



New South Wales Government
Independent Planning Commission

Gateway Determination Review Request for 42 Bells Lane, Kurmond

Gateway Determination Advice Report

Annelise Tuor (Chair)

23 November 2020

1 INTRODUCTION

1. On 19 October 2020, the NSW Independent Planning Commission (**Commission**) received a referral 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 42 Bells Lane, Kurmond (Lot 40 DP 7565) (the **Site**) within the Hawkesbury City Council Local Government Area (**LGA**).
2. Mr Peter Amor (the **Proponent**) lodged a request with Hawkesbury City Council (**Council**) in March 2016, seeking to amend the Hawkesbury Local Environmental Plan 2012 (**HLEP**) to reduce the minimum lot size at the Site to 4000m² (the **Planning Proposal**). On 17 September 2019, Council submitted the Planning Proposal to the Department, seeking a Gateway determination.
3. On 5 May 2020, as delegate of the Minister for Planning and Public Spaces, the Department issued a Gateway Determination that the Planning Proposal should not proceed (the **Gateway Determination**).
4. The Proponent wrote to the Department requesting a review of the Gateway Determination with an application form dated 1 July 2020 and an undated report titled Request for Gateway Determination Review (the **Gateway Review Request Report**).
5. The Department's letter of referral to the Commission received on 19 October 2020 requested that the Commission:

...review the planning proposal and prepare advice concerning the merits of the review request. The Advice should include a clear and concise recommendation to the Minister's delegate confirming whether, in its opinion, the Gateway Determination issued on 5 May 2020 should be overturned and given a Gateway to proceed or not.

6. Mary O'Kane AC, Chair of the Commission, nominated Annelise Tuor (Chair), to constitute the Commission providing advice on the review of the Gateway Determination.

1.1 Site and Locality

7. The Site is described at Section 1.2 of the Department's Gateway Determination Report (**Department's Gateway Report**), which states that the Site:

...has an area of 2.9 hectares, is irregular in shape, has an average depth of 113m and significant road frontage of 298 m to Bells Lane. The site is used to rural residential purposes and contains an existing dwelling, outbuilding and pool. The vegetation is limited on the site with scattered vegetation in the north portion of the site surrounding a dam and in the south western portion near the existing dwelling. The site has been cleared previously for grazing activities.

8. The location of the Site is illustrated in **Figure 1** below.



Figure 1: Site Location (source: Department's Gateway Report)

1.2 The Planning Proposal

9. The Department's Gateway Report describes the planning proposal as follows:

The planning proposal seeks to amend the Hawkesbury LEP 2012 by decreasing the minimum lot size for the site from 10ha to 4,000m². This would allow the site to be subdivided into five rural residential lots with a minimum lot size of 4,000m².

1.3 History of the Planning Proposal and Gateway Determination

Table 1 - History of the Planning Proposal and Gateway Determination (source: the material set out at paragraph 13 of this Advice Report)

23 March 2016	Planning Proposal received by Council
31 January 2017	<p>Council held an Ordinary Meeting and resolved to refuse the preparation of the Planning Proposal as:</p> <ul style="list-style-type: none"> • <i>There is insufficient infrastructure to support this proposal</i> • <i>The proposal is inconsistent with SREP 20 as development should not reduce the viability of agricultural land or contribute to suburban sprawl</i>
14 February 2017	<p>Council held an Ordinary Meeting and resolved to rescind the previous decision and defer the matter. Council's resolution stated:</p> <ul style="list-style-type: none"> • <i>That the resolution from the Council Ordinary Meeting of 31 January 2017 in relation to Item 6 concerning CP – Planning Proposal to Amend the Hawkesbury Local Environment Plan 2012 – 42 Bells Lane, Kurmond be rescinded.</i>

