

ITEM-2	PLANNING PROPOSAL - 32-34 JACKS LANE, MAROOTA (7/2018/PLP)
THEME:	Balanced Urban Growth.
OUTCOME:	7 Responsible planning facilitates a desirable living environment and meets growth targets.
STRATEGY:	7.2 Manage new and existing development with a robust framework of policies, plans and processes that is in accordance with community needs and expectations.
MEETING DATE:	10 JULY 2018 COUNCIL MEETING
GROUP:	STRATEGIC PLANNING
AUTHOR:	TOWN PLANNER KAYLA ATKINS
RESPONSIBLE OFFICER:	MANAGER – FORWARD PLANNING STEWART SEALE

EXECUTIVE SUMMARY

This report recommends that the planning proposal to rezone land at 32-34 Jacks Lane, Maroota from RU1 Primary Production to RU2 Rural Landscape and amend the Terrestrial Biodiversity map to apply to existing vegetation on site not proceed. The proposal seeks to facilitate a rural cluster subdivision on site with five (5) lots ranging in size from 7,000m² to 1 hectare.

The proposal is inconsistent with the current state and local strategic planning framework for rural land with agricultural potential. In LEP 2012, the RU1 Primary Production zone was used to encourage sustainable primary industries and minimise the fragmentation of resource lands in Maroota, where there is a significant sand resource in close proximity and intensive plant and horticultural industries. The proposal does not demonstrate sufficient strategic merit to deviate from this position. The proposal would remove the agricultural potential from the land, impact on adjacent properties ability to undertake agricultural activities and set a precedent for other sites in the locality.

The objective of rural cluster subdivision is to ensure the land is developed, managed and conserved in a holistic and sensitive manner where affected by biodiversity. The extent of biodiversity on the site is not sufficient to justify the impacts on agricultural activities in the locality. Further, the proposal would need to strike a balance between the conservation of biodiversity on the site and bush fire protection measures (such as clearing) that would be required for future development. Any further clearing would result in a loss of biodiversity.

Early consultation with the NSW Rural Fire Service (NSW RFS) indicates that they do not support the proposal and that the site is unlikely to be able to comply with *Planning for Bush Fire Protection 2006*. The site is surrounded by extensive areas of unmanaged bush fire prone vegetation with a history of bush fire and access into and out of the area is limited and likely to be cut off in the event of a bush fire. Jacks Lane is a single point of access and egress, and greater than 200m in length, which is problematic and

undesirable due to poor visibility from smoke during a bush fire event and increased chance of being isolated during a fire. Design solutions are not able to resolve these issues. The applicant has attempted to address the non-compliances with Planning for Bushfire Protection however this has not been successful. The proposal cannot ensure safe access for residents and firefighters in the event of a bushfire.

Given the lack of strategic merit, impacts on agriculture in the locality, minimal potential biodiversity benefits, bush fire risk and lack of support from the NSW RFS, it is recommended that the proposal not proceed.

PROPONENT AND OWNERS

Mr & Mrs G Bell and Ms T Nicholls.

THE HILLS LOCAL ENVIRONMENTAL PLAN 2012

Controls	Existing	Proposed by Proponent
Zone:	RU1 Primary Production	RU2 Rural Landscape
Minimum Lot Size:	10ha	No change
Maximum Height:	10m	No change
Maximum Floor Space Ratio:	Not applicable	No change
Terrestrial Biodiversity Map:	Not applicable	Apply to vegetation on site

POLITICAL DONATIONS

Nil disclosures by the proponent.

HISTORY

26/10/2017	Planning proposal to rezone 32–34 Jacks Lane, Maroota from RU1 Primary Production to RU2 Rural Landscape lodged.
21/11/2017	Planning proposal presented at Councillor workshop.
12/01/2018	Letter sent to RFS seeking pre-Gateway comments.
15/01/2018	Letter sent to RMS seeking pre-Gateway comments.
05/03/2018	Pre-Gateway comments received from RFS objecting to planning proposal.
23/04/2018	Additional information submitted by proponent from bush fire consultant.
18/05/2018	Pre-Gateway comments received from RMS.

BACKGROUND

Council's 2009 Employment Lands Direction includes objectives that seek to identify and protect significant agricultural activities and rural resource lands within the Shire.

In preparing The Hills Local Environmental Plan 2012 (LEP 2012), consideration was given to these objectives and specifically to the sand mining operations identified under Sydney Regional Environmental Plan No.9 – Extractive Industry (SREP No.9) as well as historic and existing agricultural activities, slope, bushland and sensitive vegetation on rural land. The specific boundaries of the RU1 Primary Production zone not only identified the area applicable to SREP No.9 but acknowledged the concentration of

intensive plant and horticultural industries in the same locality along Old Northern Road and the spine of Wisemans Ferry Road towards Sackville Ferry Road.

The Department of Primary Industries was consulted in the preparation of LEP 2012. Their comments encouraged the retention of opportunities for sustainable primary industries and protection of the productive capacity of land. Their comments sought to ensure that the LEP allows land to be developed in a manner consistent with its capability and reduces the risk of land use conflicts. The Department of Primary Industries stated that the locations of resource deposits cannot always be predicted and therefore known resources and their general area should not be put at risk of sterilisation through inappropriate zoning or development. The Department's comments also indicated the importance of managing housing density in primary industry zones to maintain access to untainted finite resources and allow efficient production to occur. The remaining RU1 land that is not applicable to SREP No.9 supports the more intensive extractive industries and ensures reduction in land use conflict and potential to sterilise known resources.

During the exhibition of LEP 2012, there were a number of requests for land proposed to be zoned RU1 Primary Production to be included in the RU2 Rural Landscape zone, specifically to permit community title 'rural cluster' subdivision. Landowners perceived the nomination of RU1 Primary Production zone as a 'down zone', as other rural zones had greater subdivision potential.

Following consideration of submissions no changes were made to the boundaries of the RU1 Primary Production zone given the matters raised were inconsistent with Council's strategic framework. At the time it was acknowledged the subject properties were not currently in production, however the concentration of primary industry production in the locality was still encouraged. The current extent of the RU1 Primary Production zone and SREP No.9 area is indicated in Figure 1 below.

