

Greater Sydney, Place and Infrastructure

IRF19/1754

Plan finalisation report

Local government area: Wollondilly Shire

1. NAME OF DRAFT LEP

Wollondilly Local Environmental Plan 2011 (Amendment No 38) (draft LEP). The draft written instrument is at **Attachment LEP**.

2. SITE DESCRIPTION

The draft LEP applies to land located to the west of the existing Appin township fronting Macquariedale and Appin Roads. Appin is located approximately 70km south-west of Sydney on the road between Campbelltown and Wollongong.

The site is bounded by Appin Road and Sportsground Parade to the east, vacant lots to the north and south, and undeveloped bushland followed by Ousedale Creek to the west (refer site map over)

Macquariedale Road travels east-west through the south of the site and three minor tributaries intersect the site draining in a westerly direction towards Ousedale Creek which meets the Nepean River 4km to the north.

Native vegetation on the site has been identified as Cumberland Plain Woodland and Shale Sandstone Transition Forest both of which are listed as critically endangered ecological communities under the NSW *Biodiversity Conservation Act 2016* and Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*. The remainder of the site has been cleared. This area is used for rural residential and agricultural (grazing) land uses.

The exhibited planning proposal (**Attachment A**) applies to land that has a total area of approximately 60ha in size and contains 30 lots. These lots are legally described in Table 1 below.

Table 1: Subject allotments

	Street Address	Lot	DP
1	55 Macquariedale Road	1	1218358
2	112 Heritage Drive	part 2035	1198686
3	40 Sportsground Parade	1	245866
4	61, 65 Appin Road	2, 3	1218358
5	1-8 Thomas Street	9-11, 18-20	270989
6	8, 10, 12, 14, 16, 18, 28, 30, 32 Sykes Avenue	2-7, 22-24	270989
7	11, 13, 15, 17, 19, 21, 29, 31, 33 Koolahs Street	1, 12-17, 25-27	270989



Figure 1: Approximate exhibited planning proposal boundary (red),

Figure 1 above shows the exhibited planning proposal boundary in red, the area of Council owned bushland in yellow adjoining Gordon Lewis Oval and the area proposed to be dedicated to the sportsground in green.

The site is currently zoned RU2 Rural Landscape, RE1 Public Recreation, R3 Medium Density Residential; and B2 Local Centre, under the Wollondilly LEP 2011.

3. PURPOSE OF PLAN

The draft LEP seeks to rezone the site for low and medium density housing and environmental conservation, as follows:

- Rezone RU2 Rural Landscape and retain 39.3ha of vegetation as E2 Environmental Protection and 20.1ha R2 as Low Density Residential;
- Rezone 2,000m² of B2 Local Centre to R3 Medium Density Residential;
- Introduce a maximum of 9m height of building controls for land proposed as R2 Low Density Residential and R3 Medium Density Residential;
- Introduce a minimum lot size of 450m² for the R2 Low Density Residential zone and 230m² for the R3 Medium Density Residential zone;

- Introduce minimum lot sizes of 5ha and 20ha for the E2 Environmental Conservation zone;

The planning proposal has potential to provide approximately 280 new dwellings.

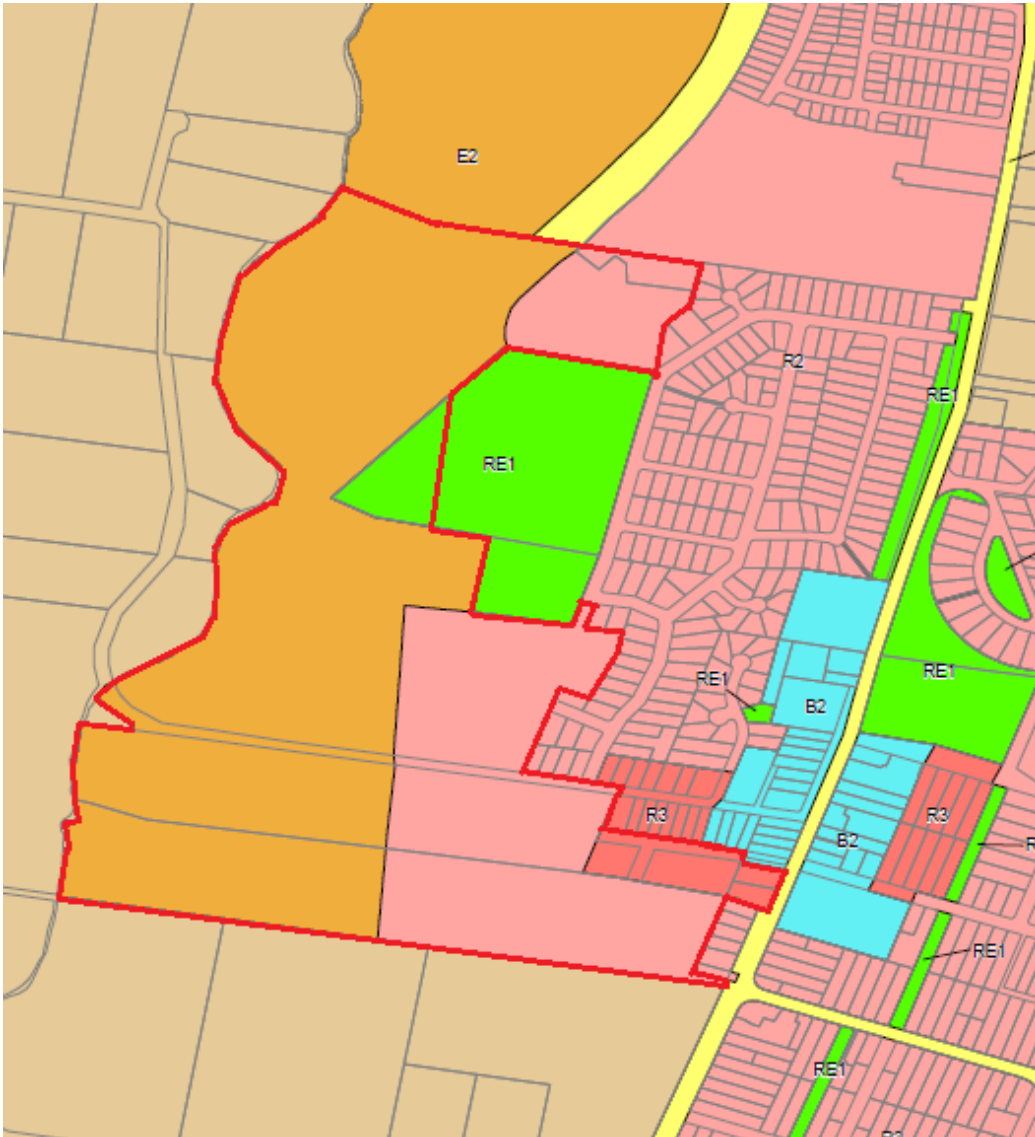


Figure 2: Proposed land zoning with approximate site boundary identified (red)

4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Wollondilly state electorate and within the Hume federal electorate. Mr Nathaniel Smith MP is the State Member. The Hon Angus Taylor MP is the Federal Member.

