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Plan finalisation report – 2016_WOLLY_003_01

Wollondilly Local Environmental Plan 2011 - 600 West
Parade, Buxton

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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Wollondilly Local Environmental Plan 2011 .

1.1.2 Site description

Table 1 Site description

Site Description	Type	Council Name	LGA
The planning proposal (Attachment A) applies to land at 600 West Parade, Buxton. (Lot 1 DP 940895) (Figure 1).	Site	Wollondilly Shire Council	Wollondilly



Figure 1 Site context, subject site outlined in red

The site is located on the northern fringe of Buxton on the corner of West Parade and Johnson Streets. It is 1.6ha in area and contains a single storey cottage with four sheds/garages. The site has been cleared of extensive vegetation.

1.1.3 Purpose of plan

The planning proposal seeks to amend the Wollondilly Local Environmental Plan 2011 (Wollondilly LEP 2011) by:

- Rezoning the site from RU1 Primary production to part E3 Environmental Management and R5 - Large Lot Residential, to enable a small large lot residential development;
- Apply a 9m building height control;
- Reducing the minimum lot size; and
- Amend the Natural Resources Biodiversity Map to include the revegetation area.

Table 2 below outlines the current and proposed controls for the LEP.

Table 2 Current and proposed controls

Control	Current	Proposed
Zone	RU1 Primary Production	Part R5 Large Lot Residential Part E3 Environmental Management
Maximum height of the building	N/A	9m
Minimum lot size	40ha	4000m ²
Number of dwellings	One	Up to four
Number of jobs	N/A	Not stated
Natural Resources – Biodiversity Map		Include area identified as Cumberland Plain Vegetation

1.1.4 State electorate and local member

The site falls within the Wollondilly State electorate. Mr Nathaniel Smith MP is the State Member.

The site falls within the Hume Federal electorate. The Hon. Angus Taylor MP is the Federal Member.

To the Western team's knowledge, neither MP has made any written representations regarding the proposal. There are no donations or gifts to disclose, and a political donation disclosure is not required. There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and alterations

The Gateway determination issued on 9/08/2016 (**Attachment B**) determined that the proposal should proceed subject to conditions.

The Gateway conditions include requirements to revise mapping to show the exact boundaries for the proposed zoning and map changes, and to address consistency with additional SEPP and Ministerial Directions.

The Gateway determination was altered twice on the following occasions:

- 19/07/2016 to amend condition 8 to extend the timeframe for completing the LEP to 18/08/2018 (12-month extension); and
- 29/08/2018 to enable the public exhibition to proceed and amend condition 8 to extend the timeframe for completing the LEP to 30/06/2019 (10-month extension).

In accordance with the Gateway determination the planning proposal was due to be finalised on 30/06/2019.

In November 2020 Council resolved to return all planning proposals which remained unresolved for more than four years since gateway determination to the Department for consideration. The Department has considered each proposal individually and given regard to the prevailing strategic planning framework for Wollondilly including the Local Strategic Planning Statement assured by the Greater Sydney Commission in early 2020.

3 Public exhibition and post-exhibition changes

3.1 Pre-Gateway Consultation

Prior to the submission of the planning proposal for Gateway determination, Council undertook pre-Gateway consultation. Council received three submissions, one submission from the community and two submissions from public agencies.

The issues raised in submissions related to the following aspects of the planning proposal:

- Infrastructure;
- Precedent of development;
- Bushfire Hazard;
- Native Vegetation;
- Loss of rural land;
- Need for planning proposal;
- Dwelling density;
- Housing;
- Community benefit;
- Traffic and transportation;
- Stormwater;
- Regional Strategies;
- Rural Urban Land Conflict; and
- Justification for planning proposal.

3.2 Gateway consultation

In accordance with the Gateway determination, the proposal was publicly exhibited from 12/12/2018 to 1/02/2019. No public submissions were received.

3.3 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with agencies listed in Table 3, which summarises the feedback received. Table 3 outlines Council's position on agency advice. The Department does not share Council's view on all matters and the Department's assessment follows at section 4.

