



GATEWAY REVIEW

Justification Assessment

Purpose: To request that the Independent Planning Commission review the Gateway determination, taking into account information provided by the Proponent and provide advice regarding the merit of the review request.

Dept. Ref. No:	GR-2021-5	
LGA	Hawkesbury City Council	
LEP to be Amended:	Hawkesbury Local Environmental Plan 2012	
Address/ Location:	2 Inverary Drive, Kurmond	
Proposal:	To amend the Hawkesbury LEP 2012 to reduce the minimum lot size standard from 10 hectares to a minimum of 2,000m ² on the subject land.	
Review request made by:	<input type="checkbox"/>	The council
	<input checked="" type="checkbox"/>	A proponent
Reason for review:	<input type="checkbox"/>	A determination has been made that the planning proposal should not proceed.
	<input type="checkbox"/>	A determination has been made that the planning proposal should be resubmitted to the Gateway.
	<input checked="" type="checkbox"/>	A determination has been made that has imposed requirements (other than consultation requirements) or makes variations to the proposal that the proponent or council thinks should be reconsidered.

Background information

Details of the planning proposal

Site description

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.

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 under the *Biodiversity Conservation Act 2016*.



Figure 1: Subject site outlined in red (Source: NearMaps)

The land, and the surrounding area, is zoned RU1 Primary Production but is predominantly used for rural residential purposes except for a plant nursery adjoining the site to the south east (as shown in Figure 1). There are two additional agricultural businesses further south east of the site, off Slopes Road. Land around Kurmond village and fronting Bells Line of Road is characterised by smaller rural residential land holdings, surrounding land characterised by larger land holdings.

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. The constructed internal road network is shown in Figure 1).

Planning context

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.

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 is strategic justification for growth provided in a Local Strategic Planning Statement, Rural Lands Study or Housing Strategy, where Council can carefully consider opportunities for growth where it would not have adverse impacts on the amenity of the local area, where development maintains and enhance the environmental, social and economic values of the MRA, and can be adequately serviced by infrastructure.

The Hawkesbury Local Housing Strategy was endorsed by Council on 8 December 2020. It does not identify the Kurmond Kurrajong Rural Village as an appropriate location for residential and that growth be concentrated in the existing release areas of Vineyard (Stage 1), Redback and Jacaranda Ponds, and in the existing centres of Richmond, Windsor, South Windsor, Hobartville and North Richmond, where there is capacity under the current controls.

Council adopted the Hawkesbury Rural Lands Strategy at its Ordinary Meeting on 30 March 2021. The Strategy recommends that the Kurmond village is not recommended for expansion, other than organic growth.

On 23 February 2021, Council resolved to:

- *Not adopt the Kurmond-Kurrajong Investigation Area Structure Plan;*
- *Assess remaining individual planning proposals with the Kurmond-Kurrajong Investigation Area against the interim development constraint principles and the NSW Planning Framework (Sydney Region plan and Western City District Plan including the Metropolitan Rural Area);*
- *Not encourage the lodgement of additional individual planning proposals within the Kurmond-Kurrajong Investigation Area for rural residential development.*

Planning Proposal

The subject planning proposal (**Attachment A2**) dated December 2020 is seeking to facilitate up to 36 rural residential lots on the subject site by reducing the minimum lot size from 10 hectares (ha) to part 2 ha, part 2,000m² as shown in Figure 2. The current lot layout supporting the planning proposal indicates the development will facilitate 30 rural residential lots (**Attachment A3**) and one (1) 2-hectare lot to protect the riparian corridor. A summary of lot sizes is shown in Table 1.



Table 1: Summary of lot sizes

Residential lot range (m ²)	Quantity
2,000-2,309	21
2,400	1
2,600-2,800	4
3,700	2
4,700	1
6,600	1

Figure 2: Proposed Minimum Lot Size Map, subject site outlined in white

In addition, the planning proposal is seeking an amendment to Clause 4.1D of Hawkesbury LEP which requires the subdivision to be serviced by a reticulated sewerage system (mapped as 'Area A' on the proposed minimum lot size map).

A Gateway determination was issued for the proposal to proceed subject to conditions on 28 June 2018 (**Attachment B1**). Prior to undertaking public exhibition, Council was required to amend the planning proposal to address a number of matters. Importantly, Council was required to review the proposal's lot sizes and address the Sydney Western City District Plan within the planning proposal.

The proposal was exhibited June/July 2020 and is currently in post-exhibition stage.

Gateway alteration

On 3 December 2020 the Department determined that the Gateway determination should be altered (**Attachment B3**) as follows:

1. The time frame for completing the LEP was extended until 30 June 2021.
2. A new condition included the following key requirements:

The proposal is to:

- Demonstrate compliance with Council's 2015 Interim Policy – Kurmond Kurrajong Development Principles and the landscape character is maintained as per the draft 2019 Kurmond Kurrajong Structure Plan;

	<ul style="list-style-type: none"> • Provide consideration of a 1-hectare minimum lot size as exhibited in the 2019 Kurmond Kurrajong Structure Plan to address the requirements for the Metropolitan Rural lands and avoid fragmentation of significant vegetation; • Provide consideration of retaining 'significant vegetation' in single ownership or a biodiversity stewardship arrangement; and • Identify a maximum lot yield. <p>A timeline of the planning proposal and key dates in the strategic planning framework is attached at Attachment D3.</p>
Reasons for Gateway alteration - 3 December 2020	<p>On 25 November 2019, Council requested an extension to the timeframe for completion of the LEP. An extension was required as Council was awaiting the submission of outstanding information in response to its letter dated October 2019 (Attachment C2).</p> <p>As part of the process of considering Council's request for a timeframe extension to finalise the LEP amendment, a review of the exhibited planning proposal material revealed that further work was required to address the conditions of the Gateway that required a review of the lot sizes and addressing the Sydney Western City District Plan. The Sydney Western City Planning Panel's comments relating to lot sizes (Attachment D2), Council's letter dated October 2019 and Environment, Energy and Science Group's submission (Attachment C3) dated 18 June 2020 should be considered within the review.</p> <p>The proposal had not responded appropriately to the site's constraints. In particular, the proposal did not preserve the landscape character of the area and resulted in fragmentation of significant vegetation. The Department considered it appropriate to apply Council's 2015 Interim Policy – Development Principles for the Kurmond Kurrajong Investigation Area, specifically the principles regarding avoiding fragmentation of significant vegetation, and building envelopes, asset protection zones, driveways and roads are not located on land within a slope less than 15%.</p> <p>The Department also considered it appropriate for the planning proposal to demonstrate its consistency with Council's draft 2019 Structure Plan, including the Landscape Character Study which was considered by Council in July 2018. The draft structure plan included the subject site and proposed a minimum lot size of 4,000m² for land fronting Inverary Drive with the remainder (majority of the site) identified as 1 hectare. The draft Structure Plan identified that a 4,000m² lot size may be possible with a 40m frontage. The Landscape Character Study identified the site to be within significant views and within a 'pastoral valley' landscape character.</p> <p>The proposal was inconsistent with the strategic planning framework, specifically the values of the MRA including the following:</p> <ul style="list-style-type: none"> • Maintaining and enhancing the distinctive character of each rural town and village is a high priority. • Development is to protect and enhance the environmental, social and economic values of the rural areas. • Rural residential development is not an economic value of the District's rural areas and further rural-residential development is generally not supported. • Limited growth of rural-residential development could be considered where there are no adverse impacts on amenity of the local area and the development provides incentives to maintain and enhance the environmental, social and economic values of the MRA. <p>This needed to be resolved and further work required to demonstrate how the proposal protects and enhances the environmental, social and economic values of the rural areas.</p> <p>This proposal was reviewed with a number of other proposals within the Kurmond Kurrajong Investigation Area for which Council had also requested extensions of time for completion of the LEPs. Table 2, overleaf, is a summary of the Department's approach to each planning proposal.</p>