On 4 December 2019 representatives of Walker Corporation met with the Minister and the State Member. The planning proposal was discussed along with other proposals in the area. No further outcomes relevant to this proposal resulted.

To the team's knowledge, the Federal Member has not made any representations regarding the proposal.

NSW Government Lobbyist Code of Conduct: There have been no meetings or communications with registered lobbyists with respect to this proposal.

NSW Government reportable political donation: There are no donations or gifts to disclose and a political donation disclosure is not required.

GATEWAY DETERMINATION AND ALTERATIONS

The Gateway determination issued on 25 October 2011 (**Attachment B**) determined that the proposal should proceed subject to conditions. The Gateway determination was altered on:

- 4 October 2013 – for an extension of time to make LEP;
- 9 April 2014 – to include additional land to site area, update Gateway determination in line with current procedures to make the process more efficient, and extension of time to make LEP;
- 29 January 2015 – for an extension of time to make LEP;
- 16 October 2015 – for an extension of time to make LEP;
- 19 September 2016 – for an extension of time to make LEP;
- 12 April 2017 – removal of proposed road corridor (Appin Bypass), additional RE1 Public Recreation for a small triangular portion of land adjoining the north west corner of Gordon Lewis Oval and minor amendments to the biodiversity corridor; and
- 29 June 2017 - for an extension of time to make LEP (2 July 2018).

The Gateway alterations are at **Attachment C**.

All the Gateway conditions (apart from the making of the LEP on time) have been met.

5. PUBLIC EXHIBITION

6.1 Exhibited proposal

The planning proposal was publicly exhibited by Council for 100 days from 15 November 2017 to 28 February 2018. A draft Local Voluntary Planning Agreement, draft Biodiversity Certification Application and draft Development Control Plan were exhibited concurrently.

A summary of the key exhibited documents is provided below.

a) Planning Proposal

The exhibited planning proposal sought to rezone the site as follows:

- Rezone RU2 Rural Landscape and retain 38.98 of vegetation as E2 Environmental Protection zone;
- Rezone 21.18ha of RU2 Rural Landscape to part R2 Low Density Residential;
- Rezone 2,100m² of B2 Local Centre to R3 Medium Density Residential;
- Rezone 1,930m² of RU2 Rural Landscape to RE1 Public Recreation and dedicate to Council;
- Introduce a maximum of 9m height of building controls for land proposed as R2 Low Density Residential and R3 Medium Density Residential;
- Introduce a minimum lot size of 450m² for the R2 Low Density Residential zone and 230m² for the R3 Medium Density Residential zone; and
- Introduce minimum lot sizes of 5ha and 20ha for the E2 Environmental Conservation zone.

