

Planning Services

Gateway Determination Report

LGA	Hawkesbury
PPA	Hawkesbury Council
NAME	2 Inverary Drive, Kurmond (41 homes, 0 jobs)
NUMBER	PP_2018_HAWKE_002_00
LEP TO BE AMENDED	Hawkesbury Local Environmental Plan 2012
ADDRESS	2 Inverary Drive, Kurmond
DESCRIPTION	Lot 2 DP 600414
RECEIVED	7 May 2018. Further information was sought from Council and finalised on 29 May 2018.
FILE NO.	IRF18/6398
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

INTRODUCTION

The proposal was subject to a rezoning review. On 27 February 2018, the Sydney Western City Planning Panel decided that the proposal should be submitted for Gateway determination (**Attachment G**), as the proposal had demonstrated strategic and site-specific merit. Hawkesbury Council was offered the role of plan making authority for this proposal and advised of its acceptance on 4 April 2018 (**Attachment H**).

Description of planning proposal

The Planning Proposal (**Attachment A**) seeks to allow the subject site (refer following) to be subdivided, by amending the minimum lot size map from 10 hectares to part 2 hectares, part 6,000m², part 2,000 m² and part 1,000 m², with a proposed yield of 41 residential lots. The proposal also seeks to apply a servicing clause (clause 4.1D(1) of Hawkesbury Local Environmental Plan 2012) to that portion of the site where subdivision is proposed at the 2000m² and 1000m² standards.

Site description

The site is located at 2 Inverary Drive, Kurmond and is legally known as Lot 2 DP 600414. The site is rectangular, approximately 11 hectares in size and fronts Bells Line of Road with a battle axe type frontage (refer to Figure 1, overleaf). The site is zoned RU1 Primary Production under the Hawkesbury Local Environmental Plan (LEP) 2012 and has previously been used for animal grazing.

A dwelling house is situated in the south-west corner and the site comprises cleared pasture, scattered vegetation and two dams. A watercourse runs through the centre of the property and supports denser vegetation of varying quality.

The site, contains Shale Sandstone Transition Forest an endangered ecological community under the *Biodiversity Conservation Act 2016*, as identified in the Flora and Fauna Assessment Report (**Attachment J**).



Figure 1: subject site highlighted in thin red outline.

Existing planning controls

Under the Hawkesbury Local Environmental Plan 2012, the site is currently zoned RU1 Primary production (refer to Figure 2), with a minimum lot size of 10 hectares (refer to Figure 3 - overleaf) and contains terrestrial biodiversity as identified on the Terrestrial Biodiversity map (refer to Figure 4 - overleaf).



Figure 2: Land Zoning Map



Figure 3: Lot Size Map

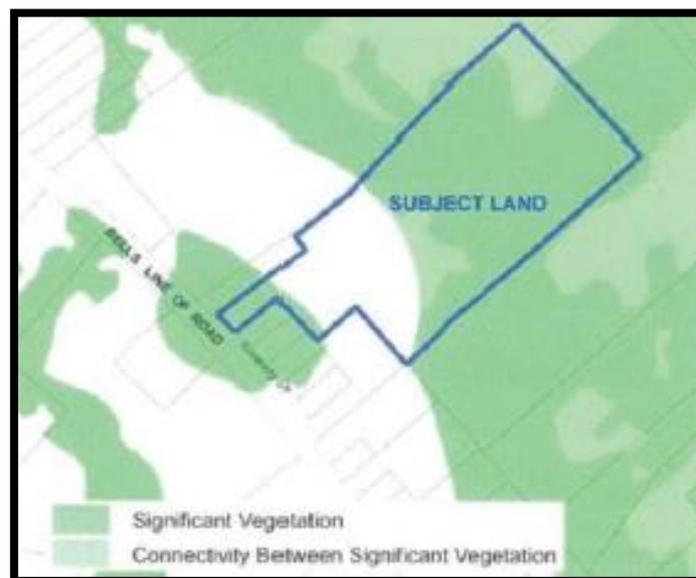


Figure 4: Terrestrial Biodiversity Map

Surrounding area

The subject site is situated in the suburb of Kurmond, and is approximately 8km from the township of Richmond, within the Hawkesbury local government area (LGA).