Table 2: Department's review of live planning proposals within Kurmond Kurrajong Investigation Area

Site	Planning Proposal	Department Decision
98 Bells Lane Kurmond	4,000m ² lot size	Refused
42 Bells Lane, Kurmond	4,000m ² , 1 ha lot size	Refused
79, 95 & 100 Bells Lane, 457 Bells Line of Road, Kurmond	5-6,000m ² , 1 ha. 18 lots	Gateway altered - Removed 1 property, increased min lot size to 1 ha.
2 Inverary Drive, Kurmond	2,000m ² , 2ha 36 lots	Gateway altered - Increased min lot size to 1 ha, consolidated lot to protect vegetation.
631 Bells Line of Road, Kurrajong	4,000m ² (1/3 of site), 1 ha (2/3 of site) 10 lots	Gateway altered - Compliance with Council's KKIA development principles. Final result of three lots. *

*Gateway determination issued prior to District Plan being in place

Council's justification

Details of justification:

The Department sought comment from Council on the Gateway determination review and Council provided comments dated 4 March 2021 (**Attachment C1**). In summary, Council officers support the Department's altered Gateway and considers the 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
- Values of the Metropolitan Rural Area
- Existing and desired character of the locality

Council officers provided the following response:

Consistency with Council's Interim Policy

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.

Environment, Energy and Science Group's submission states the Flora and Fauna Assessment Report as inadequate and invalid and the condition of the vegetation has been underestimated. It highlights that given the presence of critically endangered ecological communities, that greater effort is warranted to protect this on site from loss and degradation over time. EES state a lower lot yield is warranted with larger lots where vegetation is currently occurring and with appropriate controls to provide ongoing protection.

Based on Council's slope mapping, the subject site contains some land having slopes in excess of 15%, particularly around the watercourses, and at the front of the property.

Landscape Character Study

The Kurmond and Kurrajong Landscape Character Study includes a 'Biodiversity Priority Rank' vegetation map which provides rankings for the subject site of lower, moderate and very high. The ranking of very high priority habitat, which corresponds to the areas around the existing watercourses, reinforces the significance of the vegetation as identified under the *Hawkesbury Local Environmental Plan 2012*.

A minimum lot size of 5,000m² is required for sites within very high priority habitat. The subdivision layout plan shows proposed lots within the very high priority habitat area as having sizes ranging from approximately 2,000m² - 3,000m², which is inconsistent with the Study recommendations.

The subject site is located within significant view/vista corridors as shown in Table 3 and Figures 3 and 4 (*Figures 3 and 4 inserted by the Department*). The study requires district and regional views to be maintained.

Table 3: Significant view/vista corridors

Corridor	Description	Significance	Action
F	Rural residential with views to rolling landscape	Medium	Retain and protect view
R	Rural properties in the foreground and views over the Richmond lowlands in the distance	Medium-High	Retain and protect view

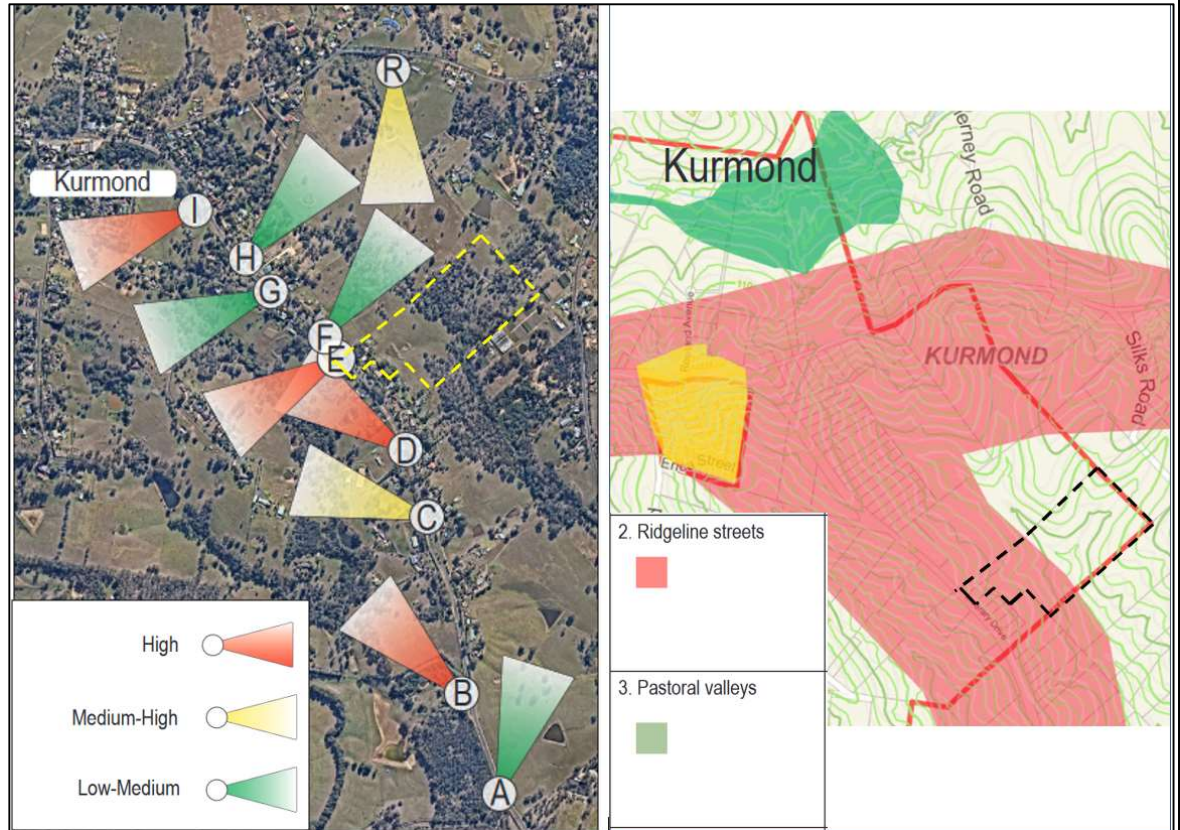


Figure 3 (L): View Corridor analysis with subject site highlighted in yellow

Figure 4 (R): Landscape Character analysis with subject site highlighted in black

In consideration of the significance of the view/vista corridors described 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.