Table 3 Advice from public authorities

Agency	Advice raised	Council response
Sydney Water	<p><i>22 October 2020</i></p> <p>Water and wastewater systems do not have capacity to support the proposal.</p>	<p>Sydney Water has not committed to servicing the site with reticulated wastewater due to ongoing network constraints. Council have been working under the assumption that wastewater will be treated onsite. There should be adequate land area under a three-lot layout for this to occur, but it is not possible with 4 lots.</p>
Water NSW	<p><i>20 December 2018</i></p> <ul style="list-style-type: none"> The site is capable of achieve a satisfactory NorBE on water quality, however this does not preclude the requirement for any subsequent development to have a NorBe on water quality before consent is granted. Unclear if the approvals or otherwise for the clearing of the vegetation were taken into consideration when determining the pre-development state Support the rezoning of part of the site to E3 Environmental Management and including sensitive land in the Natural Resources Biodiversity Map. Concerned with the spot rezonings in the area results in the proliferation of unsewered lots and the associated risks to water quality in the Sydney drinking water catchment. 	<p>Noted.</p>
OEH	<p><i>20 February 2019</i></p> <ul style="list-style-type: none"> OEH strongly supports the implementation of planning measures to assist with the restoration of all the cleared Shale Sandstone Transition Forest (SSTF) which was cleared without consent in 2013/14. However, this is not possible due to the bushfire protection requirements. Recommended Council consider applying a minimum lot size of 8,000m² to the whole site and split zoning the western portion of the site E2 or E3 in a configuration that would ensure all 3,800m² of the SSTF could be restored 	<p>Council is intending to protect and enhance the proposed revegetation of the western portion of the site by implementing a Vegetation Management Plan at the subdivision stage. The aim is to protect and enhance the revegetation area as much as possible while still allowing for an adequately sized APZ to be implemented.</p> <p>The APZ may encroach into the area identified as revegetation, this is deemed to be acceptable as long as the majority of the area identified within the amended Biodiversity study is being revegetated.</p>

Agency	Advice raised	Council response
	within impacting on bushfire protection requirements.	
RFS	<p><i>13 February 2018</i></p> <ul style="list-style-type: none"> There is a land use conflict between the E3 rezoning objective to support the regeneration of native vegetation to the rear of the site and considering the minimum asset provision zone requirements for future development within the site. The assessment does not identify the land within the site which is not suitable for the creation of APZs and RFS is unsure if future development within the site will result in conflicting land use management objectives. The proposal should not progress until the matter of conflicting land use management objectives is resolved. <p><i>15 December 2020</i></p> <p>RFS provided advice that it is preferable that the council carries out its Shire wide Natural and Manmade Hazards and Emergency Management Study and that any proposal for the site would be required to be assessed against the updated Bush Fire Protection 2019 provisions (in particular chapter 4 – Strategic Planning).</p> <p>The RFS also mentioned it was concerned that based on the recent 2019/2020 bush fire season experienced by Wollondilly a number of evacuation and traffic management issues as a result of bush fires were evident and therefore it held concerns that the cumulative impacts of 'spot rezoning's' such as this may exacerbate these adverse experiences.</p>	<p>Council consider that the conflicting land use objectives can be resolved as a substantial area has been identified and has the potential to be regenerated in the western portion of the site.</p> <p>In addition, Council is of the view that for a suitable APZ to be implemented, an overlap into the area identified for revegetation is required, in this case it is deemed acceptable that the APZ take precedent over the proposed revegetation area.</p>
RMS	<p><i>11 January 2019</i></p> <p>RMS does not believe the proposal will have a significant impact on the state road network and on that basis does not object to the planning proposal.</p>	Noted.
TfNSW	<p><i>14 January 2019</i></p> <p>TfNSW has no comments.</p>	Noted.

Agency	Advice raised	Council response
Local Land Services	<p><i>12 December 2018</i></p> <ul style="list-style-type: none"> No objection to the proposal. The area is currently under the sensitive land layer of Native Vegetation Regulation map and the Biodiversity map. However, noting that the site was cleared between November 2013 and January 2014 without consent. Recommends Council seek explanation from the land holder why clearing was undertaken. An EPBC referral may be required. 	Noted.
Endeavour Energy	<p><i>31 January 2019</i></p> <ul style="list-style-type: none"> There are no easements over the site benefitting Endeavour Energy. No objections to the planning proposal. 	Noted.