Agricultural activity in the vicinity comprises animal grazing and a commercial flower grower adjoins the site on the eastern boundary.

The broader area is predominantly rural residential development. The area is undergoing change and several allotments in the vicinity have been subject to recent lot size amendment. The lot size controls for the adjoining 13ha lot were amended in January 2017. The adjoining lot comprises minimum lot sizes of 2,000m², 1ha and 1.5ha (refer to blue highlighted boundary in Figure 3).

Land adjoining the site to the south-west also comprises residential lots of approximately 2,000m² and land to the north-west along Bells Line of Road comprises residential lots ranging in size from 1,500m² to 8,200m².

Summary of recommendation

Proceed with conditions – the proposal is supported as the proposal is consistent with regional strategic plans which seek to deliver low density, large lot rural residential development in the vicinity of existing villages.

PROPOSAL

Objectives or intended outcomes

The objective of the planning proposal is to allow the land to be subdivided into 41 large residential lots.

Explanation of provisions

The following LEP amendments are proposed:

- amending the minimum lot size from 10 hectares to part 1,000sqm, part 2,000sqm, part 6000sqm and part 2 hectares; and
- identifying the land as being included within 'Area A', subject to clause 4.1D(1) of the Hawkesbury Local Environmental Plan 2012 (**Attachment F**). An extract of the clause is provided, as follows:

4.1D Exceptions to minimum subdivision lot size for certain land

(1) Despite clauses 4.1, 4.1AA and 4.1A, development consent must not be granted for the subdivision of land that is identified as "Area A" and edged heavy blue on the Lot Size Map if:

(a) arrangements satisfactory to the consent authority have not been made before the application is determined to ensure that each lot created by the subdivision will be serviced by a reticulated sewerage system from the date it is created, and

(b) the area of any lot created by the subdivision that contains or is to contain a dwelling house is less than 4,000 square metres.



Figure 5: Application of Area A – subject to clause 4.1D

Consideration

Suitability of proposed lot sizes

2-hectare lot size - A minimum lot size of 2-hectare is proposed for the centre of the site. This portion of the site comprises the watercourse and significant and riparian vegetation. The larger lot size will allow for the retention and preservation of these characteristics whilst allowing a reasonable area for future development, including a dwelling house, asset protection zones and access provisions. This lot size is supported.

2,000m² lot size - A minimum lot size of 2,000m² is proposed for the rear portion of the site. Several properties in the vicinity of the subject site have lot sizes of 2,000m². There are also a small number of lots between 1000m² and 4000m² near the subject site. A minimum lot size of 2000m² is consistent with surrounding development patterns and is supported.

6000m² lot size - A minimum lot size of 6000m² is proposed for the front portion of the site. The Hawkesbury LEP 2012, however, does not provide for a minimum lot size of 6,000m². The closest minimum lot size provision in the HLEP 2012 is 4,000m², which is consistent with surrounding development. It is recommended that Council reconsider this minimum lot size as 4,000m² is considered more appropriate for this location.

1000m² lot size - A minimum lot size of 1000m² is proposed for a portion of the site. The RU Primary Production zone objectives seek to ensure development does not detract from the existing rural character, and Council's strategic documents: the Hawkesbury Residential Land Strategy and Kurmond and Kurrajong Investigation Area, seek to maintain the rural character of the area while permitting appropriate large lot residential development around existing local villages. This lot size is accordingly not consistent with the above and is inconsistent with existing subdivision patterns in the vicinity of the site.

The proposal was subject to a rezoning review and the Sydney Western City Planning Panel (Panel) determined the proposal should proceed but viewed the proposed 1,000m² minimum lot size as inappropriate and potentially inconsistent with the Council's incomplete Kurmond and Kurrajong Investigation Area.

The panel commented that 'the inclusion of lots of minimum sizes of 1,000m² is likely to be inappropriate and that lots as small as 1,000m² in the location proposed would present a form of development reflecting density more akin to suburban development, and risks inconsistency with the character of a fringe rural village/large lot residential housing environment.

In view of the above, it is recommended that Council be required to reconsider the proposed 1000m² lot size standard. A determination condition is recommended.