Consistency with draft Kurmond Kurrajong Structure Plan

To ensure the protection of the landscape character, biodiversity, and the existing views and vistas within the area, the draft Structure Plan proposed a minimum lot size for subdivision of 1ha or 4,000m² dependent on the locality.

It is considered that areas immediately surrounding the town centre villages of Kurmond and Kurrajong should have a minimum lot size of 4,000m² (highlighted green), essentially providing for an expansion of the denser existing residential areas, closer to services and amenities, while minimising impacts on the surrounding rural character and views and vistas. For all other properties within the investigation area, a minimum of 1ha is proposed to maintain existing views and vistas and/or to protect the pastoral character as identified in the Landscape Character study.



Figure 5 – the subject site (outlined in black) in the context of the Kurmond and Kurrajong Investigation Area (outlined in red). Green areas are proposed 4,000m² and white areas within the red boundary are proposed as 1 ha.

In relation to the subject site, the Structure Plan nominates a minimum lot size for subdivision of 4,000m² for the front of the subject site and 1 hectare at the rear of the property to maintain pastoral character of the locality. The planning proposal seeks to create allotments with a minimum of 2,000m² and is therefore inconsistent with the minimum lot sizes for subdivision proposed by the draft plan.

Minimum lot size and significant vegetation

The Ecological Assessment Report (the Report) identifies two plant community types present on the subject site including Shale Sandstone Transition Forest, which is a Critically Endangered Ecological Community under the Biodiversity Conservation Act 2016, and Coastal Freshwater Wetland.

The Report provides recommendations for future development but does not provide conclusion that justifies that the planning proposal is appropriate. The Report fails to recognise how the type and density/scale of future development is likely to impact on the biodiversity values of the subject site and whether these impacts are acceptable.

Council notes the Report identifies that the subject site supports a number of watercourses which encompass 1st, 2nd and 3rd order streams. The Report states riparian corridors should be maintained for watercourses on site that constitute 2nd and 3rd order streams. Therefore, the 2nd order watercourse connecting the rear of the site to the main watercourse dissecting the property should be allocated a riparian corridor of 20m on each side which should also be contained within one lot to better protect, conserve and rehabilitate the riparian areas.

The planning proposal does not recognise this watercourse and riparian area, and as such it is located to the rear of a number of lots. Buffer planting is proposed in this location, however such landscaping is unsatisfactory as it does not provide for the required riparian corridor, in size, or adequate habitat.

The Report fails to acknowledge that the vegetation on site is an Endangered Ecological Community and the impacts on this Community within the region if it is further degraded or removed. It appears the proposal relies on offsetting the removal of vegetation on site rather than designing a proposal that would minimise the need for vegetation removal or offsetting.

Additional matters

Council notes the following matters were raised through numerous letters to the proponent (18 December 2018, 15 April 2019 and 3 October 2019 **Attachment C2**) and are outstanding as the proposal does not provide an adequate response.

Rezoning review

The Planning Proposal was subject to a Rezoning Review by the Sydney Western City Planning Panel on 27 February 2018. 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 amended proposal has not met the Panel recommendations including:

- Merit in increases lot sizes as distance from Kurmond centre increases.

The planning proposal seeks to justify the 2,000m² lots based on the size of existing lots in the area and that the character of the area is defined by a mix of lot sizes. This is not sufficient justification; other matters have to be considered in determining the lot size.

- Potential for larger lots along the south-western boundary as a buffer.

The planning proposal has not provided larger lots along the south-western boundary, however buffer planting is proposed. The proposal does not justify how buffer planting will provide a better outcome in reducing potential land use conflicts compared to larger lot sizes or a combination of both.

- Impact of subsequent development on watercourses and riparian corridors

The Ecological Assessment Report identifies that the 2nd order watercourses requires retention and protection of its riparian area.

- Address the impact of subsequent development on existing vegetation.

The Ecological Assessment Report dated December 2020 does not adequately address the likely impacts of future development on the existing Critically Endangered Ecological Community Shale Sandstone Transition Forest.

Native vegetation provides value within the landscape in terms of providing habitat corridors, visual amenity and character and stabilising ground surfaces.

The planning proposal with lot sizes of 2,000m² is likely to result in the removal of existing vegetation due to building, subdivision and construction works. This loss of vegetation will result in loss of vegetation/habitat connectivity in an area identified as high priority habitat and having Biodiversity Value under the *Biodiversity Conservation Act 2016*. This is also contrary to Council's adopted Development Constraints Principle to avoid the removal, and minimise fragmentation, of significant vegetation.

In addition, the components that contribute to the pastoral character of the area include stands of remnant vegetation within open areas, and an absence of buildings. A landscape plan has been submitted but it is considered the formality of the landscaping proposed is considered to add to an urbanised character.

Metropolitan Rural Area

The proposal's assessment under Planning Priority W17 – Better managing rural areas of the Western City District Plan is unsatisfactory as it fails to demonstrate how the proposal will maintain/enhance the distinctive character of the area and likely impacts on the amenity of the locality. This is particularly relevant given that it is considered that the proposal will result in a character and density that is more urban than rural, and is distinctly different to that elsewhere in the Kurmond Kurrajong Investigation Area.

The proposed lot sizes of 2,000m² will not maintain or enhance the rural character of Kurmond, as described by the Kurmond and Kurrajong Landscape Character Study. The proposal will have an adverse impact on the amenity of the locality.

The loss and fragmentation of significant vegetation and the lack of management of all the watercourses/drainage lines present on the subject site will result in a reduction of the environmental, social and economic values of the Metropolitan Rural Area.