	<ul style="list-style-type: none"> <i>The Council defer the matter in relation to the Planning Proposal to amend the Hawkesbury Local Environment Plan 2012 relating to 42 Bells Lane, Kurmond, pending completion of studies which will determine the total lot yield on relevant infrastructure be considered by Council and the adoption of a long term policy for development in the locality.</i>
March 2018	The Western City District Plan was released
18 October 2018	Council's advice report recommended that the Hawkesbury Local Planning Panel forward the Planning Proposal for a gateway determination
18 October 2018	<p>The Hawkesbury Local Planning Panel met and recommended that the Planning Proposal proceed for Gateway determination, subject to:</p> <ul style="list-style-type: none"> <i>The LEP amendment process be 24 months to allow time for Council to complete its strategic planning for the investigation area including</i> <ul style="list-style-type: none"> <i>the whole investigation area to be evaluated for appropriate zoning – the expectation being that it shall be predominantly R5 Large Lot Residential</i> <i>the completion of a development control plan for the Kurmond Kurrajong investigation Area</i> <i>the proposed subdivision not exceed five lots</i> <i>completion of the following site-specific studies by the applicant:</i> <ul style="list-style-type: none"> <i>environmental design/site capacity</i> <i>bush fire assessment</i> <i>flora and fauna assessment</i> <i>waste water feasibility</i> <i>infrastructure requirements and funding</i> <i>Council seek funding from the Department of Planning and Environment to enable the strategic planning for the Kurmond Kurrajong Investigation Area.</i> <i>A coordinated approach to all current planning proposals be undertaken for the Kurmond Kurrajong Investigation Area currently before Council, including the subject site.</i>
10 September 2019	Council held an Ordinary Meeting and resolved that the planning proposal be forwarded to the Department for a Gateway Determination, subject to completion of further studies after a Gateway Determination.
27 September 2019	Exhibition of Draft Kurmond - Kurrajong Investigation Area Structure Plan 2019 (exhibition closed 7 November 2019). The Plan was supported by studies including the Kurmond Kurrajong Landscape Character Study.
5 May 2020	The Department made the Gateway Determination that the Planning Proposal should not proceed.
30 June 2020	Council resolved to defer consideration of the draft Kurmond Kurrajong Investigation Area Structure Plan until the local housing strategy, rural lands strategy and local strategic planning strategy had been completed
1 July 2020	The Proponent submitted request for a review of the Gateway Determination and submitted a Gateway review application form and supporting report
2 August 2020	Council provided written comments to the Department regarding the Proponent's request for a review of the Gateway Determination
19 October 2020	The Commission received the referral from the Department

1.4 The Department's Decision

- The Department's Gateway Determination states that the Planning Proposal should not proceed for the following reasons:

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

2 THE COMMISSION'S CONSIDERATION

2.1 The Commission's Meetings

11. As part of its review, the Commission held the meetings set out in Table 2. All meeting transcripts were made available on the Commission's website.

Table 2 – Commission's Meetings

Meeting	Date of Meeting	Transcript Available on
Department	6 November 2020	11 November 2020
Proponent	6 November 2020	11 November 2020
Council	5 November 2020	11 November 2020

2.2 Site Inspection

12. There is no statutory requirement for the Commission to conduct a Site and locality inspection when carrying out its functions. A decision was made by the Chair of the Panel not to conduct a site inspection during the current COVID-19 circumstances, on the basis that it was possible to make an informed decision based on meetings with stakeholders and the material identified in paragraph 13, below.

2.3 Material considered by the Commission

13. In this review, the Commission has carefully considered the following material (the **Material**):
 - the Planning Proposal, prepared by Glenn Falson, dated January 2016

- the Hawkesbury Local Planning Panel Reports for Advice, dated 18 October 2018
- the Hawkesbury Local Planning Panel minutes, dated 18 October 2018
- the Council's report on the Planning Proposal, undated, prepared for the Ordinary Meeting on 10 September 2019
- Hawkesbury City Council's minutes from the Ordinary Meeting, dated 10 September 2019
- the Council's letter to the Department requesting a Gateway Determination, dated 17 September 2019
- the Department's Gateway Determination Report, dated 24 April 2020
- the Department's letter to Council with enclosed Gateway Determination, dated 5 May 2020
- the Proponent's Gateway Determination Review application form, dated 1 July 2020
- the Proponent's report titled Request for Gateway Determination Review, prepared by PMO Planning Services, undated
- the Council's letter to the Department regarding the Proponent's request for a Gateway Determination review, dated 2 August 2020
- the Department's letter of referral to the Commission, received 18 October 2020
- transcripts of the meetings identified in Table 2.