Further, as the proposed 6,000m² minimum lot size is inconsistent with the surrounding development and current lot size provisions in the HELP 2012, it is also recommended that Council be required to review this proposed lot size provision.

Clause 4.1D Exceptions to minimum lot size for certain land

As part of the department's assessment of the proposal and in discussion with council officers, it was noted that the way clause 4.1D (1) has been drafted may be subject to misinterpretation. An extract is provided, overleaf.

4.1D Exceptions to minimum subdivision lot size for certain land

(1) Despite clauses 4.1, 4.1AA and 4.1A, development consent must not be granted for the subdivision of land that is identified as “Area A” and edged heavy blue on the Lot Size Map if:

(a) arrangements satisfactory to the consent authority have not been made before the application is determined to ensure that each lot created by the subdivision will be serviced by a reticulated sewerage system from the date it is created, and

(b) the area of any lot created by the subdivision that contains or is to contain a dwelling house is less than 4,000 square metres.

The intention of the clause is to ensure that lots of less than 4,000m² are subject to satisfactory arrangements for connection to a reticulated sewerage system. Consent cannot be issued to subdivision of land to less than that standard if these arrangements are not made. Lots over 4000m² are not subject to this clause and onsite waste water disposal arrangements may be made.

Clause 4.1D(1) (a) and (b) are joined by an ‘and’. While the clause has been drafted so that it only applies to lots of less than 4000m², because the clause does not specifically state that it only applies to lots less than this standard, some misunderstandings have arisen in its interpretation i.e. it may also apply to lots above the 4000m² standard.

This matter has been further discussed with council officers and Council may wish to review the wording of this clause to avoid confusion. This matter has been addressed in the determination covering letter to Council.

Mapping

The proposal seeks to amend the following map:

- Lot Size Map – Sheet LSZ_008AA (refer to Figure 3 & 5).

The proposal includes the current and proposed lot size map.

The maps are considered suitable for exhibition, however, for clarity, it is recommended that the subject land on the proposed amendment map be highlighted in an outline and identified by a label.

NEED FOR THE PLANNING PROPOSAL

The proposal states the planning proposal has been prepared in response to the Hawkesbury Residential Lands Strategy which identified future rural residential development in the LGA will be low density, large lots, located around existing villages.

Hawkesbury Council subsequently prepared ‘Structure Planning – Kurmond and Kurrajong Investigation Area’ to identify what land would be suitable for large lot residential/rural development in the villages of Kurmond and Kurrajong. Figure 10 (below), identifies the investigation area. The subject site is located within this area.

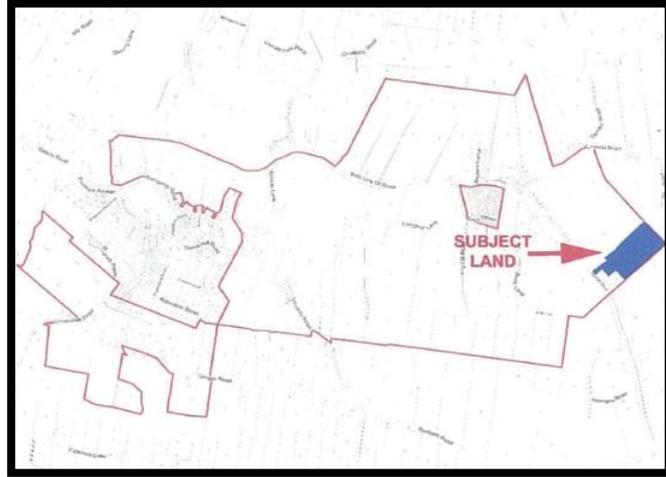


Figure 6: Subject site within the Kurmond Investigation Area

A planning proposal is the best means to achieve a large lot, residential subdivision.

STRATEGIC ASSESSMENT

State

Greater Sydney Region Plan 2018 - A Metropolis of Three Cities

Greater Sydney Region Plan 2018 - A Metropolis of Three Cities establishes a plan to manage growth and change in Greater Sydney in the context of social, economic and environmental matters.

The proposal was prepared prior to the implementation of this Plan and addresses a Plan for Growing Sydney, which was the relevant Plan at the time.