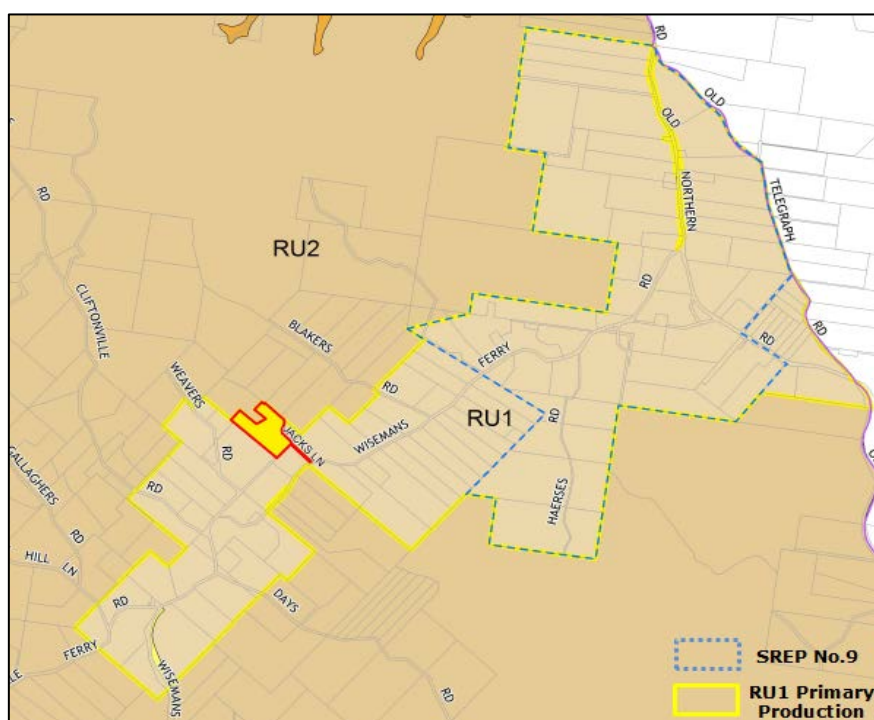


Figure 1

Current Extent of RU1 Primary Production zone and SREP No.9 (subject site outlined in red)

On 29 April 2015, a planning proposal application was lodged with Council to rezone land at 90 Weavers Road, Maroota from RU1 Primary Production to RU2 Rural Landscape. Following a Gateway Determination, the proposal was publicly exhibited in September and October 2017. During this period, Council received comment from the NSW RFS stating they did not support the proposal on the basis that it is inconsistent with Ministerial Direction 4.4 Planning for Bush Fire Protection, new lots will be created on a ridgeline and more than 200m from a through road, and on strategic grounds that the proposal is likely to generate similar proposals in the locality.

This outstanding public authority objection could not be resolved and Council, unable to exercise its delegation, forwarded the planning proposal to the Department of Planning and Environment for finalisation on 20 December 2017. To date, the outstanding agency objection has not been resolved and the planning proposal has not been finalised.

REPORT

The purpose of this report is to consider a planning proposal for land at 32-34 Jacks Lane, Maroota (Lot 4 DP864355), which seeks to rezone the site from RU1 Primary Production to RU2 Rural Landscape and amend the Terrestrial Biodiversity Map to apply to existing vegetation on site.

1. THE SITE

The subject site is irregular in shape and comprises an approximate area of 10.3 hectares. The site has a moderate slope of approximately 10% from east to west away from Jacks Lane. The western portion of the site is heavily vegetated with Shale Sandstone Transition Forest which is a species listed as a Critically Endangered Ecological Community under the Biodiversity Conservation Act 2016. This endangered vegetation covers approximately 37% of the subject site and forms part of a vast and largely undisturbed network of vegetation.

The subject site contains a single storey dual occupancy and rural sheds. Adjoining sites also comprise rural residential development and agricultural land use. The surrounding land is zoned both RU1 Primary Production and RU2 Rural Landscape.



Figure 2
Subject Site and Existing Locality

2. PLANNING PROPOSAL

The planning proposal seeks to rezone the site from RU1 Primary Production to RU2 Rural Landscape to facilitate a development application for a rural cluster subdivision. The proposal also requests an amendment to the Terrestrial Biodiversity Map within The Hills LEP 2012 to include vegetation on the subject site. Amendments to minimum lot size, height of building and floor space ratio are not proposed as part of this application.



Figure 3

Existing Land Zone (left) and Terrestrial Biodiversity Map (right)

In support of the planning proposal the applicant has submitted a subdivision concept illustrating the intended future development outcomes for the site. Figure 4 below includes indicative building envelopes and resulting lot sizes between 7,000m² and 1 hectare. Existing vegetation on site is proposed be retained as part of the subdivision concept.

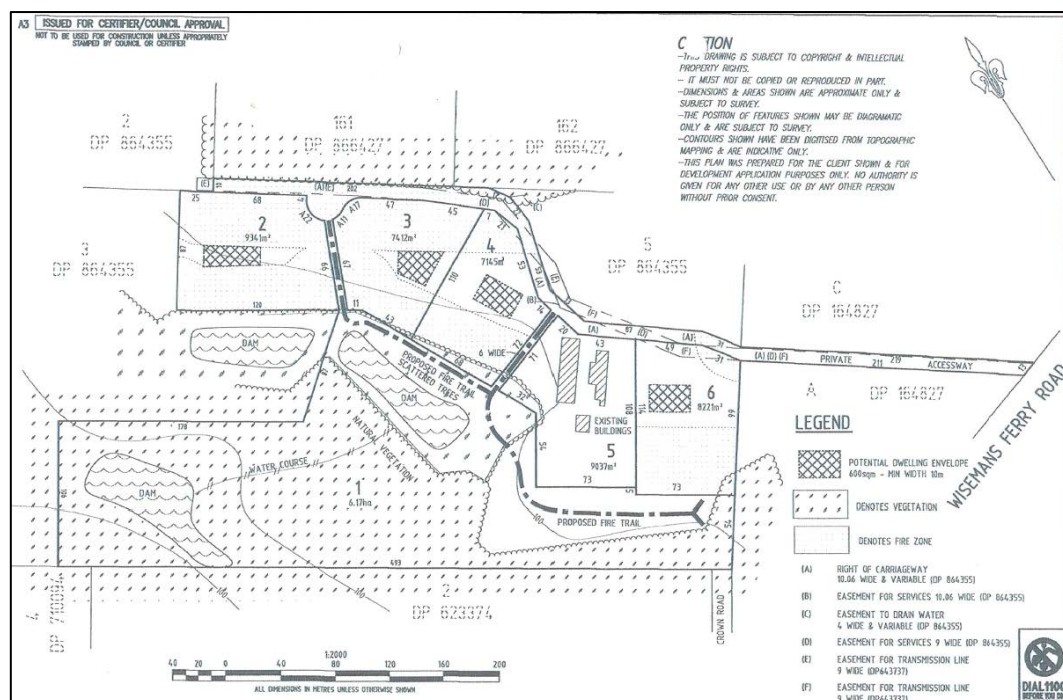


Figure 4

Proposed Subdivision Design

3. STRATEGIC CONTEXT

- Greater Sydney Region Plan and Central City District Plan

Both the Greater Sydney Region Plan and Central City District Plan contain objectives that seek to better manage rural land, protect and enhance the environmental, social and economic values in rural areas.

The proposal would facilitate the opportunity to map environmental values to secure future protection on site and connect the area to the existing biodiversity network. However, the Plans advocate a place-based planning approach that stipulates rural residential development is not an economic value of the Metropolitan Rural Area and is generally not supported. In seeking to rezone the site to facilitate rural residential development, the proposal is inconsistent with this strategic objective.

