of the *Conveyancing Act 1919*) is not a recognised conservation measure under the Biodiversity Offsets Scheme and *Biodiversity Conservation Act 2016*. EES advised that a more appropriate protection measure would be to rezone areas of the Site to E2 Environmental Conservation, with commensurate land use controls. The Commission considers that appropriate biodiversity conservation measures have not been proposed and need to be considered further, such as those recommended by EES.
77. The Commission agrees with the Department's finding that the "Planning Proposal has not adequately demonstrated how the development would ensure that adverse impacts on threatened species and communities are minimised and that existing bushland and biodiversity is protected and enhanced". The Commission also agrees with the Department's finding that the Planning Proposal is inconsistent with Planning Priority W14 (protecting and enhancing bushland and biodiversity), as discussed at paragraph 59 above.
78. Areas of the Site have a slope in excess of 15%, particularly the south-western portion of the Site and areas around watercourses. The Proponent's revised lot layout indicates that the proposed number of rural-residential lots would likely lead to building envelopes, asset protection zones (**APZs**), driveways and roads being located on slopes exceeding 15%, which is contrary to Council's Interim Development Principles.

79. Regarding view impacts, the Commission considers that the Planning Proposal would dramatically alter the Site, with significantly less tree cover and a density of development that is incongruous with surrounding land uses. The Commission agrees with the Department's finding that the Planning Proposal is inconsistent with Planning Priority W16 (protecting and enhancing scenic and cultural landscapes), as discussed at paragraph 59 above.
80. The Commission finds that the Planning Proposal would lead to overdevelopment of the Site and cause unacceptable biodiversity and view impacts. The Commission agrees with the Department's finding that the Planning Proposal does not demonstrate site-specific merit. However, the Commission is of the view that amendment of the Planning Proposal to a lower density may enable a lot layout that minimises biodiversity impacts and reduces view impacts to acceptable levels.
81. In this respect, the Commission supports the Department's recommendation that the Proponent consider a minimum lot size of one hectare for the northern part of the Site. This will ensure fragmentation and vegetation loss is minimised, riparian corridors are maintained, and the existing and future scenic character of the Site is protected.
82. The south-western portion of the Site is predominantly cleared and is situated behind existing residential development along Bells Line of Road. The Commission considers that this area of the Site could more reasonably accommodate some additional rural residential lots consistent with the 4,000 square metre minimum lot size identified in the Draft Structure Plan. However, this area may include slopes in excess of 15% and any subdivision in this area would need to be carefully considered to ensure an appropriate lot layout. The Commission's recommended indicative minimum lot sizes are identified in Table 2 below.
83. The Commission notes that the recommended minimum lot sizes would enable development in excess of organic growth. However, as described in section 3.7, the Commission considers that some limited weight should be afforded to the Council's former strategic planning approach, which supported these lot sizes, noting:
- the fact that the Planning Proposal was a response to the local strategic planning context;
  - the more recent State and regional strategic planning context, noting that both Gateway determinations deemed the Planning Proposal to have sufficient strategic merit to proceed, albeit with conditions to ensure consistency with both local, district and State strategic planning objectives; and
  - site-specific circumstances, such as the existence of supporting infrastructure.

**Table 2** Commission's indicative recommended lot numbers

	South of creek	North of creek
<b>Current proposed lot size range</b>	2,000 – 6668 m <sup>2</sup>	2,000 – 3,764 m <sup>2</sup>
<b>Minimum lot size recommended by the Commission</b>	4,000 m <sup>2</sup>	1 ha

## 4 CONCLUSION: THE COMMISSION'S ADVICE

85. The Commission has undertaken a review of the Altered Gateway Determination as requested by the Department in its letter dated 27 May 2021. In doing so, the Commission has considered the Material (paragraph 23), submissions by the Proponent, Council and the Department, and the reasons given for the determination in the Department's Gateway Report.
86. The Commission is of the view that the overriding objective for the Kurmond-Kurrajong area should be to ensure consistency with the current strategic planning framework, specifically the values of the MRA. However, the Commission is of the view that some limited weight should be afforded to Council's former strategic planning approach for the reasons described in section 3.6 above.
87. The Commission's advice to the Minister's delegate is that the Planning Proposal does not generally demonstrate strategic merit nor site-specific merit and should not proceed in its current form.
88. The Commission recommends that the Altered Gateway Determination issued on 3 December 2020 should not be overturned, and should be further amended to provide for limited subdivision of 2 Inverary Drive as described at section 3.7 above with conditions updated accordingly.



**Commissioner Chris Wilson (Chair)**  
Member of the Commission

## APPENDIX A

**Table 3** History of the Planning Proposal (source: Department's Gateway Report)

Date	Description
23 December 2014	The original Planning Proposal was initiated with Council.
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.
28 July 2015	Council resolved to adopt an Interim Policy for development constraint principles for Planning Proposals in the Kurmond Kurrajong Investigation Area.
27 February 2018	Sydney Western City Planning Panel provided advice that the proposal should be submitted for Gateway determination as part of the rezoning review process.
March 2018	The Sydney Region Plan and Western City District Plan came into effect.
7 May 2018	The Planning Proposal was submitted to the Department for Gateway determination assessment.
28 June 2018	The Department issued Gateway determination with conditions.
24 May 2019	The Department altered the Gateway Determination for an extension of time to finalise the proposal to 28 September 2019.
10 September 2019	At its Ordinary Meeting, Council resolve to place the <i>Draft Kurmond Kurrajong Investigation Area Structure Plan 2019</i> on public exhibition.
3 October 2019	Council issued a letter to the Proponent seeking additional information.
25 November 2019	Council requested the Department provide an extension to the timeframe for completion of the LEP.
18 June 2020	Letter from Environment, Energy and Science Group in response to the Department's referral.
30 June 2020	Council resolved to defer the further consideration of the <i>Draft Kurmond Kurrajong Investigation Area Structure Plan 2019</i> until the Local Housing Strategy, Rural Lands Strategy and Local Strategic Planning Statement (LSPS) have been completed.
June – July 2020	The Planning Proposal was exhibited from June through July 2020.
10 November 2020	Council resolved to adopt the LSPS and send to the Greater Sydney Commission for endorsement.
3 December 2020	The Department determined that the Gateway determination should be altered.
8 December 2020	Council adopted the Hawkesbury Local Housing Strategy and endorsed the Draft Rural Lands Strategy to be placed on exhibition.

18 December 2020 to 15 February 2021	Public exhibition of the Draft Hawkesbury Rural Lands Strategy.
4 January 2021	The Department received the Proponent's Gateway review request.
23 February 2021	<p>Council resolved not to adopt the draft Structure Plan and for any remaining Planning Proposals to be considered against the 2015 Interim Development Principles, as well as the Region Plan and District Plan.</p> <p><u>Council resolution:</u></p> <p><i>That Council:</i></p> <ol style="list-style-type: none"> <li>1. <i>Not adopt the Kurmond-Kurrajong Investigation Area Structure Plan.</i></li> <li>2. <i>Assess remaining individual Planning Proposals within the Kurmond-Kurrajong Investigation Area against the interim development constraints principles and the NSW Planning Framework (Sydney Region Plan and Western City District Plan including Metropolitan Rural Area).</i></li> <li>3. <i>Not encourage the lodgement of additional individual Planning Proposals within the Kurmond-Kurrajong Investigation Area for rural residential development.</i></li> </ol>
30 March 2021	Council adopted the Rural Lands Strategy