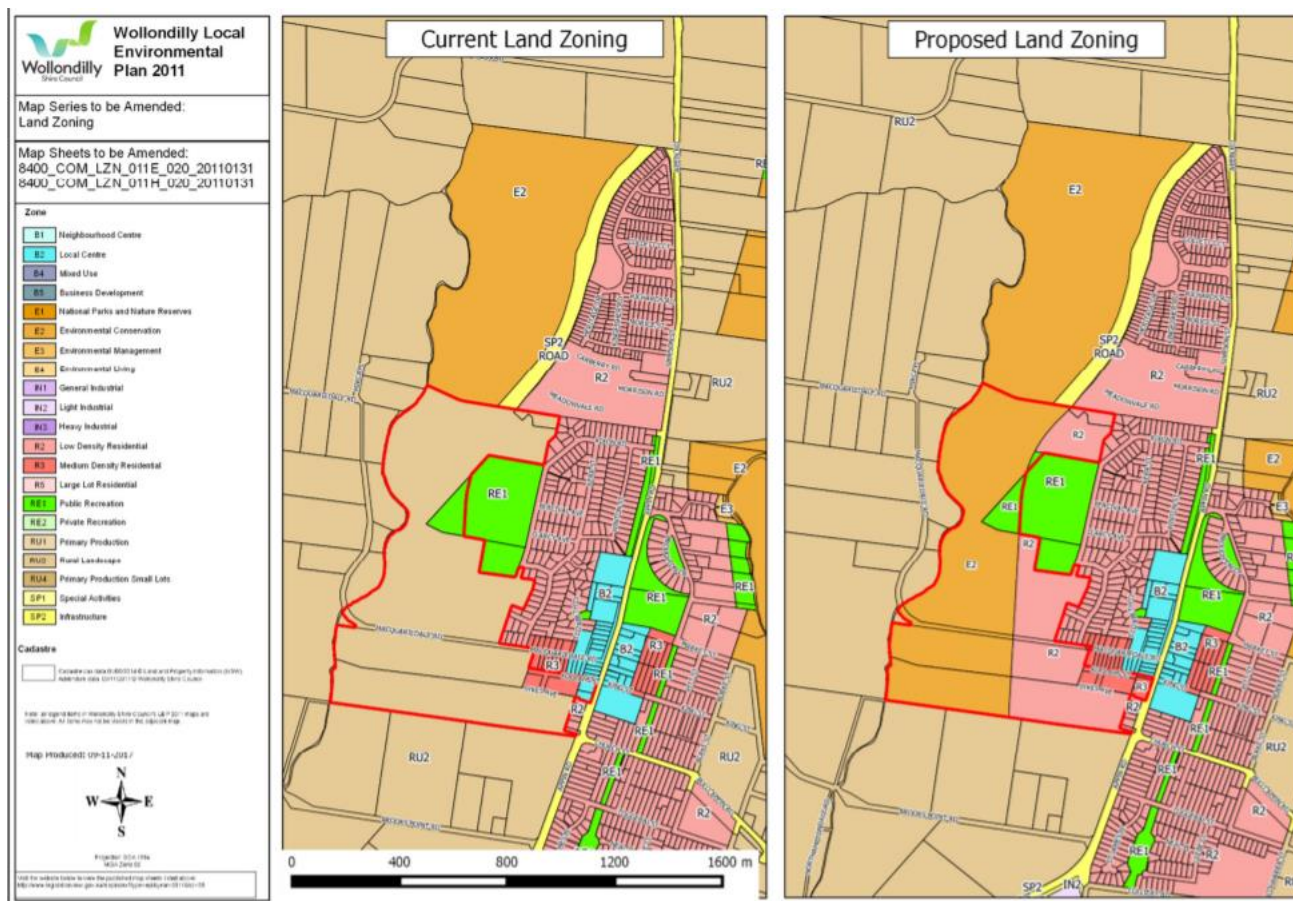


Figure 3: Comparison of existing (left) and exhibited (right) land zoning with approximately site boundary (red).

b) Local Voluntary Planning Agreement

A Local Voluntary Planning Agreement (VPA) was prepared to accompany the planning proposal for 215 final residential lots. The VPA represents a material public benefit in the order of \$9.55 million of works and monetary contributions and the dedication of land for a neighbourhood park, and embellishments to existing open space areas.

c) Biodiversity Certification Application

As part of the exhibited biodiversity certification, the proponent proposed to permanently protect and conserve environmental lands within the Macquariedale Road site (as an on-site stewardship site). In addition, the proponent intended to establish a stewardship site at Elladale Road, Appin which would involve the permanent protection of 18ha of vegetation.

d) Development Control Plan

Site specific development controls were proposed for inclusion within the Wollondilly Development Control Plan 2016 to guide the future development and address local transport issues including:

- Limiting the number of lots (18) within the site with road access to Macquariedale Road, and
- Requirement for intersection upgrades at:
 - Macquariedale Road and Appin Road;
 - Koolahs Street, King Street and Appin Road; and
 - Bulli Appin Road and Appin Road.

6.2 Community submissions

Council's post-exhibition reports (**Attachments D1-D3**) notes Council received 37 submissions from community members. Of these, one supported the proposal, 35 objected and one was neutral, but raised issues they would like addressed.

Five key issues were raised by the community and are discussed below.

1) Loss of vegetation and wildlife

Concerns included:

- Removal of Shale Sandstone Transition Forest and Cumberland Plain Woodland;
- Drainage to natural watercourses will be increased and development of this area would break wildlife corridors;
- Increase in cats, dogs and vehicles will threaten wildlife; and
- Establishment of precedent and further clearing of forested areas for new residential developments in the area.

Department Comment:

Shale Sandstone Transition Forest and Cumberland Plain Woodland are present on the site. Both are classified as Critically Endangered Ecological Communities under the *Biodiversity Conservation Act 2016* (BC Act) and Critically Endangered under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC). The Cumberland Plain Land Snail (*Meridolum corneovirens*) has also been recorded on site. Other threatened fauna and flora species were not identified.

The Department has received detailed advice from the Environment Energy and Science Group (EES) and recognises the importance of conserving these communities and species.

The draft LEP seeks to increase the level of protection applicable to vegetation and wildlife on the site through an E2 Environmental Conservation land use zone. With the biodiversity value of the vegetation, an E2 zone is a more appropriate zoning than the existing RU1 Primary Production zoning.

Following Council's decision to not proceed with the biodiversity certification application, the proponent has made an offer for a Voluntary Planning Agreement (VPA) to dedicate land to the State based on the identified urban capable footprint as indicated in the draft Cumberland Plain Conservation Plan (CPCP). Implementation of the VPA offer would enable the transfer of 562ha of conservation land. This is close to the size of the Western Sydney Parklands and will be established as conservation lands in perpetuity through biodiversity stewardship agreements.

2) Impacts on koala population and core koala habitat

Concerns included:

- The area proposed to be cleared is "Core Koala Habitat" as koalas were documented in the area late 2017 and this habitat should be protected; and
- The area proposed to be conserved (SSTF High Sandstone Influence) is of lower value to koala populations than the habitat which is nominated to be cleared (SSTF Low Sandstone Influence and Core Koala Habitat).

Department Comment:

As noted above, the proposal will result in the transfer of 562ha of conservation land to the State. This transfer will help implement the objectives of the draft CPCP, which was

supported by a detailed scientific assessment to avoid and minimise impacts to biodiversity values on the site.

The draft CPCP utilised the priority koala habitat restoration layer from the Wollondilly Koala Conservation Project to improve koala habitat regional connectivity and prioritise areas for restoration in South Western Sydney. This is to be achieved by adding to existing reserves and establishing new public reserves and biodiversity stewardship sites, such as the proposed transfer of land to the State relating to this proposal. The 39.3ha of land proposed to be rezoned E2 Environmental Conservation comprises Shale Sandstone Transition Forest, priority Koala habitat and Cumberland Plain Land Snail habitat. Therefore, on balance, the potential benefits of the proposal to koala population and habitat outweigh the loss of 20.1ha of vegetated land on the site.

3) Impacts to OEH 'Red Flag Area'

Concerns included:

- The area proposed to be cleared is a designated priority conservation area and that this area contains one of the few remaining populations of disease free koalas.

Department Comment

As noted above, the draft CPCP is supported by a detailed scientific assessment which seeks to ensure the long term ecological viability of the Cumberland Plain. This proposal aligns to the draft CPCP and will result in improved conservation outcomes.

4) Gordon Lewis Oval

Concerns included:

- Loss of vegetated land for use as soccer fields as part of the Gordon Lewis Oval.

Department Comment:

Council originally intended to accept the dedication of the land adjoining Gordon Lewis Oval subject to the necessary approvals being obtained by the proponent and land being cleared prior to transfer. Following Council's decision to not proceed with the proposal, this portion of land will be dedicated as part of the revised biodiversity certification framework under the draft Cumberland Plain Conservation Plan.