While the proposal may contribute to a protected biodiversity corridor, it would also contribute to fragmentation and alienation of resource lands through the reduction of the RU1 Primary Production spine along Wisemans Ferry Road, particularly given concerns for a wider precedent in the locality that would seriously erode the Shire's contribution of agricultural uses to the productive capacity of the Greater Sydney region.

The District Plan's strategic approach to natural hazards specifies that proposals should not increase the density of development in areas with limited evacuation options as it increases the risk to life and property. It requires consideration of limiting new development in areas exposed to existing natural hazards. By facilitating an additional four (4) residential lots, the proposal seeks to increase the risk to life and property by locating more residential development of a greater density on bush fire prone land.

- Ministerial Direction 1.2 Rural Zones

The objective of this Direction is to protect the agricultural production value of rural land. It states that a relevant planning authority must not rezone land from a rural zone to a residential, business or industrial zone or increase the permissible density of land within a rural zone. While the proposal seeks to retain a rural zone, it shifts the focus of the primary use of the land from agricultural to rural residential and contains provisions that will increase the permissible density in a rural zone.

While it could be argued that the inconsistency is minor in that it relates to a single site, consideration must be given to similar surrounding sites and the cumulative impact on the locality. Section 6(e) of this report identifies 20 other sites that may seek a similar outcome and refutes the notion that this site benefits from unique circumstances. The wider strategic role of this area in buffering the potential for land use conflicts and encouraging agricultural practices is particularly important in managing rural residential development and subdivision in this locality. Further justification would be required from the proponent to address this inconsistency.

- Ministerial Direction 4.4 Planning for Bush Fire Protection

This direction requires a planning proposal to have regard to Planning for Bush Fire Protection 2006 and ensure the adequate provision of Asset Protection Zones, two-way access roads linking to perimeter roads and/or fire trail networks, adequate water supply for fire-fighting purposes, minimisation of the area of land directly interfacing with the hazard and controls regarding combustible materials in the Inner Protection Area.

A proposal may only be inconsistent with this Direction if written advice is obtained from the Commissioner of the NSW Rural Fire Service (NSW RFS) stating that notwithstanding the non-compliance the NSW RFS does not object to the proposal's progression. The NSW RFS has provided written advice in response to the proponent's Bushfire Hazard Assessment Report stating that it does not support the proposal due to the limited capacity to facilitate adequate emergency access and egress as new lots created would be more than 200m from a through road, the suitability of the site for intensification of development and the proposal's encouragement of incompatible land uses in a bush fire prone area. These comments are discussed further in section 4 of this report. The proposal is inconsistent with this Direction given the advice from the Rural Fire Service and assessment against Planning for Bushfire Protection 2006 contained within section 6(a) of this report.

- Local Strategy – Rural Lands Strategy and Employment Lands Direction

The Rural Lands Strategy was adopted in 2003 and acknowledges the importance of a consistent approach to the management of rural lands to ensure their suitability for agricultural use and to minimise the occurrence of incompatible surrounding uses. It reflects the value of rural areas for the Shire, and the challenge of sustainable land use in the long term management of rural lands. Whilst the Strategy sought to provide for economic development opportunities, it recognised that some existing agricultural uses were marginal from an economic sustainability point of view. A specific land use designation (or zone) for agriculture was not suggested at the time the Strategy was prepared, due to the scattered nature of high class agricultural land and the lack of any large and contiguous areas of agricultural production. The proposal for a specific zone related to primary production was explored further in 2009 in the preparation of Council's Employment Lands Direction, following the opportunity offered by the Standard Instrument LEP.

The Rural Lands Strategy also includes an objective to ensure the ecological integrity of the rural lands are enhanced and maintained. It included an action to identify and protect significant linkages of native vegetation in a draft LEP for the Shires rural lands. The draft rural lands LEP reported to Council in June 2005 included an overlay designating environmentally sensitive lands, which included the rear portion of the subject site. The overlay formed the basis of the terrestrial biodiversity mapping contained in LEP 2012, since adjusted to exclude land zoned RU1 Primary Production.

Given the foregoing, the planning proposal is partly consistent with the objectives and strategies contained within the Rural Lands Strategy. The development of the site for rural cluster subdivision, as proposed, will allow for retention of significant vegetation and contribute to biodiversity in the area consistent with the objective of maintaining and enhancing the ecological integrity of the rural area. However, as the Strategy aims to preserve long-term agricultural land use and protect the future rural economy, the proposal is not entirely consistent.

The Rural Lands Strategy has been brought to fruition in LEP 2012, where rural cluster subdivision is permitted in the RU2 Rural Landscape zone and RU6 Transition zone for lots larger than 10ha. This site has not been included in these zones and has been zoned RU1. The application of the RU1 zone in this locality was an acknowledgement of the existing and future activities permitted under SREP No.9 – Extractive Industry as well as site opportunities and constraints such as topography, bushland, significant vegetation and the concentration of agricultural activities. Insufficient justification has been provided to support a deviation from Council's adopted Rural Lands Strategy and its application through LEP 2012.

4. PRE-GATEWAY PUBLIC AUTHORITY COMMENTS

In the context of known issues associated with a similar planning proposal in the Maroota locality, pre-Gateway comments were sought from the NSW RFS as well as RMS. The content of their written advice is provided below.

(a) NSW Rural Fire Service (RFS)

The NSW RFS stated that it is not in a position to support the planning proposal as it lacks strategic merit in that it would encourage development of increased density in close proximity to a bush fire hazard and would set an undesirable precedent for further rezoning requests in the locality.

Comment:

The potential for precedent is noted and further discussed in section 6(e) of this report. In rezoning the site from RU1 Primary Production to RU2 Rural Landscape, a number of additional uses would be permitted including centre-based child care facilities, respite day care centres, restaurants and cafes. While it is acknowledged that the intended future development outcome for this site does not include these uses, the proposal would facilitate the permissibility of these uses for future development applications beyond the immediate future. Many of these uses are not compatible with the constraints of the subject site as a number of these uses are defined under Planning for Bush Fire Protection 2006 as Special Fire Protection Purposes (SFPP), which refer to occupants that are especially vulnerable to the effects of a bush fire event and are difficult to evacuate.

The RFS have also indicated that they do not support the proposal due to its inconsistency with Ministerial Direction 4.4 and the objectives of Planning for Bush Fire Protection 2006 in that the proposal does not ensure safe operation access and egress for emergency service personnel and residents, the proposal encourages the establishment of incompatible land uses in bush fire prone areas, and access and egress is limited, more than 200m from a through road and likely to be cut off in the event of a bush fire. The site remains narrow and impeded by vegetation even if Jacks Lane were to be upgraded to a perimeter road.