Public Submissions

Council notes following public exhibition of the planning proposal public submissions raised the following matters:

- Traffic problems from Richmond to North Richmond and the new Hawkesbury River Crossing need to be resolved prior to approval of the proposal;
- Inadequate infrastructure, including lack of public transport and road congestion, which also interferes with emergency services;
- Over development and loss of the 'peaceful, green haven' character;
- Watercourses/riparian areas are significant and home to many frogs and reptiles and the proposal will remove connectivity;
- The proposal will result in significant changes to density and character of the locality; and

	<ul style="list-style-type: none"> Proposed buffer planting is out of character with the existing landscape but necessary to screen the suburban character of the proposed development. <p><u>Council Consideration</u></p> <p>Council note that the planning proposal had not been formally reported to Council given the matter proceeded to Gateway via a rezoning review. Subsequently, Council has not had the opportunity to determine if the planning proposal should be supported or not. If the matter would have proceeded, Council would have considered the merits of the proposal following receipt and assessment of further reports/additional information from the proponent with particular regard to biodiversity.</p>
Material provided in support of application/proposal:	<p>Council's submission was supported by:</p> <ul style="list-style-type: none"> Council letter to proponent (October 2019) (Attachment C2) Environment, Energy & Science submission (June 2020) (Attachment C3)

Proponent's view

Details of justification:	<p>The proponent sought the Gateway determination review on 4 January 2021 (Attachment A1). In support of the application for a Gateway Determination Review, a response was provided addressing the additional condition inserted by the Gateway alteration. The responses are summarised as follows:</p> <ol style="list-style-type: none"> <i>An indicative subdivision layout must be submitted to the Department of Planning, Industry and Environment for endorsement following exhibition of the planning proposal and resolution of the issues raised in the Environment, Energy and Science submission.</i> <p><u>Proponent response:</u> 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.</p> <ol style="list-style-type: none"> <i>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.</i> <p><u>Proponent response:</u> 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.</p> <ol style="list-style-type: none"> <i>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.</i> <p><u>Proponent response:</u> 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.</p>
Material provided in support of application/proposal:	<p>The proponent has provided the following documents to support its Gateway Review request:</p> <ul style="list-style-type: none"> Gateway Review Request Application Form (Attachment A6); Letter requesting a Gateway Review (Attachment A1); Planning proposal as exhibited (Attachment A5); Revised planning proposal dated December 2020 (Attachment A2);

- Ecological Assessment Report dated December 2020 (**Attachment A4**); and
- Revised indicative subdivision layout dated 2/8/20 (**Attachment A3**).

Assessment summary

<p>Department assessment</p>	<p>The Department has considered submissions from both Council and the Proponent. The Department agrees with Council's comments, the Department's comments in this section should be read in conjunction with Council's.</p> <p>The Gateway Determination review package included a revised planning proposal (Attachment A2) which includes a further response of the proposal's consistency to the Planning Priority W17 Better Managing Rural Areas and a response to the Draft Kurmond Kurrajong Investigation Area Structure Plan 2019.</p> <ul style="list-style-type: none"> • <u>Strategic Merit – District Plan</u> <p>The following planning priorities are relevant to this proposal.</p> <ul style="list-style-type: none"> • <i>Planning Priority W14 Protecting and enhancing bushland and biodiversity</i> <p>The planning proposal has not included a commentary as to how the proposal demonstrates it protects and enhances existing bushland and biodiversity as required under Planning Priority W14.</p> <p>The planning proposal is supported by two Ecological reports, a Flora and Fauna Assessment 2016 (Attachment D1) prepared by Envirotech and a Ecological Assessment Report (Attachment A4) prepared by Australian Wetlands Consulting Pty Ltd.</p> <p>Environment, Energy and Science Group (EES) provided comment on Envirotech's Flora and Fauna Assessment report stating it was inadequate and out of date, severely underestimating the biodiversity value of the site. Given the presence of critically endangered ecological communities (CEEC), greater effort is warranted to protect the CEECs on site from loss and degradation over time. EES considers a lower lot yield is warranted with larger lots where vegetation is currently occurring and appropriate controls to provide for ongoing protection. EES recommended a detailed Flora and Fauna assessment be completed for this vegetation.</p> <p>The Ecological Assessment Report prepared by Australian Wetlands Consulting was submitted to the Department as part of the Gateway Determination Review package. The Ecological Assessment Report states there are two plant community types present within the site including Coastal Freshwater Wetland and Shale Sandstone Transition Forest (SSTF). SSTF on the site is identified as an Endangered Ecological Community under the Biodiversity Conservation (BC) Act 2016 and Environment Protection and Biodiversity Conservation Act 1999. Due to a creek traversing the centre of the site, altering the vegetation composition, this community was broken down into two condition classes – Woodland and Riparian vegetation. 'Woodland' vegetation is described as being in moderate condition, 'riparian' vegetation is described as some areas in good condition.</p> <p>Figure 6 illustrates the proposed lot layout and shows approximately one third of the proposed lots will occur on land cleared for pasture purposes. The remaining two thirds of proposed lots are shown on land containing established vegetation that would require clearing to facilitate the development.</p>
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Figure 6: Map of proposed lot layout showing existing vegetation communities (Source: Ecological Assessment Report, December 2020).

The development will require the removal of 4.3 ha of SSTF and 0.06 ha of Freshwater Wetland. The report states, 'the area calculation has been based off the assumption that 75% of vegetation within each lot being lost and 100% vegetation with roads, bridges etc, will be lost.' EES has commented on this aspect of the proposal as outlined below.

Due to the extent of clearing sought to facilitate the proposal, the biodiversity offset scheme will be triggered under the BC Act 2016 at Development Application Stage. An assessment of significance was not prepared as a BDAR will occur at DA stage.

In respect of biodiversity, five (5) threatened flora species were recorded on site during Australian Wetlands Consulting's survey. The Ecological report states the development will potentially impact the following:

- East Coastal Free-tailed bat
- Green and Golden Bell Frog
- Grey-headed Flying-fox
- Southern Myotis
- Large bent wing bat
- Cumberland Plain Land Snail (more survey required to determine impact)

The report states the development will not result in restrictions of movements of any threatened species to maintain their lifecycle. EES has also commented on this aspect of the proposal as outlined below.

The planning proposal and Ecological Assessment Report state the following mechanisms to retain vegetation:

- Concept plan allows for retention of trees within perimeter areas which are able to be protected through covenants over the created lots.
- A minimum lot size of 2ha across the centre of the site allows for the retention, embellishment and management of the central east-west riparian zone. This could be further protected by a requirement for a positive covenant to be registered on the titles.
- Riparian areas and 0.1ha of wetland in the north of the site are proposed to fall within the back of numerous lots. A planning instrument (likely 88b) is intended to be used to protect this vegetation in perpetuity.
- Habitat linkages from east to west will be maintained via the retention and restoration of the main watercourse that runs from west to east. Additionally, connectivity to the north (riparian corridors) will be maintained via a combination of Water Management Act buffers and 88b instrument for vegetation at the back of numerous lots.