5) Infrastructure Provision

Concerns included:

- inadequate water, sewerage, public transport, open space, schools and streetscape upkeep; and
- increase in the local traffic will lead to congestion, decreased road safety, air pollution, and inadequate street parking.

Department Comment:

Infrastructure provision is integral to the delivery of future development. Development contributions towards the delivery of local infrastructure including works in kind or monetary contributions can be imposed on all future development at the site.

Sydney Water has not raised any objections to the proposal and identified issues to be addressed at the development application stage (**Attachment H17**).

The site is less 1km from the Appin village centre where local community services are located including transport linkages, shops, schools and parks. Any future development application will consider parking, pollution, and the availability of public transport.

6) Urban Design and Lifestyle

Concerns included:

- the rural character of Appin will be compromised by the additional development; and
- the density of the proposal is too high for the character of the area.

Department Comment:

Future character including subdivision design, building setbacks, visual amenity, and landscaping will be assessed as part of the development application process. Wollondilly Development Control Plan 2016 contains shire wide controls relating to a range of design matters, such as vegetation buffers, avoiding cul-de-sacs, providing shared pathways and landscape plans. The DCP controls, combined with the proposed draft LEP control to require Council to consider any guidelines adopted by the Secretary will ensure the rezoning will result in development compatible with the character of the area.

7) Fairness and integrity of the consultation process

Concerns included:

- One submission questioned fairness and integrity of the consultation process

Department Comment:

The Department considers the exhibition of the proposal to be consistent with the requirements of the Gateway determination.

6.3 Council resolution

At its meeting of 18 February 2019, Council resolved (**Attachment D3**) not to support the planning proposal or proceed with the application for biodiversity certification for the land for the following reasons:

- The rezoning of the land may sterilise the future opportunities under *Greater Macarthur 2040*;
- The cumulative growth of this proposal on the existing Appin township has not been adequately supported with local, regional and state infrastructure;
- Feasible servicing of the site for water and sewer has not been addressed by the proponent;
- Significant concerns from increased traffic and pressure on the existing water network raised by the Appin community;
- The rezoning is premature until a comprehensive regional Koala Plan of Management is in place;
- The proposed yield is not required to assist Council's housing target identified in the *Western City District Plan*; and
- That Council notes that there is significant community opposition to the proposal.

As a result, Council wrote to the Department on 25 February 2019 (**Attachment E**), as the Delegate of the Minister, requesting the planning proposal not proceed.

Delegation to finalise the planning proposal was not issued to Council by the Department.

6. ADVICE FROM PUBLIC AUTHORITIES

Council was required to consult Endeavour Energy, NSW Aboriginal Land Council, Ambulance Service of NSW, Sydney West Area Health Service, Hawkesbury Nepean Catchment Management Authority, Department of Primary Industries (Agriculture), Department of Education and Communities, NSW Police Service, Transport for NSW,

Railcorp, Sydney Water Corporation, and Telstra in accordance with the Gateway determination.

Council also consulted the following authorities: Water NSW, Rural Fire Service, DPIE - Division of Resources and Geoscience, Department of Industry - Crown Lands and Water, Division, Department of Industry – Water, Heritage Council, Office of Environment and Heritage, Roads and Maritime Services, Subsidence Advisory NSW, NSW Department of Industry – Resources and Energy Division, NSW Department of Education - Asset Management Directorate, Tharawal Aboriginal Land Council and Campbelltown City Council.

These public agencies did not raise any objections to the planning proposal, but identified issues to be addressed at the development application stage including site contamination, stormwater management, odour, noise and dust impacts, public transport, subdivision layout, riparian areas, water servicing and heritage.

Council addressed the public agency comments in its post exhibition report and final council report at **Attachments D1-D2** and advised that most of the issues will be considered at the development application stage.

A summary of the outstanding key issues raised by the public authorities is provided below.

The public agency submissions are provided at **Attachments H1-15**.

7.1 Biodiversity Issues

The proposed -urban capable footprint under the draft CPCP supports the proposed development of 20.1ha of vegetated land on the site. The land proposed for E2 Environmental Conservation totals 39.3ha and will be managed under a Biodiversity Stewardship Agreement (Figure 4, below).