Comment:

In response to these comments the proponent submitted further information which stated that initial plans included a second egress connecting to a Crown Road but the RFS advised them that it could be deleted. The proponent's response also noted that the RFS were significantly deviating from their original pre-lodgement comment that they had no concerns regarding the length of access way to Wisemans Ferry Road as the hazard was not located on the side of road where traditional fire weather causes the greatest impact. The proponent's response indicated that the proposal's deviation from Planning for Bush Fire Protection 2006 is only minor and relates only to access matters. The response has indicated that the development could provide wider roads, however RFS comments stated that even with upgrades, the site remains narrow and impeded by vegetation. The proponent's response also stated that the pre-lodgement plans were amended to adequately address non-compliances with Planning for Bush Fire Protection 2006. These plans were forwarded to the NSW RFS who have indicated in their pre-Gateway comments that the proposal retains serious inconsistencies.

Follow up correspondence with the RFS confirmed that provision of a second egress to the Crown Road is not likely to resolve the access arrangements to their satisfaction as it does not connect to a public road, remains in excess of 200m, would rely on access through significant vegetation that is mapped as a bush fire hazard and the assumption that all rights of access can be achieved. There is also no record of a specific comment

made during the RFS pre-lodgement with the proponent requiring the deletion of the fire trail connecting to the Crown Road. The RFS indicated that provision of a second egress is not likely to change the comments and position already provided by the RFS.

The RFS also noted in their comments that they have objected to multiple development applications for rural cluster subdivisions in permissible zones throughout the Shire where the risk of bush fire is high and environmental and access constraints cannot be easily overcome. It should be noted that if the proposal were to proceed, at development application stage the application would be considered Integrated Development and would require the approval of the NSW RFS before Council may issue consent.

(b) Roads and Maritime Services (RMS)

As Wisemans Ferry Road is an RMS controlled road, pre-Gateway comments were sought. The RMS have indicated that a traffic impact statement would be required to address the additional traffic potential and any road safety impacts resulting from the planning proposal. The intersection of Jacks Lane and Wisemans Ferry Road may require upgrade to cater for additional yield. At a minimum, the RMS has advised that the dished crossing is required to be upgraded from its current configuration to improve road safety. A strategic concept plan should be provided detailing the dished crossing upgrade, intersection advance warning signs and any other required upgrade works, turn treatments, simultaneous access and egress at the junction of Jacks Lane and Wiseman's Ferry Road and existing sightlines. The RMS advised that Council may wish to consider a site-specific development control plan (DCP) to master plan the subdivision and set out future access arrangements and intersection works.

Comment:

Council would require concept plans to be provided including approximate details of any vegetation to be removed, engineering and drainage specifications of any upgrade works required if the proposal were to proceed.

5. LOCAL PLANNING PANEL ADVICE

Council sought preliminary advice on the planning proposal from the Local Planning Panel at a public panel meeting held on 20 June 2018. The Panel deferred the matter for a further meeting before the same Panel with a detailed report including recommendations. Given the role of the Panel is to provide independent advice, a recommendation from Council would remove the independence of the views and advice of the Panel.

It is considered that Council has fulfilled its obligation under the Ministerial Direction for referring planning proposals to the Local Planning Panel and the matter will not be referred again for further consideration.

6. MATTERS FOR CONSIDERATION

The planning proposal requires consideration of the following matters:

- a) Bush Fire Affectation;
- b) Loss of Agricultural Land;
- c) Land Use Conflict;
- d) Potential Precedent for Locality; and
- e) Biodiversity Protection.

a) Bush Fire Affection

In addition to the above concerns raised by the NSW RFS, the site is identified as both Vegetation Category 1 and the associated 100m buffer. Figure 5 illustrates the relevant bush fire mapping. Vegetation Category 1 is considered to be the highest risk for bush fire due to its high combustibility and likelihood of forming fully developed fires and heavy embers. This category is allocated a 100m buffer due to this high risk. The entire site is identified as either Category 1 Vegetation or buffer. A new draft bush fire map was developed by the RFS in consultation with Council and updated vegetation data. This map was endorsed by Council at a meeting on 13 March 2018 and is currently awaiting sign off from the Commissioner of the NSW Rural Fire Service. In the new mapping the site retains its Category 1 bush fire status and 100m buffer.

As noted in section 4 above, Council cannot issue development consent for a rural cluster subdivision without approval from the NSW RFS, as it is considered Integrated Development. Although these issues can sometimes be resolved at the development application stage, a recent meeting with the RFS indicates they are having difficulty approving rural cluster developments on existing land zoned RU2 Rural Landscape. This is due to some sites being incompatible with this type of development as a result of bush fire risk, topographical constraints and significant vegetation.

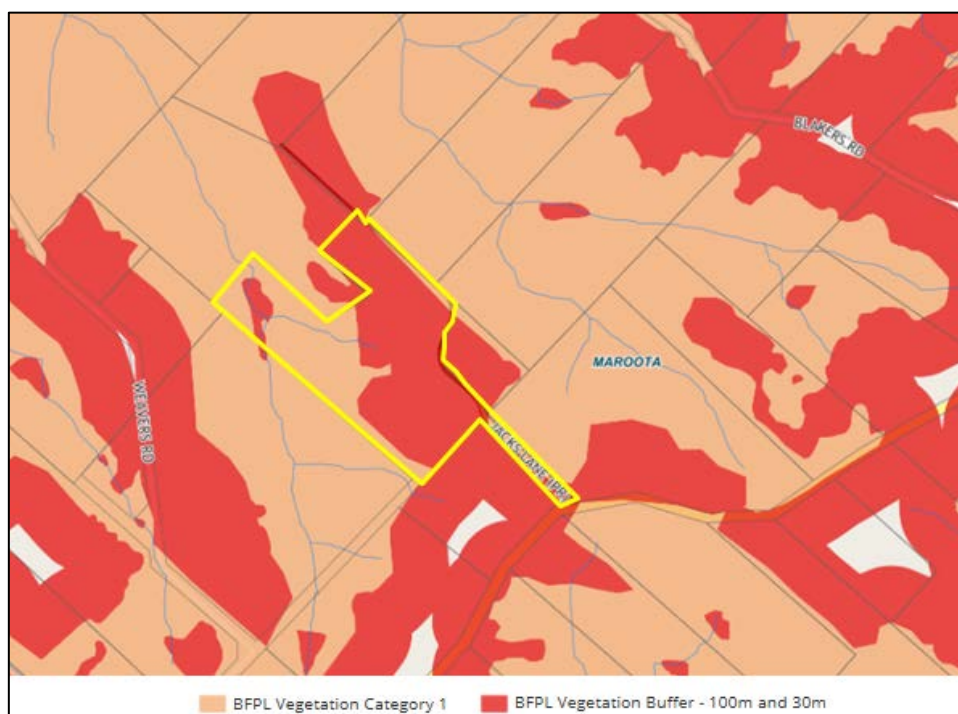


Figure 5
Planning for Bush Fire Protection Mapping

Planning for Bushfire Protection stipulates requirements for access to properties via public roads, internal driveways and fire trails. Access via public roads is intended to provide safe operational access to structures and water supply for emergency services, while residents are seeking to evacuate from an area. It should provide alternative access or egress for firefighters and residents during a bushfire emergency if part of the road system is cut by fire. There are minimum widths and construction standards that are required to be met to enable safe access to sites identified as bushfire prone. The nearest public road is Wisemans Ferry Road, located between 220m and 650m from the proposed lots, with other properties currently gaining access beyond 650m. Jacks Lane is private road and is not constructed to the required widths and standards. Therefore,

site is not consistent with the requirements of Planning for Bushfire Protection in terms of access from public roads.