The proposed subject land is identified as being within the Region Plan's Metropolitan Rural Area (MRA). Rural-residential development in the MRA is not generally supported, however, limited growth could be considered where there are no adverse impacts on the amenity of the local area and where development provides incentives to maintain and enhance the environmental, social and economic values of the MRA.

In these circumstances it is considered that the proposal's inconsistency with the Greater Sydney Region Plan is minor and justifiable, particularly as:

- the proposal is generally consistent with the Plan, specifically the 'Liveability' directions, which seeks to provide a range of housing types in the most suitable locations, recognising local characteristics and qualities people value;
- the proposal, first submitted in 2015, was in response to and is consistent with Council's Residential Lands Strategy, which identified the popularity of rural residential living, and determined rural, residential development be located within proximity to existing rural villages, services and facilities and be low density; and
- the subject site is not suitable for suitable agricultural use due to the proximity of the sites to residential development and the small size of the lot.

It is recommended, however, that prior to public exhibition the planning proposal be amended to address the recently released Greater Sydney Region Plan 2018 - A

Metropolis of Three Cities. The Gateway determination has been conditioned accordingly.

Regional / District

Western City District Plan

An addendum to the planning proposal, addressing the proposals consistency with the Draft Western City District Plan was submitted to the Department in November 2017, as part of the Rezoning Review process.

The proposal was prepared prior to the release of The Western City District Plan. However, the proposal is generally consistent with the directions in the Western City District Plan. Any inconsistency, such as the provision of residential development within the Metropolitan Rural Area, as discussed previously, is considered minor and justifiable.

It is recommended that the information contained in the addendum be updated to reflect the Western City District Plan and incorporated into the planning proposal.

Local

Hawkesbury Residential Land Strategy 2011

The planning proposal was prepared in response to the Hawkesbury Residential Lands Strategy 2011, which identified that rural residential living is a popular lifestyle choice within the Hawkesbury LGA. The Strategy recommended rural residential development be located within proximity to existing rural villages, services and facilities and be low density, large lot residential dwellings.

The proposal 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.

Structure Planning – Kurmond and Kurrajong Investigation Area'

Hawkesbury Council subsequently prepared 'Structure Planning – Kurmond and Kurrajong Investigation Area' (endorsed as an interim policy in July 2015), which identifies an area (refer to Figure 6) suitable for large lot residential/rural development, if certain fundamental development constraints can be addressed. The subject site is located within this area.

The site is subject to several constraints including terrestrial biodiversity, comprising significant vegetation; a watercourse; two dams; and, is bushfire prone. A Flora and Fauna Assessment Report (**Attachment J**) and Bushfire Hazard Assessment (**Attachment I**) accompanied the proposal. In response to some of the sites constraints, a 2 hectare lot size has been proposed over the centre of the site where the water course and associated riparian vegetation is located.

However, to ensure the sites environmental constrains are satisfactorily considered the proposal is recommended to be forwarded to the Office of Environmental and Heritage for consideration and comment.

Section 9.1 Ministerial Directions

The planning proposal is consistent with the relevant Section 9.1 Ministerial Directions, with the exception of the following:

1.2 Rural Zones

This direction seeks to protect the agricultural value of the rural land and applies as the proposal affects land within an existing rural zone. The proposal seeks to increase the permissible density of the subject land within the RU1 Primary Production rural zone.

In these circumstances the subject land is located in on the edge on an existing village, and the subject site not likely to support intensive or viable small agriculture due to the subject lands proximity to residential development. Any inconsistency with this direction is considered of minor significance.

It is recommended that the delegate agrees that any inconsistency with this direction is of minor significance.

4.1 Acid Sulfate Soils

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

Class 5 is considered the least constrained class of acid sulfate soil 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 of minor significance.

It is recommended that the delegate agrees that any inconsistency with this direction is of minor significance.

4.4 Planning for Bushfire

This direction seeks to protect life and property from bush fire hazards. The subject site is identified as bushfire prone land. A Bushfire Hazard Assessment (**Attachment I**) was submitted with the proposal. The report indicates that as a major part of the woodland will be cleared for the construction stage of the subdivision the bushfire risk would be greatly minimised, however, a number of lots would be required to incorporate Asset Protection Zones.