	<p>The proponent's Gateway Determination Review covering letter (Attachment A1) states a 1 hectare minimum lot size and maximum residential lot yield is not considered necessary in light of the work completed by Australian Wetlands Consulting and the report's response to vegetation fragmentation.</p> <p>The Department does not consider the above strategies for retaining vegetation, including offsetting at the development application stage, as adequately demonstrating a greater effort to protect the CEECs or adequately addressing the planning priority. In addition, the north-south watercourse is recommended by the report to have a corridor width of 20m (2nd order watercourse), with the proposed strategy to provide and maintain this corridor within future residential lots. This strategy is not considered as adequately protecting the riparian corridor. EES' submission is consistent with the Department's comments.</p> <p>As the site contains an endangered ecologically community protected under state and commonwealth legislation, land use planning has a role in protecting and enhancing biodiversity. It is considered that the proposal and concept layout have not meaningfully considered reducing the lot yield in order to assist in retaining vegetation on larger lots. While the concept plan shows a reduction in residential lots from 36 to 31, the proposed lot size map maintains a minimum lot size of 2,000m² and the planning proposal refers to the LEP amendment facilitating a development up to 36 residential lots.</p> <p>EES has provided comment on the Ecological Assessment Report (Attachment B4). EES stated it is clear that the site contains high biodiversity values including:</p> <ul style="list-style-type: none"> • 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 <p>The following is a summary of EES' submission:</p> <ul style="list-style-type: none"> • Further studies are required for the Green and Golden Bell Frog and the Cumberland Land Snail and impacts on several threatened bat species have been underestimated. • The report underestimates the loss of Shale Sandstone Transition Forest (SSTF), the extent of the impact to vegetation is not clear but it is likely to be more than 4.3ha. The report does not include a figure for SSTF currently on site. • The proposed 2,000m² lot size will likely result in adverse impacts to biodiversity within the site. • Riparian corridor widths for the 1st, 2nd and 3rd order streams will not be maintained as per the Water Management Act in the proposed layout. • The proposal will not facilitate retention or afford protection to the biodiversity values in the site. EES does not recommend or support the use of 88b instruments to protect vegetation in perpetuity as they can be overridden, removed or modified. It is also unclear how Council would monitor and enforce. • In order to afford the highest of protection under a planning instrument, the conservation areas should be zoned E2 Environmental Conservation with the permitted uses limited to those that are consistent with the conservation objectives of the zone. • Biodiversity areas are to be retained and conserved should be in single ownership. <p>Given the impacts to biodiversity within the site, EES considers the subdivision layout and minimum lot size has not been designed and located to avoid and minimise impacts to native vegetation and habitat. Much greater consideration needs to be given to the biodiversity values within the site and locating the proposed development to avoid and minimise direct and indirect impacts to these areas.</p> <p>Considering the Department's and EES' comments, 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.</p> <p>The proposal is inconsistent with this planning priority.</p> <ul style="list-style-type: none"> • <i>Planning Priority W16 Protecting and enhancing scenic and cultural landscapes</i>
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	<p>The District Plan states ridgelines are highly valued elements of scenic landscapes and development should not diminish their scenic quality. The planning proposal states the land is located on the lower foot slopes to part of the Blue Mountains eastern escarpment. There are numerous minor ridgelines within the locality, including Bells Line of Road and local roads.</p> <p>To support the draft Kurmond Kurrajong Structure Plan, a Landscape Character Study was prepared (published July 2018). It identified four main landscape character types and low-medium, medium-high and high view corridors, mostly from Bells Line of Road. The Study identifies the subject site as being within two significant view corridors categorised as medium-high and low-medium with the corresponding action of 'retain and protect' views (described 'Council's Justification section, Table 3, Figures 3 and 4).</p> <p>The Study identifies the subject site's landscape as ridgeline streets and pastoral valleys. 'Ridgeline streets' are predominantly urban and provide views of Richmond Lowlands and/or Blue Mountains. 'Pastoral valley' is defined by the lightly sloping open pastures with scattered trees over gently sloping terrain. Properties are dotted amongst the hills and valleys of the landscape situated between groupings of trees. Figures 3 and 4 (refer to Council's justification section) are excerpts of the landscape character mapping and location of view corridors. The proposed minimum lot sizes are inconsistent with this character.</p> <p>The planning proposal notes there is a variety of lot sizes in the area with a number of lots along Inverary Drive that range from 2,000m² to 2,400m² and the adjoining development has consent for lots in the order of 2,000m². The existing lots referred to mostly interface with the main road and identified as the ridgeline character whereas the lots within the planning proposal do not interface with the main road and is mostly within the pastoral valley character.</p> <p>Council carried out the landscape character study to determine the character of the area in order to maintain the character into the future. This proposal is inconsistent with both the existing and envisaged character of the area.</p> <p>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.</p> <ul style="list-style-type: none"> • <i>Planning Priority W17 Better Managing Rural Areas</i> <p>The planning proposal includes an updated response to this planning priority. It draws upon comments within the Kurmond Kurrajong Structure Plan 2019 which states that while the area (including subject site) is comprised of rural land zoned for the purposes of agricultural activities, there is no significant agricultural activities in operation. The majority of rural properties are used for residential purposes.</p> <p>The proposal provides further justification as to why the land is not considered viable for rural activities and therefore rural residential development is an appropriate outcome. Large lot development, similar to the development occurring on 396 Bells Line of Road, is compatible with the values of the MRA, enhance the values relevant to the locality, and would meet the aims of this planning priority through:</p> <ul style="list-style-type: none"> • delivering positive environmental outcomes by restoring, protecting and maintaining the riparian corridor; • providing green corridors along the perimeter and middle of the site assisting in vegetation connectivity to the riparian corridor; • enabling imposition of covenants to protect bushland on the residential lots; and • increased rural residential housing within the KKIA would contribute to the delivery of positive social and economic outcomes of the Kurmond and Kurrajong neighbourhood centres. <p>The Department acknowledges that the District Plan states ongoing planning and management of rural towns and villages will need to respond to local demand for growth but with a high priority of maintaining and enhancing the distinctive character of each village. Limited rural residential development could be considered if it demonstrated that are no adverse impacts on the amenity of the local area and that development provides incentives to maintain and enhance the environment, social and economic values of the MRA. This could include the creation of protected biodiversity corridors, buffers to support investment in rural industries and protection of scenic landscapes.</p>
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Firstly, in respect of limited rural residential development, the Department considers that if amendments to the LEP are required to support the village's organic growth, a holistic review of the area should be carried out to identify the appropriate locations for village expansion. Council had progressed this exercise for the Kurmond and Kurrajong villages but Council resolved not to progress the proposal or send to the Department for Gateway assessment.

Although planning investigations for Kurmond Kurrajong villages are not progressing, it is observed that several planning proposals have been finalised which will support the organic growth of Kurmond and Kurrajong villages. The Department has undertaken an analysis of Kurmond village and the number of residential dwellings it would need to support the village's organic growth.

The Department defines Kurmond village as the residential zoned land supporting the strip of shops (B1 Neighbourhood Centre) as shown in Figure 7 below. This interpretation of Kurmond village is consistent with the draft 2019 Kurmond Kurrajong Structure Plan.