Further, internal roads for community title subdivisions are required to be two traffic lanes wide and be through roads. Internal roads are required to be of sufficient width and design to enable safe access for emergency services and allow crews to work with equipment about the vehicle. Dead end roads are not permitted to be more than 200m in length. Given that Jacks Lane is approximately 650m long, to the end of the subject property and is not a through road the site does not meet the requirements of Planning for Bushfire Protection.

Planning for Bushfire Protection also requires access via fire trails to provide suitable access for fire management purposes and maintenance of APZ. It notes that fire trails may surround isolated dwellings or groups of dwellings and could form part of the protection area around dwellings. However, fire trails are generally required to be under Council management to ensure that maintenance occurs. In exceptional circumstances an alternative is for them to be identified via an easement and rights of way on private land, with a community title arrangement to ensure ongoing maintenance. The fire trails provided proposed would only partially satisfy these requirements.

In addition to the requirements of Planning for Bushfire Protection, the NSW RFS have released a Fact Sheet 'Multi Lot Residential Subdivisions in Bush Fire Prone Areas' specifically related to rural cluster subdivisions. It notes that perimeter roads are to be provided separating developable lots from conserved bushland areas, to provide a fuel free area adjacent to the hazard and ensure suitable unrestricted access for firefighting and fire management purposes. It also requires the consideration of an APZ in addition to those required under Planning for Bushfire Protection. The planning proposal only provides a dead end fire trail between the proposed lots and the vegetation, rather than the perimeter road (which is required to be through road).

The proponent has previously investigated a secondary egress via an unformed Crown Road indicated in red in Figure 6. This option was investigated as a means to meeting the requirements of Planning for Bushfire Protection by providing a secondary egress to overcome the length and dead end nature of Jacks Lane and the proposed roads within the subdivision. However, this road would require residents and fire fighters to travel back through bush fire hazard. The presence of vegetation means the road is likely to be cut off in the event of a bush fire and this is not an appropriate or safe egress for residents and firefighters. Further, construction of this road would require consent from the Crown and additional clearing of significant vegetation and endangered species. Further clearing to support the development would weaken the improved biodiversity outcomes sought through the rural cluster subdivisions. Biodiversity protection is discussed in greater detail in sub-section (f) below.

In addition, the Crown Road links to Weavers Road, which is not a through road. The distance of the Crown Road through to Wisemans Ferry Road is 700m (beyond the maximum 200m) and is not likely to resolve access issues and adequately ensure safe access to and from the site in the event of a bush fire.



Figure 6
Unformed Crown Road linking to Weavers Road

The proposal has not demonstrated that the future development can comply with the requirements of Planning for Bushfire Protection and ensure the safety of future residents and fire fighters. It is not recommended to proceed with the proposal, given the risks to life and property that are likely to occur if the development was to proceed.

b) Loss of Agricultural Land

The Rural Lands Strategy completed in 2003 identified that while the Shire did not have a great deal of high class agricultural land (Classes 1 to 3), it did have some significant pockets located at Box Hill, Maraylya, Cattai, Maroota and South Maroota and along the banks of the Hawkesbury River in Sackville North and Lower Portland. Much of the agriculture practiced in these areas comprised of intensive plant growing activities such as nurseries, cut flowers, hydroponics and market gardening.

Over the last 10 years there has been a gradual decline in total output (gross revenue) and jobs associated with the agriculture, forestry and fishing industry in the Shire. Currently this industry sector contributes approximately \$163.8m (or 0.9%) to the Shire's \$18.9b economic output. In 2007 it contributed approximately \$171.5m (or 1.74%) to the Shire's \$9.8b output. This represents a decline of \$7.7m despite the Shire's output almost doubling over a 9 year period. Likewise, total jobs for the industry sector have reduced from 899 jobs in 2007 to 486 jobs in 2016 (Source: Remplan data, April 2016).

Desktop analysis of aerial imagery from 2005 to 2014 identifies that there has been a reduction in land area within the Shire used for horticultural activities (329.7 ha in 2005 and 317.8 ha in 2014). Part of the loss of agricultural land has been a result of urban

development in the release areas. However, there has also been a -7.3% decrease in the area of land used for horticulture in the RU1 Primary Production zone in Maroota since 2008 (refer Table 1).

	2008	2014	% change
Horticultural activities (market gardens, orchards, crops)	161.7ha	149.74ha	-7.3%
Extractive industries	102.9ha	120.9ha	+17.4%

Table 1
Changes to horticultural activities and extractive industry operations
RU1 Primary Production zone 2008 to 2014

The Maroota area is characterised by dispersed agricultural lots used predominately for intensive horticultural purposes such as market garden cultivation, orchard vines and large crops. Extractive industry operations within the SREP No.9 boundary have increased in land area by 17.4% since 2008 (refer Table 1) and partly account for the reduction in horticultural activities in the locality. Figure 7 shows the changes to horticultural activities and extractive industry operations in the RU1 Primary Production zone between 2008 and 2014. The map indicates that the subject site was previously used for horticulture activities in 2008.

A five class system used by NSW Agriculture classifies land in terms of its suitability for general agricultural use. Agricultural land is classified by evaluating biophysical, social and economic factors that may constrain the use of land for agricultural purposes. The subject site is identified as a mix of two classes being predominantly Class 3 and a portion of Class 4 where significant vegetation exists on site (see Figure 8). The Department of Primary Industry has indicated that Class 3 is the preferred land for soil based agriculture.