3.4 Post-exhibition changes

Following public exhibition Council requested that the applicant prepare a revised concept lot layout which accommodated the APZ, revegetation area, building envelopes and appropriate setbacks.

Council also requested that further information was provided to address Council's LSPS action to develop a Shire-wide *Hazards Analysis and Emergency Management Study* to evaluate the threats and risk level from both natural and manmade hazards and establish appropriate management.

A draft Bushfire Assessment Report has been provided considering the subdivision of the site into three lots.

4 Department's Assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination (**Attachment B**) and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal (as modified).

As outlined in the Gateway determination report (**Attachment C**), the planning proposal submitted to the Department for Gateway determination was:

- consistent with the regional and district plans in place at the time of Gateway determination;
- inconsistent with Ministerial Directions for 2.1 Environmental Protection Zones and 4.4 Planning for Bushfire Protection; and
- inconsistent with all relevant SEPPs.

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment,

requires further analysis or requires reconsideration of any unresolved matters these are addressed in Section 4.1

Table 4 Summary of strategic assessment

	Consistent with Gateway determination report Assessment	
Regional Plan	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
District Plan	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
Local Planning Panel (LPP) recommendation	Gateway determination made prior to requirement for planning proposals to be referred to the Local Planning Panel.	
Ministerial Directions	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1

Table 5 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Environment impacts	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
Infrastructure	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1

4.1 Detailed Assessment

In November 2020 Council resolved to return all planning proposals which remained unresolved for more than four years since Gateway determination to the Department for consideration. The Department has considered each proposal individually and with regard to the prevailing strategic planning framework for Wollondilly including the Local Strategic Planning Statement assured by the Greater Sydney Commission in early 2020.

The following section provides details of the Department's assessment of key matters and any recommended revisions to the planning proposal to make it suitable.

4.1.1 Strategic Alignment

Strategies at Gateway Determination

Sydney Metropolitan Strategy and Draft South West Subregional Strategy

The planning proposal was found to be consistent at Gateway determination with these strategies as it promoted opportunities for housing adjacent to existing urban areas.

Wollondilly Growth Management strategy

The Wollondilly Growth Management strategy, now superseded by the Local Strategic Planning Statement, does not identify the need for additional dwellings in Buxton. Council consider the proposal scale will have a negligible contribution towards housing.

Current strategies and policies

Greater Sydney Regional Plan (A Metropolis of Three Cities)

The planning proposal received a Gateway determination before the release of the Greater Sydney Regional Plan (A Metropolis of Three Cities) (Regional plan). Planning proposals are to be consistent with plan. The Regional plan nominates the site as being part of the Metropolitan Rural Area (MRA). The MRA is identified as having environmental, social and economic values that contribute to the region, and of importance for its capacity to produce agricultural products.

Strategy 24.3 identifies the need to protect and support agricultural production by preventing inappropriately dispersed urban activities in rural areas. Limited urban investigation areas are identified within the MRA to enable long term growth.

The site is not identified with the regional plan within an urban investigation area and as such the proposal for urban residential development is inconsistent with the Regional Plan.

Western City District Plan

The planning proposal received a Gateway determination before the release of the *Western City District Plan (District plan)*. The Western District Plan supports the aims of the Regional Plan with action 29, identifying the need to limit urban development, except to those areas identified for urban investigation.

The planning proposal is inconsistent with the following District Plan priorities:

- W1 - Planning for a city supported by infrastructure;
- W14 - Protecting and enhancing bushland and biodiversity; and
- W17 - Better managing rural areas.

The basis for this is that:

- inadequate measures have been provided for wastewater servicing to demonstrate an ability for the site to be serviced in an interim or permanent state;
- the site is located within the Metropolitan Rural Area and is not designated as a growth area. Housing targets at a regional and district level are not expected to be met through additional housing in the Metropolitan Rural Area, but rather through the new development in growth areas such as the Wilton and Greater Macarthur Growth Areas; and
- the cumulative impacts of bushfire on the Shire are unresolved. Concerns continue to exist about the ability to defend against major bushfire events, as well as ensure safe evacuation.