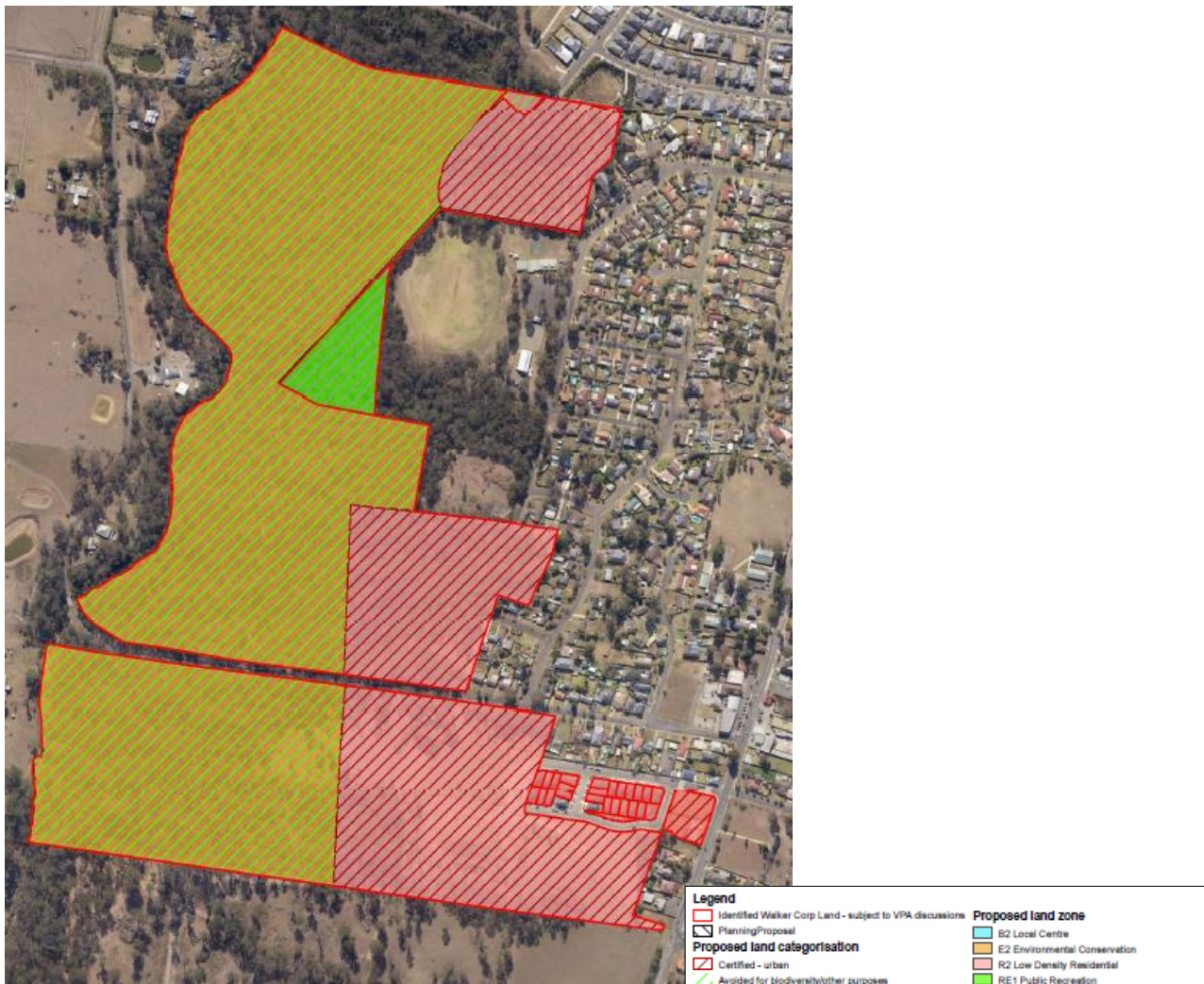


Figure 4: Land proposed certified (urban capable) [red] and excluded and non-certified for biodiversity purposes [yellow] (Source: Cumberland Plain Conservation Plan)

In summary OEH (now Environment, Energy and Science) (**Attachments H15**) raised several comments in response to the exhibition of the proposal. OEH's comments related to the then proposed biodiversity certification application under the *Threatened Species Conservation Act 1995* (TSC Act). Council subsequently resolved not to proceed with the proposal or this biodiversity certification application.

Inclusion of site into the Draft Cumberland Plain Conservation Plan

Following Council's decision to not proceed, the proponent entered into negotiations with the Department regarding the scope of the draft Cumberland Plain Conservation Plan (CPCP), and to secure conservation measures through a Voluntary Planning Agreement (VPA).

The biodiversity certification currently proposed under the draft CPCP would enable the development of 20.1ha of vegetated lands. As noted above, the proposal seeks to rezone 39.3ha of land to E2 Environmental Conservation, and this is proposed to be managed under a Biodiversity Stewardship Agreement.

The draft CPCP is designed to offset all impacts on biodiversity by protecting areas for strategic conservation and identifies land with high-value biodiversity, as well as areas with important connectivity or potential for ecological restoration. As noted above, the draft CPCP and proposed VPA in conjunction with this proposal will improve koala habitat, regional connectivity by adding to existing reserves and establishing new public reserves and biodiversity stewardship sites.

The proposed stewardship site (ie the 39ha of land proposed to be rezoned E2 Environmental Conservation) comprises Shale Sandstone Transition Forest, priority Koala habitat and Cumberland Plain Land Snail habitat (Figure 5, overleaf).



Figure 5: Koala habitat (top left), Cumberland Plain Land Snail habitat (top right) and Shale Sandstone Transition Forest (bottom left)

EES acknowledged that the planning proposal has been amended to be consistent with the draft CPCP urban capable footprint and noted its assessment of impacts and adequacy of proposed conservation measures of the draft CPCP would occur following close of public exhibition (of the draft CPCP) and the formal submission of the CPCP biodiversity certification application to the Minister for Environment (**Attachment H19**).

The Department and proponent are negotiating the VPA, the Department has received the proponent's offer to dedicate approximately 562ha of conservation land including the Macquariedale Road site at no cost to Government.

Department Comment:

The Department has amended the zoning boundary to reduce the extent of proposed R2 Low Density Residential and increased the extent of the proposed E2 Environmental Conservation land. This will ensure that bushfire management APZs do not impact on Critically Endangered Ecological Communities.

The final zoning maps are consistent with the urban capable footprint identified in the draft CPCP

The proposal will facilitate the permanent protection and management of 39.3ha of E2 zoned conservation land as a Biodiversity Stewardship Agreement site under the BC Act. The land proposed to be zoned E2 includes Sandstone Transition Forest, priority Koala habitat and Cumberland Plain Land Snail habitat.

Subject to the registration of the proposed stewardship site, the Department is satisfied that there is an appropriate regulatory framework in place to offset biodiversity impacts on the site and to ensure biodiversity offsets are achieved through the development application process and, where appropriate, measures taken to mitigate impacts. To ensure implementation of the proposed offsets, the draft LEP includes a concurrence clause requiring the concurrence of the Planning Secretary prior to granting consent to development that results in an increase in the number of dwellings on the site. The draft LEP should proceed as rezoning the site will facilitate the protection and management of 39.3ha of environmental lands in perpetuity and streamline development across the Greater Macarthur Growth Area including (the Macquariedale Road site) through upfront biodiversity certification and land use zoning in an LEP.

The Department is satisfied that adequate measures are proposed to mitigate and offset impacts on threatened species, including Shale Sandstone Transition Forest and priority Koala habitat.

7.2 Bushfire Issues

The majority of the site is identified as Category 1, Category 2 and Buffer bushfire prone land (Figure 6, overleaf) and areas of the site are proposed to be protected as Asset Protection Areas (APZs).