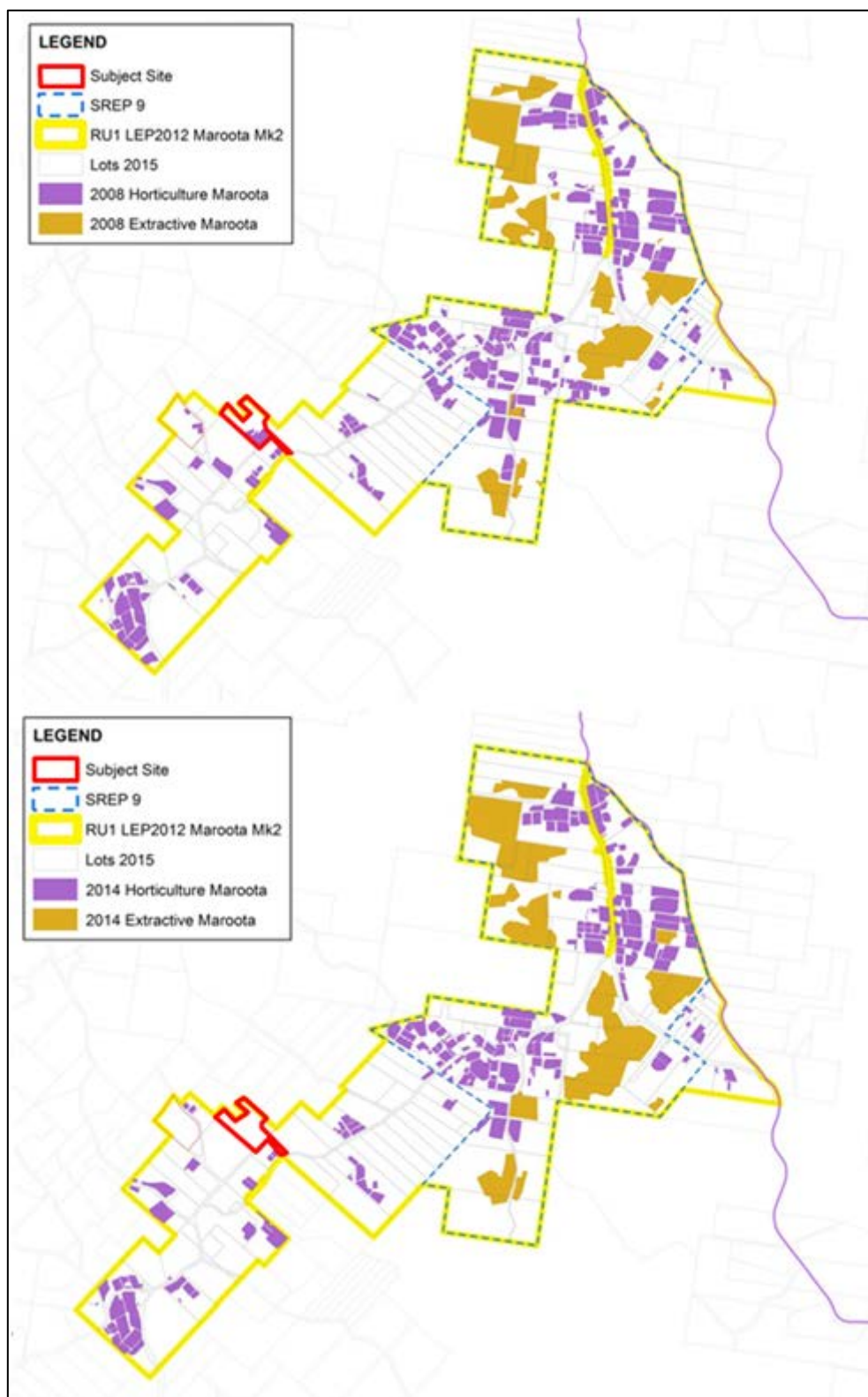
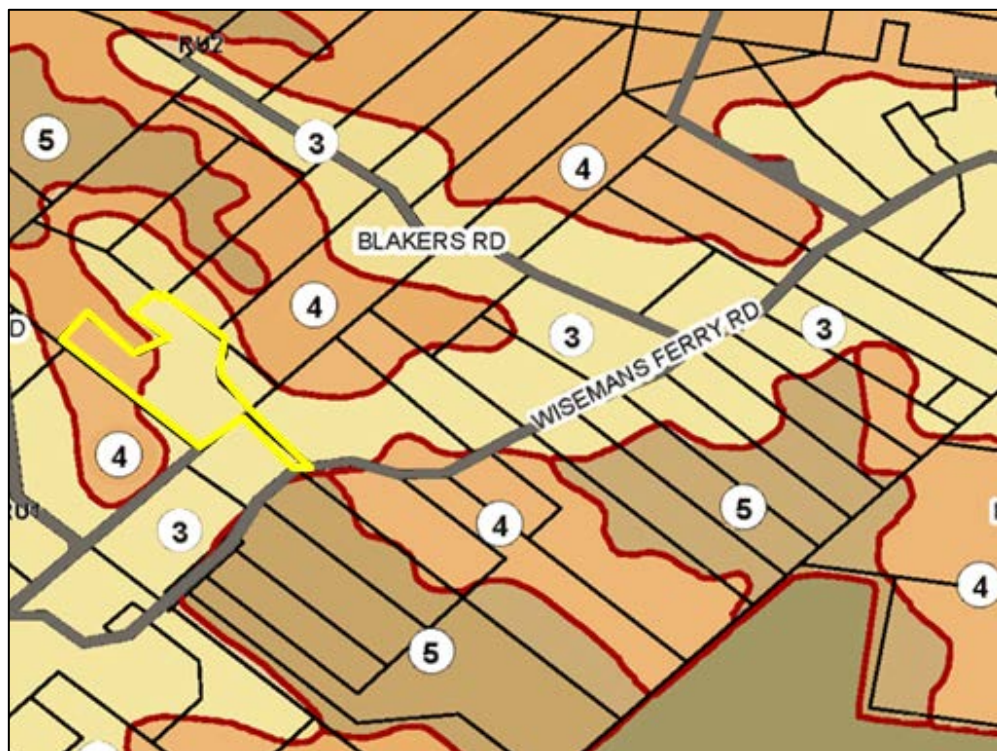


Figure 7

Changes to horticultural activities and extractive industry operations in RU1 Primary Production zone from 2008 to 2014

**Figure 8**

Agricultural land classifications in Maroota locality

In support of the planning proposal the proponent has submitted a soil chemistry profile to determine the suitability of the soil for agricultural purposes. The profile found that the current soil quality is extremely acidic and aluminium can be toxic to plants. It also found a low ability to retain water and nutrients. The soil profile concluded that in its current state the soil is not ideal agricultural soil because it is sandy, has poor nutrient and water holding and is strongly acidic.

The profile analysis further concluded that while the current state of soil is not ideal for agricultural use, the soil quality can be improved to allow adequate water and nutrient holding of a reasonable productivity. The current soil quality is likely a result of the land being removed from production. Lots that are not currently in production do not automatically lose their agricultural potential. Agricultural practices are still encouraged on this land and in the wider locality, and as a result agricultural potential still remains on the subject site.

The proponent submitted a copy of title restrictions applicable to the land that prohibit the use of commercial poultry farming, pig farming, market gardening and mushroom farming. The soil may be improved to support other agricultural uses not prohibited including hydroponics which does not rely on soil quality to determine its production potential. If the proponent sought to pursue activities prohibited on their site, the restrictions could be lifted by Council.

The proponent also submitted correspondence from Council indicating that the rates classification for the subject site has been changed from farmland to residential. This is a result of the land not currently being used for agricultural purposes. If the land were brought back into agricultural production, the rates classification would revert back to farmland.