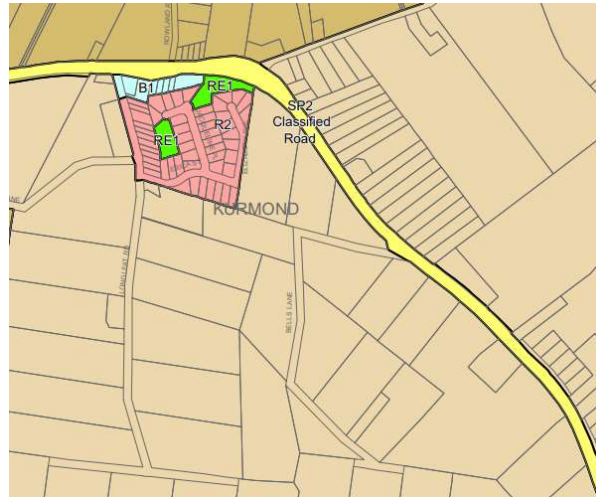


Figure 7 Excerpt of Land Use Zoning Plan (Hawkesbury LEP Sheet LZN_008AA)

There are approximately 52 residential lots within Kurmond village. Based on an average of 2.92 persons per household (profile.Id), the population of Kurmond village would be 151 persons. The Rural Lands Strategy states the current population growth of the LGA is 0.7% per annum over the past 10 years according to the ABS Regional Population Growth database.

If this population growth is compounded per year until 2040, this would see a total population of 172 person, an increase in approximately 22 persons which equates to an additional eight (8) dwellings based on 2.92 persons per household. For comparison purposes only, if the village 'base' is increased to 100 dwellings to take in a broader catchment, with a population of 292 persons, the village would only see an increase in population of 41 people equating to an additional 14 dwellings based on the same household size.

The Department has undertaken an analysis of the finalised and live planning proposals (Figure 8 below) to ascertain whether additional LEP amendments are required to support organic growth of Kurmond village. The finalised planning proposals will facilitate approximately 69 additional residential lots (78 residential lots total development potential) which significantly exceeds what the Department considers as organic growth. This excludes the additional development potential for live planning proposals being 457 Bells Line of Road, 79 & 95 Bells Lane and the subject proposal which will facilitate an additional 41 residential lots (45 residential lots total development potential). Combined, this equates to 110 additional residential lots and is far in excess of what the Department considers to constitute organic growth and is not 'limited' residential development in nature.

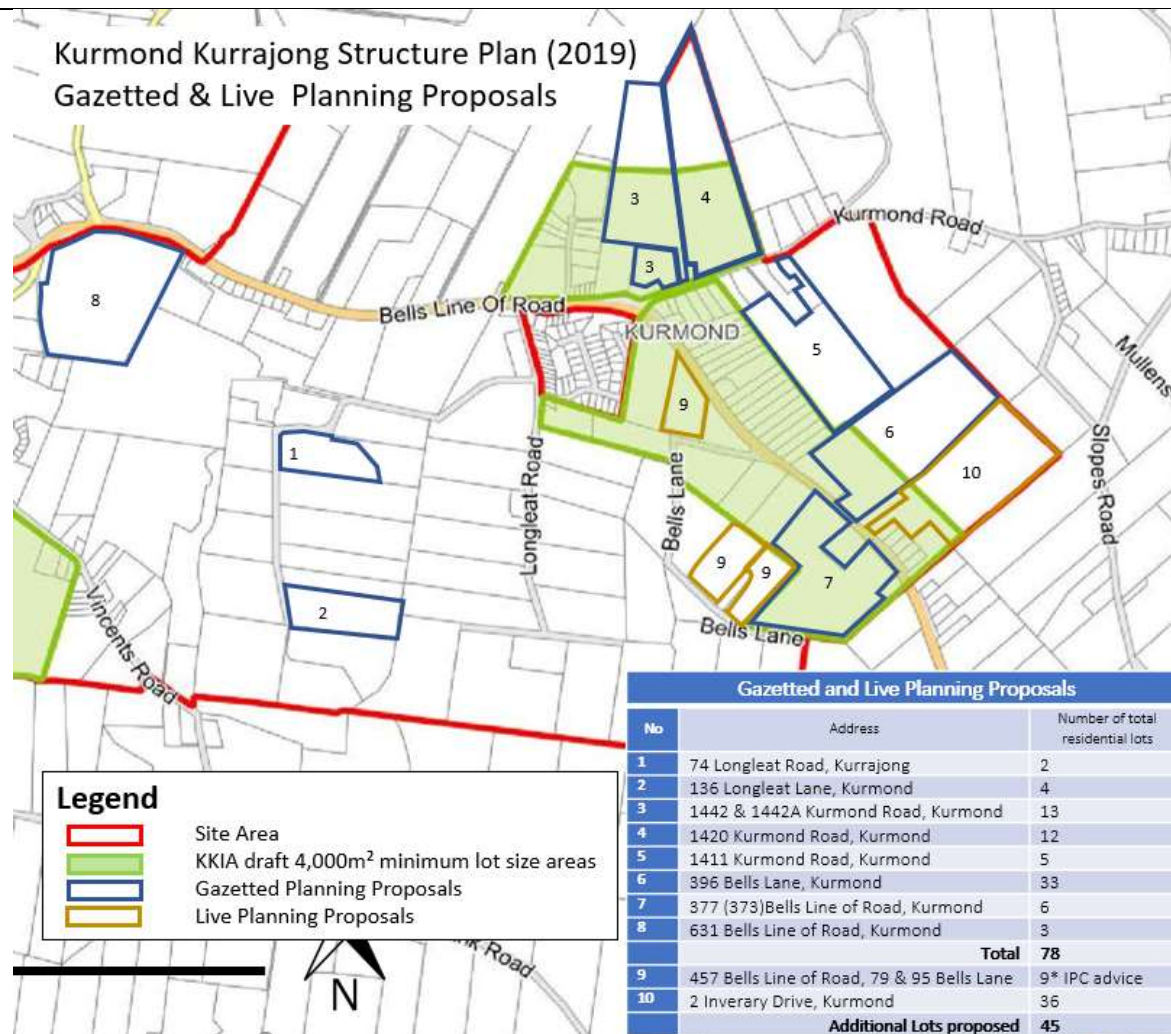


Figure 8 Department's analysis of additional growth to support Kurmond village

The other reason for limiting residential growth in the MRA is to enhance and maintain the village's distinctive character. The Planning Proposal outlines some mechanisms (as described previously) to demonstrate consistency with the values of the MRA.

The village's distinctive character is outlined in the Kurmond Kurrajong Landscape Character study and the local strategic planning framework. As already discussed, the proposal has not adequately addressed the landscape character identified for the subject site nor the significant view corridors. In addition, the planning proposal would result in a development that is more urban in nature and will have an adverse impact on the amenity of the locality.