2.4 Consistency with Strategic Framework

2.4.1 Western City District Plan

Proponent's Consideration

14. The Western City District Plan had not been released when the Planning Proposal was initially submitted to Council. The Proponent's Gateway Review Request Report therefore provides an assessment against the Western City District Plan, stating:

... the current proposal for rural residential subdivision of the subject site is consistent with the Western City District Plan, in particular, Planning Priority W17 – Better Managing Rural areas as:

- *It is consistent with the current local strategic planning adopted by Council,*
- *It is consistent with the future strategic planning in the area based on the draft documents available from Council, i.e., draft Structure Plan, draft Rural Land Strategy.*
- *The current planning proposal is not being justified based on contributing to Regional or District housing targets, but rather contributing to the local housing demand for this style of housing.*
- *Any development as proposed can enhance the environmental (vegetation enhancement), social (focuses on the local demand for rural residential housing) and economic (Support local businesses as is within 500 metres of the Kurmond neighbourhood centre), thereby enhancing and protecting the rural values of the locality.*

Council Comments

15. In its meeting with the Commission, Council noted that the release of the Western City District Plan represented a significant change to the strategic planning framework and prioritises the protection of the Metropolitan Rural Area's rural character and supports only incremental growth to existing villages. Council stated that these new priorities are what Council should be planning for.

Department's Assessment

16. Section 4.1 of the Department's Gateway Report states:

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

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

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

17. Section 10 of the Department's Gateway Report finds:

The proposal does not give effect to the Western City District Plan, in particular Planning Priority W17 Better managing rural areas.

Commission's Findings

18. The Commission notes that the Western City District Plan does not generally support rural residential development in the Metropolitan Rural Area, and agrees with the Department's finding that the proposal does not give effect to the Western City District Plan, in particular Planning Priority W17 Better managing rural areas.
19. The Commission also finds that the Planning Proposal does not demonstrate consistency with Planning Priority W16, as it does not adequately address the protection of scenic landscapes, as discussed at Section 2.4.3 of this Advice Report.

2.4.2 Hawkesbury Residential Land Strategy 2011

Proponent's Consideration

20. The Proponent's Gateway Review Request Report states:

This current proposal should be viewed and assessed in the context of when it was made and the existing and [sic] direction of local planning Policy. The strategic planning framework at the time of submission was, and still is, the Hawkesbury Residential Land Strategy 2011 which indicated that this land should be considered for rural residential development.

Council Comments

21. In its meeting with the Commission (see Table 2), Council stated:

Council, in 2011, adopted the Residential Land Strategy, and whilst the Kurmond Kurrajong area wasn't identified as an investigation area within the Residential Land Strategy due to the fact that council had received increasing of [sic] individual proposals, council resolved to commence a structure planning process around 2013 and 2014.

Department's Assessment

22. Section 4.2 of the Department's Gateway Report states:

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

23. In its meeting with the Commission (see Table 2), the Department responded to the Commission's question regarding the Proponent's assertion that the proposal was consistent with the Hawkesbury Residential Land Strategy 2011. The Department stated:

The District Plan was released in 2018 and the department is obliged by the Act to consider the plan when determining Gateway applications. So the District Plan is quite clear that it encourages urban development in designated growth areas. The strategy you referred to was not a strategy endorsed by the department, and so the department is bound to take strategies it endorses into account. And in endorsing those strategies, they become part of the strategic planning framework. The Local Strategic Planning Statement to be produced by council following the release of the District Plan is not yet assured by the Greater Sydney Commission and is soon to be considered by council.