In addition to the above, loss of agricultural potential on adjoining sites must also be considered as a result of the increased potential for land use conflicts arising from rural residential development. The following section provides further discussion on land use conflicts.

c) Land Use Conflict

The issue of rural land use conflict arises where there is inadequate separation between incompatible land uses and misunderstanding around the purpose, role and character of a locality. Rural land use conflicts often result in farmers ceasing operations and being forced to move to alternative locations.

The most significant conflict in this locality is the pressure for rural residential development and landowners desire to subdivide their land. An increase in residential development in the locality increases the probability and likelihood of compromising surface and groundwater quality and quantity that is relied upon for agricultural production.

The subdivision of land reduces the ability to locate residential development at a safe distance from surrounding agricultural uses. Conversely, the potential to put agricultural land back into production is limited where residential development has encroached onto neighbouring land. Noise, odour, dust, visual and lighting impacts, road damage, traffic management and safety in the locality are not only intensified, but incrementally affect a growing number of residents as they move into the locality.

Introducing more residential development into the area perpetuates a cyclical issue of residents moving into the area for a certain desirable locality and the erosion of that local character as a result of incoming populations. Land use conflict arises where confusion surrounds the role of this locality in protecting and encouraging agricultural land use rather than facilitating further residential subdivision.

d) Potential Precedent for Locality

The circumstances of the site used by the proponent to justify the proposal (the site being on the periphery of RU2 with potential for natural extension of the RU2 zone and containing significant vegetation on site) are not unique to this site and could be used to justify similar rezoning of a number of other properties within the locality. This proposal should be considered in the context of the implications for similar sites in the locality and the potential wider threat to land with current and future agricultural potential.

Figure 10 below identifies other sites in the locality that are currently zoned RU1 Primary Production, adjoin RU2 Rural Landscape, are greater than 10 hectares in size and comprise vegetation on site. Rezoning all nominated sites on this basis would result in a significant loss of land with agricultural potential, significant land use conflicts and fragmentation and alienation of the remaining agricultural land. Rural residential development threatens the viability of agricultural use on adjoining land as land use conflicts become more prominent, farmers become the minority and stop investing in their land with the growing expectation that their land can be sold for future residential development.

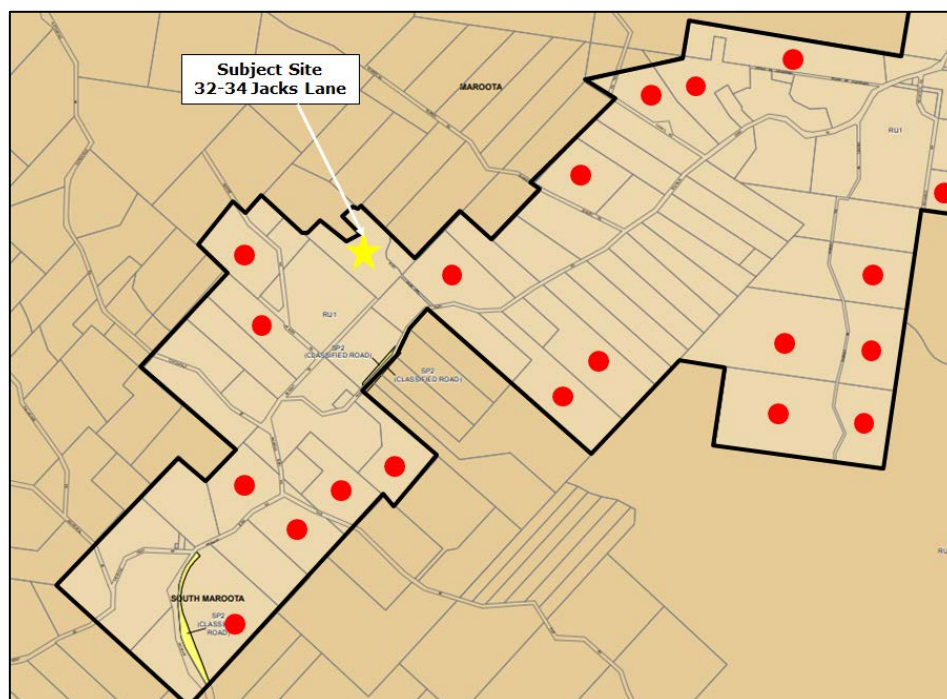


Figure 9

Lots greater than 10ha with significant vegetation and bordering RU2 Rural Landscape

In identifying these sites it is acknowledged that each site would be considered on its merits, in particular whether biodiversity outcomes outweigh the retention of agriculturally productive land or risk of damage from a bush fire event. Notwithstanding this, the wider strategic implications of this planning proposal have not been adequately addressed by the proponent to justify the progression of the proposal.

e) Biodiversity Protection

The planning proposal provides the opportunity to identify the on-site vegetation on Council's Terrestrial Biodiversity Map. This would facilitate the natural extension of the Biodiversity Map at current (see Figure 11 below).



Figure 10

Current Extent of Terrestrial Biodiversity Map

Council's vegetation mapping identifies the western portion of the site as Shale Sandstone Transition Forest, which is a species listed as a Critically Endangered Ecological Community under the Biodiversity Conservation Act 2016. The flora and fauna report submitted in support of the proposal identified more than 21% of Shale Sandstone Transition Forest (High Sandstone Influence) species to be present on site. The Biodiversity status placed the biodiversity value of the site as high and significant (see Figure 12 for Council's vegetation mapping).