Local Strategic Planning Statement

Since issuing the original Gateway determination, the Wollondilly Local Strategic Planning Statement (LSPS) provides the framework for local planning for future housing, jobs, infrastructure and environment for the LGA. The LSPS sets out a 20-year vision for growth that takes into account the principles of the Metropolitan Rural Areas established by the Western City District Plan, the local housing strategy and wastewater capacity limits.

A key action (Action18.12) of the LSPS is to prepare a study in partnership with emergency service agencies to evaluate the threats and risk level from both natural and manmade hazards and establish appropriate management. The study will help inform Council's decisions on local growth and planning proposals. A site-specific strategic bushfire study prepared in accordance with *Planning for Bushfire Protection 2019* is also required to demonstrate consistency with the hazard's management approach being implemented under the LSPS. While a further study has

been provided, the RFS feedback is clear that it is their preference that the shire wide evaluation occur first.

The site is located within the Metropolitan Rural Area (MRA), which is outside the nominated growth areas of Wilton and Greater Macarthur. Instead the LSPS identifies seeks to contain all additional housing in the short term to be met on land already rezoned for towns and villages.

In terms of servicing and infrastructure the LSPS identifies:

“Significant servicing and infrastructure issues also constrains development, including restrictions from the Picton Wastewater Scheme and Water Recycling Plant which are at capacity. Impacting the Picton, Tahmoor and Thirlmere area and preventing further rezoning for at least five years.”

At this time however, the planning proposal does not give effect to LSPS as it does not provide effective planning to reduce the exposure of new urban development to urban hazards, permits incompatible urban development in a rural area and is not adequately supported by local infrastructure.

Ministerial Directions

Direction 2.1 Environmental Protection Zones

The objective of this Direction is to protect and conserve environmentally sensitive areas.

A vegetation rehabilitation site 3,800m² in area is proposed at the southern end of the site to facilitate the regrowth of previously removed Shale Sandstone Transition Forest.

The success of the rehabilitation area is dependent on the final alignment E3 Environmental Management zone boundary which will protect it, and the extent to which (if any) the APZ extends into the sensitive lands. Additional advice is required from Environment, Energy and Science (formerly OEH) and the RFS on those matters. The planning proposal cannot proceed until such time as those matters are resolved.

The inconsistency with Direction 2.1 Environmental Protection Zones is unresolved as the proposal does not facilitate the protection and conservation of environmentally sensitive areas.

Direction 3.1 – Residential Zones

The objective of this Direction is to ensure residential zoned land is appropriately serviced by urban infrastructure.

The development cannot be adequately serviced by wastewater infrastructure. Sydney Water has advised that there is insufficient capacity in the existing wastewater system, to service the development. The inconsistency with Direction 3.1 Residential Zones is unresolved

Direction 4.4 – Planning for Bushfire Protection

The objective of this direction is to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas.

The Wollondilly local government area is highly exposed to bushfire hazard with significant areas mapped as bushfire prone land. To address requirements of *Planning for Bushfire Protection 2019* all planning proposals in bushfire prone areas are to be supported by a strategic bushfire study.

As committed to in the LSPS council will prepare a study in partnership with emergency service agencies to evaluate the threats and risk level from both natural and manmade hazards and establish appropriate management practices. The study will help inform Council's decisions on local growth and planning proposals. A site-specific strategic bushfire study prepared in accordance with *Planning for Bushfire Protection 2019* is also required to demonstrate consistency with the hazard's management approach being implemented under the LSPS. While a further study has been provided for the subject proposal, the RFS feedback is clear that it is their preference that the shire wide evaluation occur first.

The planning proposal's consistency with this direction cannot be established until such time as that study is complete. Therefore, the inconsistency with Direction 4.4 Planning for Bushfire Protection is unresolved.

4.2 Site Specific Assessment

4.2.1 Social and Economic Impacts

The planning proposal will generate social and economic benefit, creating jobs during its construction and new demand for local business services.

4.2.2 Environmental Impacts

The site contains areas of high environmental sensitive. As discussed above, impacts on those matters are unresolved.