So the Local Strategic Planning Framework is dynamic, the department recognises that and recognised that in its report. The prevailing strategic planning guidance is the District Plan. The other point that we took into account was council was in the processes of preparing a strategy for Kurrajong Kurmond after some years of investigation and this proposal is inconsistent with the draft strategy that was recommended to be placed on exhibition which represented the most current view endorsed by councillors at the time the department formed its view on this Gateway proposal.

Commission's Findings

24. The Commission notes that the Department has not relied upon the Hawkesbury Residential Land Strategy 2011 on the basis that it is outdated and was not endorsed by the Department. The Commission notes that at the time of submission of the Planning Proposal, the strategic planning framework was centred on the Hawkesbury Residential Land Strategy 2011, which indicated that this land should be considered for rural residential development. However, this is no longer the case and the Commission agrees with the Department's finding that the Planning Proposal presents unresolved inconsistencies with the Western City District Plan and does not demonstrate strategic merit.

2.4.3 Draft Kurmond Kurrajong Investigation Area Structure Plan

Proponent's Consideration

25. The Proponent's Gateway Review Request Report notes that the Draft Kurmond Kurrajong Investigation Area Structure Plan (**Draft Structure Plan**) identifies that most rural properties in the area are used for residential dwellings with no significant agricultural activities occurring. The Proponent states the Draft Structure Plan supports the premise that agricultural production is not current or viable for the site, and that:

Consideration of the planning proposal against the current work by Hawkesbury City Council to update the strategic planning framework for the locality indicates that the current planning proposal is consistent with this updated planning and direction.

26. Appendix A of the Proponent's Gateway Review Request Report states:

The draft Structure Plan has proposed a lot size map surrounding Kurmond. This map indicates that the preferred location for 4,000m² lots is to the north and east of Kurmond, along the Bells Line of Road ridgeline. The draft Structure Plan recommends the remaining area within the investigation area to have a minimum lot size of 1ha.

Council's Comments

27. In its meeting of 18 October 2018, Council's Local Planning Panel commented on the difficulties of determining the Planning Proposal in the context of the ongoing preparation of a structure plan, stating:

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

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

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

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

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

28. Council's report for its Ordinary Meeting of 10 September 2019, states:

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

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

29. Council's report for its Ordinary Meeting of 10 September 2019 also discusses Council's landscape character study prepared in support of the Draft Structure Plan, stating:

...the subdivision layout as proposed for 42 Bells Lane, Kurmond would not be compatible with the identified 'Pastoral Valley' character of the area, especially when considering the location, scale and density of both existing and likely future development on the land in relation to the size of the proposed lots. In turn, this would have an adverse impact on the significant views/vista corridor in which the land is situated.

30. At its Ordinary Meeting of 30 June 2020, Council resolved to defer consideration of the Draft Structure Plan until the local housing strategy, rural lands strategy and local strategic planning strategy had been completed.
31. In its meeting with the Commission, Council discussed the local housing strategy prepared in support of the Draft Structure Plan, stating:

Our Local Housing Strategy, is basically, sort of, highlighting that our – we have five year housing target of 1150 dwellings and a target to 2036 of 4000 dwellings all up. It's highlighting that new growth which should be centred around the growth corridor, so, essentially, the northwest growth area which should maximise our existing urban areas which have access to services, facilities and transport, and that there's incremental growth in the rural villages that maintains the local character and environmental considerations. So, essentially, we're – it's saying that we don't need rural residential development to meet our housing targets in our Local Housing Strategy.

Department's Assessment

32. Section 4.2 of the Department's Gateway Determination Report states:

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

33. In its meeting with the Commission, the Department discussed strategic considerations regarding preservation of landscape character, stating:

So the planning decisions we take on a site specific basis have an impact on how rural land is viewed strategically. So while that site may not be a mushroom farm or be productive at the moment, the preservation of it as the size it is now means that adjoining properties can readily be developed for small scale agriculture that has potential rural impacts, odours and visual issues, because it's clearly rural. Once that is fragmented and becomes semi-urban, it then makes it more difficult for the agricultural – small scale agricultural activity to exist in that area.