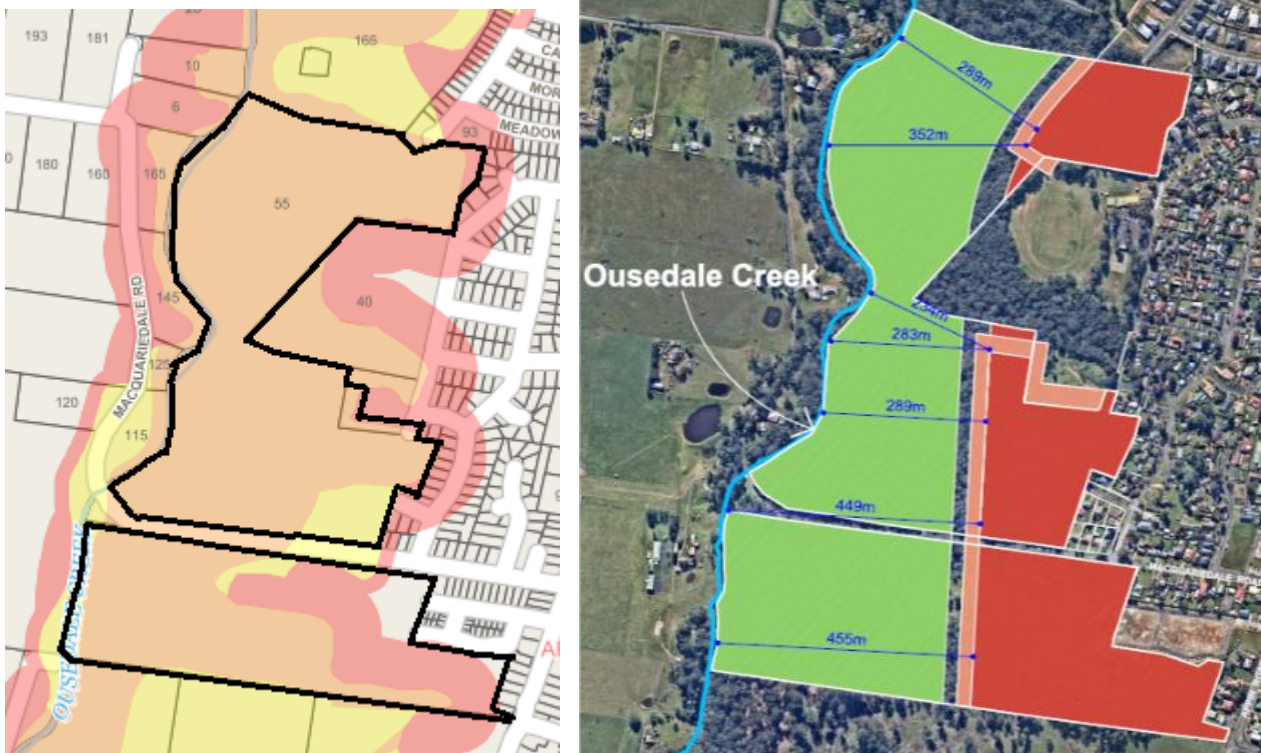


Figure 6: Site overlay with Council bushfire maps (left) and Proposed APZs (right) [orange] and residential areas [red] as exhibited (Source: Planning Proposal documentation).

In its submission (**Attachment H8**) the Rural Fire Service (RFS) advised that all APZs are to be located within residential zones land and not within E2 Conservation zone as indicated in Figure 6 (above). The RFS does not support the proposed fire trail over private property in the northern part of the site and requires it to be in either single ownership or as a dedicated public perimeter road.

RFS also advised that prior to finalisation of the LEP, Council should be satisfied that future development in the northern part of the site achieves satisfactory standards for access: either via the use of fire trails under single ownership, or a public perimeter road

To address the RFS requirements for future subdivision the proponent submitted a revised development concept layout (Figure 7, overleaf) and traffic evacuation assessment (**Attachment F1-F2**).

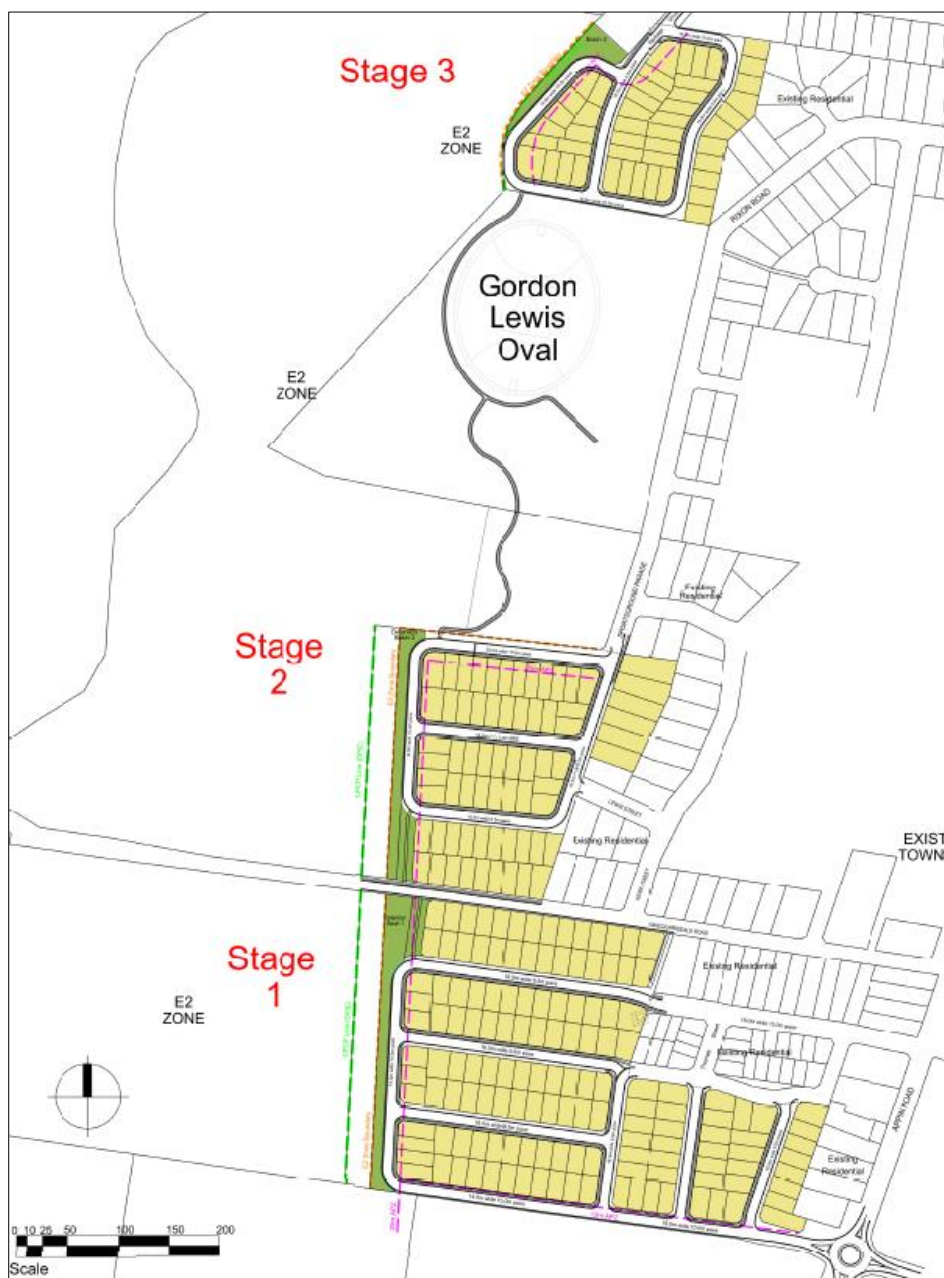


Figure 7: Proposed conservation lands and future development layout (Source: Walker Corporation)