The Department's views on the proposal's environmental outcomes is discussed under Planning Priority W14 Protecting and enhancing bushland and biodiversity and under site specific merit below. The proposal does not adequately recognise or respond appropriately to the significant vegetation on site, the riparian corridors, wetland or the land use conflict the proposal would create with the existing flower nursery adjoining the site.

In respect of enhancing the social or economic values of the locality, guidance is provided in the local strategic planning framework, being the Local Strategic Planning Statement, Local Housing Strategy, Employment Strategy and Rural Lands Strategy. The Department's assessment of the proposal's consistency with these strategies are discussed further below.

It is concluded that the proposal does not adequately demonstrate the development will not have an adverse impact on the amenity of the local area or that it enhances the social or economic values of the locality or the MRA. The planning proposal is inconsistent with this planning priority.

Reference is also made to the Department's assessment of the proposal's consistency with this planning priority under 'Reasons for Gateway alteration - 3 December 2020' as it remains relevant.

- **Strategic Merit – Local Strategic Planning Framework**

The strategic planning framework at the time of the planning proposal lodgement to Council, and the Sydney Western Planning Panel's consideration of the rezoning review, included the following:

- 10 May 2011 – Council adopted its Hawkesbury Residential Land Strategy 2011. This strategy included a strategy for large lot residential or rural residential development to focus around existing rural villages. Development within and adjacent to rural villages must:
 - Be able to have onsite sewerage disposal
 - Cluster around or on the periphery of villages
 - Cluster around villages with services that meet existing neighbourhood criteria services as a minimum (within a 1km radius)
 - Address environmental constraints and with minimal environmental impacts; and
 - Only occur within the capacity of the rural village.
- 28 July 2015 – Council adopted a set of development principles to be taken into consideration in the assessment of planning proposals within the Kurmond Kurrajong Investigation Area including:
- Essential services under LEP 2012 and fundamental development constraints are resolved.
- Building envelopes, asset protection zones (APZs), driveways and roads are located on land with a slope less than 15%.
- Removal of significant vegetation is avoided.
- Fragmentation of significant vegetation is minimised.
- Building envelopes, APZs, driveways and roads (not including roads for the purposes of crossing watercourse) are located outside of riparian corridors.
- Road and other crossings of water courses is minimised.
- Fragmentation of riparian areas is minimised.
- Removal of dams containing significant aquatic habitat is avoided.
- November 2016/March 2017 – Draft District Plans publicly exhibited
- October 2017/December 2017 – Draft District Plans publicly exhibited

The 2011 Hawkesbury Residential Land Strategy has been superseded with the 2020 Local Housing Strategy. If the previous local strategic planning framework is to be given weight, it is observed the proposal has not satisfactorily addressed the environmental constraints of the site and the opinion cannot be formed that it has minimal environmental impacts. The proposal has not satisfactorily demonstrated compliance with the July 2015 development principles, specifically relating to accommodating development on slope less than 15%, avoidance of removing and/ or fragmenting significant vegetation, or minimised fragmentation of riparian areas. This is also discussed further under site specific merit.

The Planning Proposal was submitted to the Department for Gateway determination assessment on 7 May 2018. Between the Planning Panel's consideration of the proposal and Council submitting to Gateway, the Sydney Region Plan and Western City District Plan came into effect in March 2018. Since the Department issued the Gateway determination in June 2018, the following key milestones have occurred in respect of the strategic planning framework:

- July 2018 – Council received the Kurmond Kurrajong Landscape Character Study
- September 2019 – Council exhibited a draft structure plan for the Kurmond Investigation Area, which includes the subject site. The draft structure plan proposed to reduce the minimum lot sizes from 10ha and 4ha to 1 ha and 4,000m² and indicated a potential rezoning from RU1 and RU4 to E4 Environmental living. The draft structure plan identified the majority of the site to have a minimum lot size of 1 hectare (as shown in Figure 5 in this report). The suggestion of 4,000m² lot size is supported by a 40m frontage.
- October – November 2019 – exhibition of draft Hawkesbury Local Strategic Planning Statement 2040.
- 30 June 2020 – Council considered a post exhibition report and resolved to defer the further consideration of the draft Kurmond Kurrajong Investigation Area Structure plan until the Local Housing Strategy, Rural Lands Strategy and Local Strategic Planning Statement (LSPS) had been completed.
- 10 November 2020 – Council resolved to adopt the LSPS and send to the Greater Sydney Commission (GSC) for endorsement removing references to the Kurmond Kurrajong Investigation Area Structure Plan.

- 8 December 2020 – Council adopted the Local Housing Strategy and endorsed the draft Rural Lands Strategy to be placed on exhibition.
- 8 February 2021 – the GSC assured Hawkesbury's LSPS.
- 23 February 2021 – Council resolved to adopt the assured LSPS.
- 23 February 2021 – Council resolved to not adopt the Kurmond Kurrajong Investigation Area Structure Plan, assess remaining individual planning proposals within the KKIA against the interim development 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 KKIA for rural residential development.
- 30 March 2021 – Council adopted the Rural Lands Strategy.

It is important that the policy evolution is taken into consideration and that recent local policies are given weight. Local policies are critical to the application of the principles for the MRA. In recent policies, Council has had the opportunity to consult with the community and make clear their position on growth within the MRA, and in Kurmond.

The proposal is inconsistent with the local strategic planning framework including, the adopted Local Housing Strategy, Rural Lands Strategy and Local Strategic Planning Statement as demonstrated below.

The LSPS does not identify the Kurmond-Kurrajong as an area for additional housing. Previous references to the structure planning have been deleted in the final draft. The Kurmond-Kurrajong centres are only referenced for future opportunities to provide tourist accommodation, facilities, and small-scale events to further grow their role as a tourism destination.

The current Local Housing Strategy acknowledges the Kurmond Kurrajong Investigation Area as an 'urban investigation area' and notes the investigations currently being undertaken by Council and the problematic nature of individual planning proposals proceeding ahead of the more holistic planning approach.

The Kurmond Kurrajong Investigation Area is not identified within Council's 'Housing Priorities.' The 'Housing Priorities – consideration of options' includes reviewing remnant R2 Low Density lands in or adjacent to centres, a review of zoning for Hobartville and the potential for rezoning of land in South Windsor. The Strategy states that incremental growth of rural villages will need to respect the natural environment, appropriately manage environmental constraints and will not impact on the viability of rural land and agricultural activities.

The Rural Lands Strategy identifies Kurmond and Kurrajong as a local centre – village. The Rural Lands Strategy recommends that Kurmond, and several other listed villages are "not recommended for expansion other than natural or organic growth" due to a number of natural, character and infrastructure constraints.