Commission's Findings

34. The Draft Kurmond Kurrajong Investigation Area Structure Plan was considered at Council's Ordinary Meeting of 30 June, 2020, and Council resolved to defer consideration of the plan until key strategic documents are completed, including the local housing strategy, rural lands strategy, and strategic planning statement.
35. Furthermore, the Commission notes that the Site is not within the area proposed for a minimum lot size of 4000m² under the Draft Structure Plan and the Planning Proposal would therefore be inconsistent with this plan, even if it were adopted.
36. The Commission notes the Department's finding that an updated strategic planning framework is needed to establish the strategic merit of the Planning Proposal. The Commission agrees with the Department's finding that the Planning Proposal presents unresolved inconsistencies with the Western City District Plan and does not demonstrate strategic merit.

2.4.4 Section 9.1 Ministerial Directions

Proponent's Consideration

37. Regarding Section 9.1 Direction 1.2 (Rural Zones), the Proponent's Gateway Review Request Reports states:

...Whilst the above classification indicates that such land may have some agricultural production capability, there would be a need for significant cultivation, pasture improvement (fertiliser, etc.) drainage and earthworks for soil conservation for such agricultural activities to be viable.... In the Kurmond area around the subject site there is no current agricultural activities and the surrounding uses are rural residential. Given this and the fact that the subject site is within 200 metres of the Kurmond current urban residential land use properties, it is not reasonable or realistic for the land use to be changed and utilised for viable agricultural activities other than rural residential, domestic scale activities such as horse agistment etc.

38. Regarding Section 9.1 Direction 4.4 (Planning for Bushfire), the Proponent's Gateway Review Request Reports states:

Due to the site's cleared and regularly maintained condition, it is clear the current site can meet the requirements of any bushfire hazard assessment through subdivision design and landscape planting without the need for clearing of existing vegetation or imposing building material restrictions on new dwellings. It has always been the proponent's intention that should this request for review of the Gateway Determination be successful the necessary reports will be provided as part of the process.

Department's Assessment

39. Regarding Section 9.1 Direction 1.2, the Department's Gateway Report states:

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

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

40. In its meeting with the Commission, the Department clarified that the agricultural potential of the Site and surrounding land is important, even if the land is not currently used for agricultural purposes, stating:

...the planning decisions we take on a site specific basis have an impact on how rural land is viewed strategically. So while that site may not be a mushroom farm or be productive at the moment, the preservation of it as the size it is now means that adjoining properties can readily be developed for small scale agriculture that has potential rural impacts, odours and visual issues, because it's clearly rural. Once that is fragmented and becomes semi-urban, it then makes it more difficult for the agricultural – small scale agricultural activity to exist in that area.

41. Regarding Direction 4.4 (Planning for Bushfire), the Department's Gateway Report states:

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

42. At Section 10, the Department's Gateway Report finds that the Planning Proposal contains unresolved inconsistencies with Section 9.1 Directions 1.2 Rural Zones and 4.4 Planning for Bushfire Protection.

43. In its meeting with the Commission, the Department stated:

We formed the view that there was [sic] some inconsistencies with the 9.1 directions that could be resolved in principle, in future, with further detailed investigation.

Commission's Findings

44. The Commission agrees with the Department's finding that the Planning Proposal presents unresolved inconsistencies with the Section 9.1 Directions 1.2 (Rural Zones) and 4.4 (Planning for Bushfire Protection). The Commission considers that the inconsistency with Direction 1.2 is a matter that should be addressed prior to a Gateway Determination as the agricultural potential of the land is a key consideration in establishing the strategic merit of the Planning Proposal. The Commission finds that the identified inconsistency with Direction 4.4 could reasonably be resolved after Gateway Determination due to the historic clearing of the site and associated reduced fire risk.