Consultation with the Rural Fire Service is required prior to public exhibition, in accordance with this direction.

Note that Section 9.1 Direction 1.3 Mining, Petroleum Production and Extractive Industries will be further considered by Council at the consultation stage. It is recommended that Council consult with the Department's Division of Resources and Geoscience to address this direction.

State Environmental Planning Policies

The planning proposal is consistent with the relevant SEPPs with the exception of the following:

SEPP No. 55 – Remediation of Land

As the subject site has been used for agriculture purposes for many years, a preliminary investigation report as referred to in the contaminated land planning

guidelines is recommended, to ensure that any changes to the land use will not increase the risk to health. The Gateway determination has been conditioned accordingly.

State Regional Environmental Policy No. 20 – Hawkesbury-Nepean River

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

The subject sites comprise a watercourse and areas of significant vegetation. In order to ensure consistency with this deemed SEPP the proposal should be forwarded to the NSW Office of Water for consideration. The Gateway determination has been conditioned accordingly.

SITE-SPECIFIC ASSESSMENT

Social

The proposal seeks to provide 41 large lot residential dwellings on the edge of the Kurmond village. This location and dwelling type is consistent with Council's Hawkesbury Residential Lands Strategy 2011 and the vision of the Greater Sydney Region Plan 2018 - A Metropolis of Three Cities, to provide large lot, rural, residential dwellings in the vicinity of an existing village.

Environmental

The site is subject to a number of constraints including slope; terrestrial biodiversity, comprising either significant vegetation or connectivity between significant vegetation, dams, watercourses and associated riparian corridors; and, is bushfire prone containing Category 1 vegetation.

Planning Panel Comments

When determining that the proposal held merit and should proceed to the gateway process, The Sydney Western City Planning Panel recommended that the following matters be examined in regard to the suitability of rural holdings:

- The impact that the subsequent development would have on the health and viability of the creek system and associated riparian corridors (which in turn feeds the broader river catchment system);
- The impact the subsequent development would have on the existing on site native vegetation system including the weight to be given to any losses and the potential for additional development to be conducted on the basis of additional planting to improve the extent and quality of that environment being required.
- The capacity to develop the land while maintaining adequate fire protection precautions and management measures.
- Assessment and resulting development against the RU1 objectives of the RU1 Primary Production zone under Hawkesbury LEP 2012 (or potentially altering zoning', while recognising that agriculture is effectively no longer carried out in this locality.

In addition, the Panel commented that the following issues should be considered by Council as part of the post determination process in consultation with relevant agencies:

- Impacts upon the creek system and associated riparian corridor and other vegetation;
- the maintenance of fire protection measures;
- consideration of zone objectives; and
- effluent disposal issues and sewerage infrastructure.

It is considered that the issues raised by the Panel concerning vegetation; fire protection and servicing can be adequately addressed by Council in consultation with the relevant authorities.

As indicated in this report, it is recommended that Council be required to review the proposed lot sizes taking into consideration the comments made by the Panel, and if necessary, seek an altered Gateway determination prior to exhibit. The Gateway determination has been conditioned accordingly.

Flora and Fauna Assessment

A Flora and Fauna Assessment (**Attachment J**) has been prepared for the site which found Shale Sandstone Transition Forest (an endangered ecological community (EEC) under the *Biodiversity Conservation Act 2016*), was present on the site. Some areas of this community, however, were assessed as being degraded. The report recommended a number of strategies to mitigate the effects of the proposal on flora and fauna values including: selective vegetation removal; the assessment of any hollow bearing trees for fauna prior to removal; and, littoral vegetation associated with waterways should remain undisturbed.

The Bushfire Hazard Assessment Report (**Attachment I**) suggests that a major part of the woodland will be cleared at the construction stage of the subdivision and even if clearing was to occur, a number of lots would be required to incorporate Asset Protection Zones.

To ensure the proposed lot sizes are suitable for the sites attributes it is recommended that the Office of Environment and Heritage be consulted and the Gateway determination has been conditioned accordingly.

Council may also care to consider the sites constraints in regard to environmental impacts when considering the minimum lot sizes.