The Department's consideration of organic growth is addressed above in this report. The Strategy outlines criteria that should be used to exclude land for future urban or rural residential development. Relevant to this application, it includes proximity to agricultural development, slope of land – greater than 20% and native vegetation. On the above criteria, this site is not a preferred location for natural growth of the centre.

The Rural Lands Strategy also draws attention to land use conflict for agriculture and agribusiness in Sydney's peri-urban zones, which include land in the KKIA. It states the smaller the lots, the greater potential for conflict between resident lifestyle expectations and existing uses of adjacent land for agricultural, industrial or commercial purposes. Conflicts arise from issues such as noise, odour or chemical pollution crossing boundaries. As stated previously within this report, a flower nursery is in operation adjoining the south-eastern property boundary. The land use planning for this site needs to respond appropriately and not rely solely upon buffer planting to be maintained by future owners.

In considered the most recent policy and the public interest, the Department finds that the planning proposal no longer demonstrates strategic merit. The proposal is inconsistent with the minimum lot sizes and interim development principles contained in the draft Kurmond Kurrajong Investigation Area structure plan, and is inconsistent with the endorsed local policy context, which does not identify the site as a location for future residential growth.

Section 9.1 Directions

1.2 Rural Zones

As part of the assessment of the Gateway Determination Review request, the Department reviewed the proposal's consistency with Section 9.1 Directions. The planning proposal's inconsistencies with Section 9.1 Direction - 1.2 Rural Zones was justified in accordance with the terms of the Direction as part of the Gateway Determination and no further approval was required. However, as a result of change in policy, the proposal has been re-assessed against this Direction.

The planning proposal is not justifiably inconsistent with Direction 1.2 to retain rural lands due to the following:

- The subject site is approximately 1km from the edge of an existing village. The proposal cannot be justified as 'increasing permissible density of land...within an existing town or village';
- It has not adequately demonstrated that it is consistent with the Western City District Plan;
- It is not supported by the strategic planning framework including its supporting studies as mentioned above, and
- The inconsistency cannot be viewed as a minor significance given the extent of the inconsistency with the number of proposals seeking to increase residential development in this area and density proposed within this proposal.

Site-specific merit

Upon review of the additional information submitted within the Gateway determination review package, it is concluded the proposal has limited site-specific merit for the residential development proposed for the following reasons:

- It is considered that the proposal has not adequately addressed issues raised by The Sydney Western City Planning Panel (as part of the rezoning review (**Attachment D2**) – and referred to under Council's Justification section) and the Department relating to lot sizes, particularly along the southern boundary; issues related to environmental zoning for areas identified as warranting special protection; and provision of a maximum lot yield;
- The proposal has not adequately demonstrated consistency with Council's adopted 2015 Kurmond Kurrajong interim development principles, specifically avoiding fragmentation of significant vegetation, building envelopes, asset protection zones (APZs), and ensuring driveways and roads are located on land within a slope less than 15%. While it is noted that the proposed revised lot layout shows a north-south vegetated corridor from the centre of the site (Figure 6 above); these refer to possible new plantings on private land with no proposal for protection of existing woodland, wetlands and riparian vegetation in this area or proposed methods for avoiding fragmentation;
- The site is identified as containing significant vegetation and connectivity between significant vegetation in the Hawkesbury's LEP Terrestrial Biodiversity Map (Figure 9). The objective of the Terrestrial Biodiversity provisions within the LEP are to maintain terrestrial biodiversity by protecting native fauna and flora, protecting ecological processes necessary for their continued existence, and encouraging the conservation and recovery of native fauna and flora and their habitats.

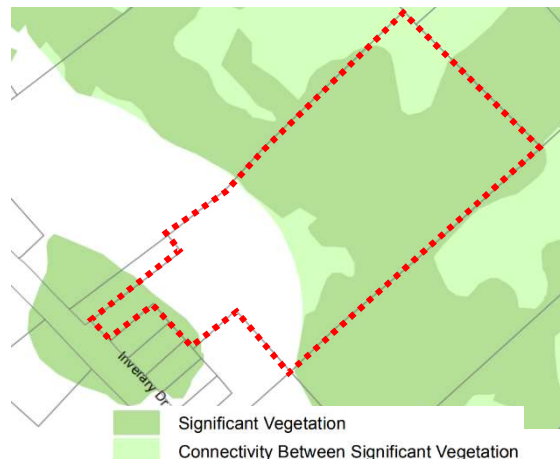


Figure 9: Terrestrial Biodiversity LEP Map

	<ul style="list-style-type: none"> The Ecological Assessment Report (Attachment A4) identifies the presence of Shale Sandstone Transition Forest in moderate to good condition. This is identified as a Matter of National Environmental Significance (MNES), which would be significantly affected by the development aims of the planning proposal as the proposed lot layout would require removal of more than 1 hectare of vegetation identified as Shale Sandstone Transition Forest, listed as an Endangered Ecological Community under State and Commonwealth legislation; Given the impacts to biodiversity within the site, EES considers the subdivision layout and minimum lot size has not been designed and located to avoid and minimise impacts to native vegetation and habitat. Much greater consideration needs to be given to the biodiversity values within the site and locating the proposed development to avoid and minimise direct and indirect impacts to these areas; The proposal, at this density, presents potential land use conflicts that have not been adequately addressed or mitigated. <p><u>Recommendation</u></p> <p>The planning proposal does not demonstrate strategic merit or site-specific merit. The Department's position is that this planning proposal should not proceed.</p>
Attachments	<p>Attachment A1 – Gateway Determination Review covering letter Attachment A2 – Planning Proposal (December 2020) Attachment A3 – Lot layout (August 2020) Attachment A4 – Ecological Assessment Report (December 2020) Attachment A5 – Superseded Planning Proposal (May 2020) Attachment A6 – Gateway review application form Attachment B1 – Gateway Determination 28 June 2018 Attachment B2 – Gateway Determination Report Attachment B3 – Alteration Gateway determination 3 December 2020 Attachment B4 – Environment, Energy and Science Group Submission May 2021 Attachment C1 – Council's Gateway Determination review comments (March 2021) Attachment C2 – Letter from Council October 2019 Attachment C3 – Environment, Energy and Science Group Submission June 2020 Attachment D1 – Flora & Fauna Assessment Report (June 2016) Attachment D2 – Planning Panel Rezoning Review Determination (February 2018) Attachment D3 – Planning Proposal timeframe Attachment D4 – Draft Kurmond Investigation Area Structure Plan</p>

COMMISSION'S RECOMMENDATION

Reason for review: A determination has been made that the planning proposal should be altered.

Recommendation:	<input type="checkbox"/>	The planning proposal should not proceed past Gateway.
		<input type="checkbox"/> no amendments are suggested to original determination. <input type="checkbox"/> amendments are suggested to the original determination.
	<input type="checkbox"/>	The planning proposal should proceed past Gateway in accordance with the original Determination.

Any additional comments:
Nil

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Director
Central (Western)