2.4.5 State Environmental Planning Policy (Koala Habitat Protection 2019)

Proponent's Consideration

45. The Hawkesbury LEP 2012 Terrestrial and Biodiversity Map (Sheet_BIO008AA) shows that the Site contains areas of significant vegetation. The Proponent's Gateway Review Request Report states:

Whilst it is acknowledged that these maps show the presence of vegetation, those maps have not been verified on ground. The maps indicate that the vegetation location is in the north eastern corner of the site. However, a review of the aerial photo of the site and verified in a site visit, this vegetation is not significant. Should development be permitted on the site there may be an opportunity to enhance this vegetation.

Department's Assessment

46. The Department's Gateway Report states:

The site contains areas of significant vegetation as identified under the Hawkesbury LEP 2012 Terrestrial and Biodiversity Map (Sheet_BIO008AA). The planning proposal states a formal assessment of the site against the SEPP has not been completed however would be included in any subsequent flora and fauna report. It is noted that under the SEPP, the site is identified on the Koala Development Application Map therefore may contain koala habitat.

Commission's Findings

47. The Commission finds that the identified inconsistency with the State Environmental Planning Policy (Koala Habitat Protection) 2019 is unlikely to preclude rural residential development at the Site and could reasonably be resolved after Gateway Determination.

2.4.6 State Regional Environmental Plan No 20 – Hawkesbury-Nepean River

Proponent's Consideration

48. Regarding the State Regional Environmental Plan No 20 – Hawkesbury-Nepean River, the Proponent's Gateway Review Request Report states:

...any such detailed reports will be prepared should a successful Gateway Determination be received.

Department's Assessment

49. The Department's Gateway Report states:

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

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

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

Commission's Findings

50. The Commission finds that the identified inconsistency with the State Regional Environmental Plan No 20 – Hawkesbury-Nepean River) is unlikely to preclude rural residential development at the Site and could reasonably be resolved after a Gateway Determination.

2.4.7 Strategic Merit

Proponent's Consideration

51. The Proponent's Gateway Review Request Report states:

The comments provided in the previous sections of this request for review have demonstrated that the current planning proposal is consistent with the current strategic plans for the Hawkesbury LGA and is also consistent with the future strategic planning currently being undertaken by Council, but not yet finalised.

...this current proposal should be viewed and assessed in the context of when it was made and the existing and [sic] direction of the local planning Policy.

...Whilst this proposal is not supported by an updated framework, it is consistent with the existing strategic planning framework of Hawkesbury Council which was relevant when the application was made and is still the Council adopted Strategy for the area.

Council's Comments

52. In its meeting with the Commission, Council stated:

...there was a report prepared to council in September of 2019, and...from an officer's perspective, the planning proposal was considered to be inconsistent with the recommendations of the character study and the draft Structure Plan, particularly in regard to the protection of the pastoral character of the locality and the...significant views and vista corridors... For those reasons, the report...recommended that the planning proposal be amended from the proposed minimum lot size of 4000 square metres to a minimum lot size of one hectare.

Department's Assessment

53. The Department's Gateway Determination includes the following conclusion, addressing strategic merit:

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

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

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

Commission's Finding

54. The Commission agrees with the Department's finding that the Planning Proposal does not demonstrate strategic merit.

3 CONCLUSION: THE COMMISSION'S ADVICE

55. The Commission has undertaken a review of the Gateway Determination as requested by the Department. In doing so, the Commission has considered submissions by both Council and Proponent and reasons given for the determination in the Department's Gateway Report.
56. Based on its consideration of the Material (paragraph 13), the Commission finds that the Gateway Determination should not be overturned, and the Planning Proposal should not proceed. The reasons for the Commission's position are as follows:
- The proposal is inconsistent with the Western City District Plan as it does not demonstrate consistency with Planning Priority W16 (Protecting and enhancing scenic and cultural landscapes) and does not adequately address the identified inconsistency with the objective of Planning Priority W17 (Better managing rural areas)
 - The proposal contains unresolved inconsistencies with Section 9.1 Direction 1.2 (Rural Zones)
 - The proposal is not supported by an updated local strategic planning framework and does not adequately demonstrate strategic merit



Annelise Tuor (Chair)
Member of the Commission