The RFS has reviewed the supplementary information provided by the proponent and is satisfied that future residential land uses will be adequately separated from the western hazard and future road networks are likely to satisfactorily service the proposed future community, in the event of an emergency (**Attachments H20-H21**).

Department Comment

The Department is satisfied that the RFS concerns have now been addressed. The Department notes that *Planning for Bush Fire Protection 2019* is the relevant current standard for the proposal to meet, and the RFS would be further consulted as part of any future development application for the site.

The proposed zoning approach ensures all APZs and access requirements would avoid the need for clearing or modifying Critically Endangered Ecological Communities. The zoning approach resolves the potential for future conflict between the planning, bushfire and biodiversity legislation at the development assessment phase and provides clarity to the community and the proponent.

7. POST-EXHIBITION CHANGES

8.1 Summary of Department changes

A number of minor post-exhibition changes have been made to the proposal by the Department in response to matters raised during the community consultation period and advice from public authorities.

In summary, the revised proposal makes provision for:

Revised Zoning Plan (Figure 8, below)

- Reduction in the proposed R2 Low Density Residential zone boundary (approximately 0.28ha);
- Increase in the proposed E2 Environmental Conservation zone boundary (approximately 0.32ha); and
- Removal of proposed RE1 Public Recreation zone (north west corner of the RE1 zone approximately 0.4ha).

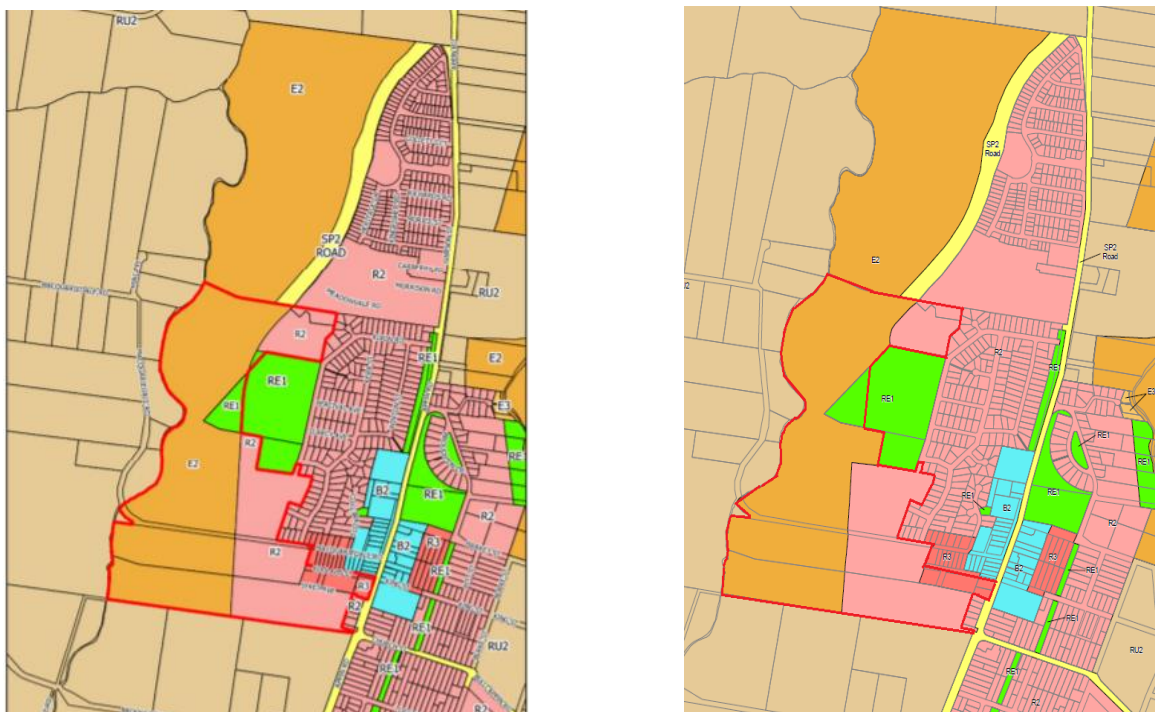


Figure 8: Comparison of exhibited (left) and revised (right) land zoning map with approximate boundary.

Inclusion of concurrence clause and additional matter for consideration

- Requirement to obtain the concurrence of the Planning Secretary prior to granting consent to future development on the site.
- Requirement for Consent Authority to consider Guidelines made by the Planning Secretary prior to granting consent.

8.2 Justification

It is recommended that these amendments be endorsed without requiring further exhibition as the amendments do not change the intent of the planning proposal as exhibited. The negotiated urban capable boundary results in a 0.9ha reduction to the biodiversity certification area as exhibited. The Department supports this post-exhibition change as it offers improved public benefit through enlarged environmental land dedications without increasing the size of proposed urban areas.

8. ASSESSMENT

The LEP has sufficiently demonstrated site-specific merit to deliver additional housing in a convenient location adjacent to an existing urban area and adequate provisions in place to ensure environmental protection. As outlined below, the LEP has strategic merit as it is consistent with relevant Section 9.1 Directions and State Environmental Planning Policies and gives effect to the Western City District Plan.

9.1 Section 9.1 Directions

Direction 1.2 Rural Zones

This Direction seeks to protect the agricultural production value of rural land and applies to the proposal as it will increase the permissible density of land within a rural zone. At the time of Gateway determination (**Attachment B**), the delegate of the Secretary agreed that the planning proposal's inconsistency with the Direction is of minor significance. Therefore, no further approval is required in relation to this Direction.