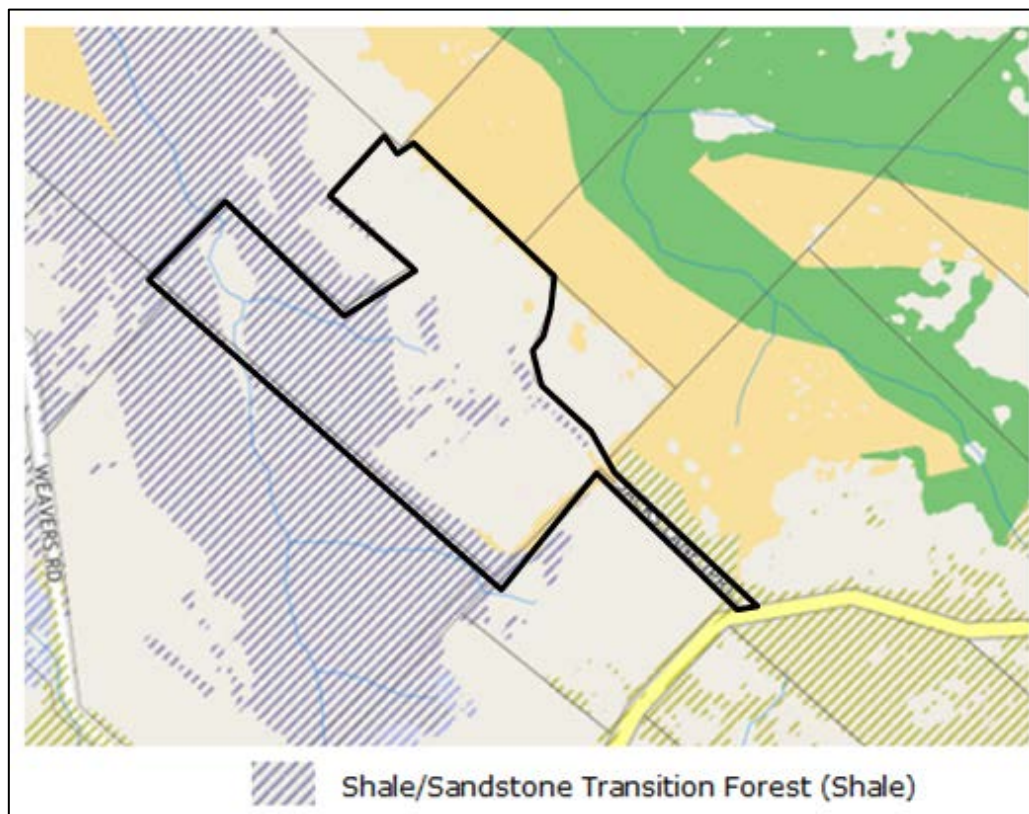


Figure 11
Significant vegetation on site

While the significance of the vegetation is acknowledged, it only covers approximately 37% of the site and would cover approximately 60% of the community title lot. The coverage of this vegetation is not extensive enough to ensure a significant biodiversity value can be secured, managed and protected. Further clearing of vegetation for the construction of a fire trail to the unformed Crown Road is not likely to be supported on the grounds of removing significant vegetation. This casts further doubt on the biodiversity outcomes that could be secured on the site. It is considered that an appropriate balance has not been struck between mitigating bush fire risk and ensuring protection of biodiversity values. It should also be noted that the source of biodiversity value is also an unmanaged hazard that is highly flammable and prone to bush fire. If a bush fire event were to occur in this locality it would result in a temporary loss of all biodiversity on the site.

Further, it should be noted that the proponent's bush fire comments described the bush fire hazard (subject vegetation) as "patchy and disturbed and not a true forest structure". If the proposal were to proceed, further clarification would be sought as these comments do not reflect those provided in the flora and fauna report provided by the proponent.

Council would require an updated flora and fauna report that responds to the new Biodiversity Conservation Act 2016, specifically whether the Biodiversity Offset Scheme would be triggered in this instance and whether the potential biodiversity impact is considered "serious and irreversible" if the proposal were to proceed.

7. OPTIONS

Option 1

The planning proposal to rezone land from RU1 Primary Production to RU2 Rural Landscape to facilitate a future rural cluster subdivision be forwarded to the Department of Planning and Environment for Gateway Determination.

If Council were to forward the planning proposal for a Gateway Determination, the comments from the NSW Rural Fire Service would need to be attached, indicating that the proposal does not meet Ministerial Direction 4.4. The Department would need to consider these comments in determining whether to issue a Gateway Determination or not. In addition, the following information would be required by Council prior to commencement of public exhibition:

- Further justification in terms of bush fire risk, including exploration of a second egress to the unformed Crown Road;
- A traffic impact statement that considers the additional traffic potential, road safety and vehicle movements;
- A strategic concept plan for road upgrades providing details of a dished crossing upgrade, intersection advance warning signs and any other required upgrade works, turn treatments, simultaneous access and egress at the junction of Jacks Lane and Wiseman's Ferry Road and existing sightlines; and
- An updated flora and fauna report that addresses the impact of potential clearing for the fire trail and improved sightlines, responds to the new Biodiversity Conservation Act 2016, specifically whether the Biodiversity Offset Scheme is triggered and updated assessments of significance.

Option 2

The planning proposal not proceed to the Department of Planning and Environment for Gateway Determination.

It is recommended that Council not proceed to Gateway Determination, as per Option 2 for the reasons outlined in this report. The key reasons being inconsistency with the strategic planning framework and the significant bush fire risk that is not able to be mitigated through design solutions at the development application stage.

Option 3

The planning proposal be held in abeyance pending the outcome of planning proposal 16/2015/PLP applicable to land at 90 Weavers Road, Maroota. This option is not recommended as the outcome of 90 Weavers Road, Maroota will not have a significant bearing on the ability of this site to comply with the requirements of Planning for Bushfire Protection.

IMPACTS

Financial

This matter has no direct financial impact upon Council's adopted budget or forward estimates.

Strategic Plan - Hills Future

The planning proposal is inconsistent with Council's Strategic plan in that it does not manage Council's built and natural environment and facilitate an outcome of balanced urban growth.

RECOMMENDATION

The planning proposal to amend zoning and Terrestrial Biodiversity mapping for land at 32-34 Jacks Lane, Maroota not proceed to Gateway Determination for the following reasons:

1. The planning proposal is inconsistent with the objectives of state and local strategic policy, specifically the retention and protection of land with agricultural potential.
2. The planning proposal would facilitate an inappropriate outcome on a site that is unsuitable for intensification of development due to its proximity to bush fire hazard.
3. The planning proposal would result in the loss of land with agricultural potential and would contribute to the fragmentation and alienation of surrounding agricultural land.
4. The planning proposal will set a precedent for similar sites in the locality and diminish the role of the locality in encouraging and protecting agricultural land practices.
5. The opportunity to map biodiversity protection does not provide a significant benefit to justify strategic inconsistencies.
6. The planning proposal poses a significant bush fire risk that is not supported by the NSW RFS and non-compliance with Planning for Bush Fire Protection 2006 cannot be mitigated through design solutions.

ATTACHMENTS

Nil.

A MOTION WAS MOVED BY COUNCILLOR HASELDEN AND SECONDED BY COUNCILLOR PRESTON THAT the planning proposal to rezone land from RU1 Primary Production to RU2 Rural Landscape to facilitate a future rural cluster subdivision be forwarded to the Department of Planning and Environment for Gateway Determination.

354 RESOLUTION

Being a planning matter, the Mayor called for a division to record the votes on this matter

Mayor Dr M R Byrne
 Cllr R A Preston
 Cllr Dr P J Gangemi
 Cllr B L Collins OAM
 Cllr R Jethi
 Cllr M G Thomas
 Cllr F P De Masi
 Cllr A N Haselden
 Cllr S P Uno

Clr R M Tracey
Clr A J Hay OAM

Clr E M Russo

A MOTION WAS MOVED BY COUNCILLOR TRACEY AND SECONDED BY COUNCILLOR HASELDEN THAT the Recommendation contained in the report be adopted.

355 RESOLUTION

1. The draft Planning Agreement Policy (Attachment 3 – ECM Document No.17010707) and draft Works-in-Kind Policy (Attachment 4 – ECM Document No.17010708) be subject to a legal review, prior to public exhibition.