Bushfire

As outlined in Section 4.1.1 of this report, until council carries out the shire wide natural and manmade hazards study to inform appropriate management outcomes for land and Council's decisions on local growth and planning proposals in rural areas, this proposal pre-empts this evaluation.

If this work helps demonstrate the potential suitability of the site despite the risk of bushfire a site-specific strategic bushfire study that is prepared in accordance with Planning for Bushfire Protection 2019 will be required to demonstrate consistency with the hazard's management approach being implemented under the LSPS. While a further study has been provided for the subject proposal, the RFS feedback is clear that it is their preference that the shire wide evaluation occur first.

4.2.3 Infrastructure

Wastewater

The Picton Water recycling plant (Bargo - Buxton) is operating at capacity and unable to receive effluent from any development on land currently zoned non-urban. Sydney Water has developed an integrated water strategy to increase the plant's capacity by increasing the use of recycled water on nearby farms. A variation to the plant's Environmental Protection Licence (EPL) is required to permit the change. Sydney Water plans to submit its licence variation application in early 2021 and expects a decision in the second half of 2021.

The Department and Sydney Water have under certain circumstances permitted Interim Operating Procedures (IOPs) including pump out of effluent for transport by tanker to another operating Sydney Water facility. The IOPs were permitted where there was certainty that service capacity would become available within a defined timeframe. This includes cases where the new servicing infrastructure was under construction, or funding had been committed for the infrastructure and its delivery programmed. In these cases an EPL for the wastewater treatment facility was also in place. In this instance, there is insufficient certainty to allow an IOP as the required upgrade works have not received environmental or funding approval.

The Water Industry Competition Act 2006 (WICA) establishes the framework to allow private sector participation in the water and wastewater industry. This can apply where package treatment facilities are used as an interim or long term measure to service development. Private sector delivery and management of infrastructure can provide significant benefit, but is not suitable in all circumstances. Applications for a WICA licence are made to the Independent Pricing and Regulatory Tribunal which have a service commitment to process applications in thirty-four weeks.

The planning proposal does not demonstrate the ability for the site to be serviced in an interim or permanent state. Its determination should not be deferred for a further extended period to allow for preparation, lodgement and determination of a WICA licence application.

If the Environment Protection Authority approves Sydney Water's licence variation application, Sydney Water will proceed with a business case for the related infrastructure. A successful licence variation application and business case may provide sufficient evidence for the Department to support a future planning proposal for the site.

We acknowledge that Council has progressed plans with the proponent to accommodate onsite wastewater disposal for the additional two lots, however this is not supported by the Department, in light of the Sydney Water's advice dated 22 October 2020.

5 Recommendation

The extensive work and time taken to attempt to address and resolve matters relating to the proposal is acknowledged. However, many of these matters as outlined in this report continue to remain unresolved or are dependent on further approvals and studies to be conducted by other authorities.

On this basis the proposal fails to demonstrate that the site is suitable for the proposed development resulting from the land being rezoned in accordance with the subject planning proposal. Added to this proposal is presently not aligned with the priorities and directions set in the Regional, District and local strategic plan framework for Wollondilly LGA.

Therefore, it is recommended that the Minister's delegate determine to alter the Gateway determination to not proceed under clause 3.34(7) of the *Environmental Planning and Assessment Act 1979* given that:

1. there is an unresolved land use conflict between the E3 rezoning objective to support the regeneration of native vegetation to the rear of the site and the minimum asset provision zone requirements for future development within the site;
2. inadequate measures for bushfire evacuation can be implemented to minimise potential risk to life arising from rezoning the site;
3. there are inadequate measures for wastewater servicing to demonstrate an ability for the site to be serviced in an interim or permanent state;
4. the proposal is inconsistent with regional, district and local strategic planning frameworks presently in place for Wollondilly LGA; and
5. the proposal is inconsistent with Section 9.1 Directions 2.1 Environmental Protection Zones, 3.1 Residential Zones, and 4.4 Planning for Bushfire Protection remain unresolved, hence all related issues remain unresolved.



18/12/2020

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Attachments

Attachment A – Planning Proposal November 2018

Attachment B – Gateway determination 9 August 2016 and alterations

Attachment C – Gateway determination report