Economic

The provision of additional dwellings in proximity to Kurmond Village may provide positive economic benefits for local businesses.

Infrastructure

Provision of Infrastructure

The proposal may require the provision of, or improvement of infrastructure and the Kurrajong Kurmond area is not subject to a Section 94 Contributions Plan.

It is anticipated that Council will investigate the means to capture infrastructure contributions.

Road Infrastructure

The proposal seeks to provide 41 additional dwellings with direct access onto Bells Line of Road, the main vehicle east-west thoroughfare within the area. This is a State road and is managed by the Roads and Maritime Services (RMS). The RMS has advised of its concerns regarding the cumulative impacts of planning proposals for subdivision in this area.

It is recommended that the proposal be forwarded to the Roads and Maritime Services for consideration and comment, and the Gateway determination has been conditioned accordingly.

Wastewater Disposal

The investigation area is not currently serviced by reticulated sewer service. Without a sewer service, Council's current policy is: all new allotments if not serviced by developer funded reticulated sewer systems would need to provide onsite treatment and disposal of waste water.

Under clause 4.1D of the Hawkesbury LEP 2012 allotments with onsite treatment systems must not be less than 4,000sqm.

Council may wish to review the proposed lot sizes if reticulated sewer services are not available on the site.

CONSULTATION

Community

The proposal is to be publicly exhibited for 28 days.

Agencies

Consultation with the following agencies is recommended:

- NSW Office of Heritage and Environment;
- NSW Rural Fire Services;
- Roads and Maritime Service;
- NSW Office of Water; and
- Resources and Geoscience Division of the Department.

TIME FRAME

The recommended timeframe for making the LEP is 9 months.

LOCAL PLAN-MAKING AUTHORITY

Council has requested to be the local plan-making authority, given the minor nature of the planning proposal, it is considered appropriate for the authorisation to be issued in this instance.

CONCLUSION

The planning proposal is supported to proceed, with conditions, as it seeks to provide low density, large lot rural residential development in the vicinity of an existing village.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. **agree** any inconsistencies with section 9.1 Directions: 1.2 Rural Zones; and, 4.1 Acid Sulfate Soils are minor or justified;
2. **note** consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection remains unresolved until the Council has obtained written advice from the Rural Fire Services.

It is recommended that the delegate of the Greater Sydney Commission, determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 28 days.
2. Consultation is required with the following public authorities:
 - NSW Office of Environment and Heritage;
 - NSW Transport – Roads and Maritime Services;
 - NSW Office of Water;
 - NSW Trade and Investment; and,
 - NSW Rural Fire Service, prior to public exhibition.

Note: In accordance with section 9.1 Direction 4.4 Planning for Bushfire Protection, Council is to consult with the NSW Rural Fire Service prior to public exhibition and, if necessary, amend the planning proposal accordingly.

3. The time frame for completing the LEP is to be 9 months from the date of the Gateway determination.
4. Given the nature of the planning proposal, Council should be the local plan-making authority.
5. Prior to undertaking public exhibition Council is to:
 - arrange for the preparation of a preliminary contamination report to address SEPP 55 – Remediation of land;
 - review the maximum lot size standards for each site and, if amended, prepare a proposed lot size map for inclusion in the planning proposal;
 - make the following minor editorial amendments:
 - amend the cover sheet of the proposal to indicate that Council is the planning proposal authority;
 - at the discretion of Council, consideration is to be given to re-ordering the format of the proposal so that the introductory sections forms an appendix to the proposal and/or making any other amendments to this section (s) as Council considers necessary for the purposes of clarity; and
 - amend the following sections:
 - the 'Addendum to Planning Proposal to Inverary Drive, Kurmond' to address the Sydney Western City District Plan and incorporate with the planning proposal so that the document provided for exhibition is one integrated document, with Council's logo appended.

- Section B – relationship to strategic planning framework - to address the proposals consistency with Greater Sydney Region Plan 2018 - A Metropolis of Three Cities;
- Prepare a Preliminary Contamination Report and update the planning proposal to clarify the proposal does not require consideration under State Environmental Planning Policy No. 55 – Remediation of land.



1 June 2018

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28 June 2018

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