Direction 1.3 Mining, Petroleum Production and Extractive Industries

This Direction seeks to ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development. This Direction applies to the proposal as the site is underlain by an existing coal mining tenement in close proximity to the Bulli coal seam.

The Direction required Council to consult with the Division of Resources and Geoscience (DRG) and in a submission to Council dated 31 January 2018 (**Attachment H2**) DRG confirmed its support for the proposed rezoning. On this basis, it is recommended that no further approval is required in relation to this Direction.

Direction 2.1 Environmental Protection Zones

This Direction seeks to protect and conserve environmentally sensitive areas and applies as the proposal will rezone land containing Critically Endangered Ecological Communities identified under state and commonwealth environmental legislation.

To achieve consistency with the Direction, Council was required specifically to consult with the former Office of Environment and Heritage (OEH) prior to exhibition to:

- determine the adequacy of the flora assessment;
- determine an appropriate boundary for the proposed R2 Low Density Residential zone in view of the Shale Sandstone Transition Forest on the site, that is consistent with the Cumberland Woodplain Recovery Plan;
- determine the appropriateness of the proposed location of the Appin bypass reservation; and
- confirm the applicable vegetation offsets.

The proposal was forwarded to OEH on 13 May 2013 for comments and a response was received on 1 August 2013 (**Attachment H16**).

The planning proposal was updated in response to OEH comments. Therefore, it is recommended that no further approval is required in relation to this Direction.

Direction 2.3 Heritage Conservation

This Direction seeks to facilitate the conservation of European and Aboriginal heritage. To ensure consistency with the Direction Council was required to consult with the former OEH in relation to the need for further heritage study and whether heritage listings are required for the site.

OEH was invited to provide comments on November 2017 and a response was received on 28 February 2018 (**Attachment H6 and H15**) and those comments are detailed in Council's 19 November 2018 report (**Attachment D1**). In summary, there are no State Heritage listed items in the site, and there is one local heritage item (Appin Inn). The Heritage Council noted the proposed zoning 'is unlikely to impact on the heritage significance of the property' and noted that future development of the site be guided by a Heritage Impact Statement. In relation to Aboriginal Cultural Heritage (ACH), the Regional Operations Division of OEH noted the Gateway determination condition in relation to ACH had been satisfied and had no further comments to make.

On this basis, it is recommended that no further approval is required in relation to this Direction.

Direction 3.1 Residential Zones

This Direction seeks to encourage a variety and choice of housing types, to make efficient use of existing infrastructure and services and ensure that new housing has access to infrastructure and services, and to minimise the impact on the environment and resource lands. At the time of Gateway determination (**Attachment B**), the delegate of the Secretary agreed that the planning proposal's inconsistency with the Direction is of minor significance. Therefore, no further approval is required in relation to this Direction.

Direction 4.2 Mine Subsidence and Unstable Land

This Direction seeks to prevent damage to life, property and the environment on land identified as unstable or potentially subject to mine subsidence. This Direction applies to the proposal as the site is located in the Appin Mine Subsidence District.

The Direction required Council to consult with the Subsidence Advisory NSW (SA NSW) [former Mine Subsidence Board] and in a submission to Council dated 9 February 2018 (**Attachment H18**) SA NSW confirmed its support for the proposed rezoning. Therefore, it is recommended that no further approval is required in relation to this Direction.

Direction 4.4 Planning for Bushfire Protection

This Direction seeks to protect life, property and the environment from bush fire hazards, by discouraging incompatible land uses in bush fire prone areas. The site is identified as bushfire prone land (Category 1, Category 2 and Buffer) therefore this Direction applies to the proposal.

The Direction required Council to consult with the Rural Fire Service (RFS) and a response was received dated 6 July 2018 (**Attachment H8**). To address the issues raised, an updated development layout showing APZs contained within residential land, adjoining public perimeter road and site evacuation assessment was forwarded to the RFS for comment. On 24 September 2020, the RFS confirmed its support for the proposal (**Attachment H21**). On this basis, it is recommended that no further approval is required in relation to this Direction.

9.2 State environmental planning policies

SEPP – Koala Habitat Protection 2019

SEPP (Koala Habitat Protection) 2019 encourages the conservation and management of koala habitat to ensure populations remain in their present range and the trend of population decline is reversed. The SEPP is supported by a guideline and replaces the previous SEPP No 44 - Koala Habitat Protection.

The site is identified on the Koala Development Application Map. As there is no Koala Plan of Management for the site, compliance with this SEPP will be required to be demonstrated at the development application stage.

SEPP No 55 – Remediation of Land

The objective of this SEPP is to provide a consistent planning approach to the remediation of contaminated land. Detailed compliance with this SEPP will be required to be demonstrated at the development application stage.

9.3 State, regional and district plans

A Plan for Growing Sydney and Draft South West Sub Regional Strategy

At the time of issuing the original Gateway determination the planning proposal was consistent with these strategies insofar as it promoted opportunities for housing adjacent to existing urban areas.

Greater Sydney Regional Plan and Western City District Plan

This planning proposal received a Gateway determination in October 2011, before the release of the Greater Sydney Regional Plan and Western City District Plan.

Greater Macarthur Growth Area

The *Greater Macarthur 2040* plan provides a framework to guide land release and development opportunities across 12 precincts over 20-30 years.

The draft LEP will permit urban development to existing rural zoned areas within the Greater Macarthur Growth Area. The Department is satisfied that the draft LEP is consistent with the Greater Macarthur 2040 plan. The Greater Macarthur Structure Plan identifies urban capable land consistent with the proposed rezoning and will not affect precinct planning within Greater Macarthur made under State Environmental Planning Policy (Sydney Region Growth Centres) 2006 or the Wollondilly LEP 2011.

9. MAPPING

The amending plan seeks to amend the following maps:

- 1) Land Zoning Map – map sheets LZN_011E and LZN_011H;
- 2) Height of Building Map – map sheets HOB_011H;
- 3) Lot Size Map – map sheets LSZ_011E and LSZ_011H; and
- 4) Natural Resources – Biodiversity Map – map sheet HOB_011H

The maps and map cover sheet are correct, have been checked by the Department's ePlanning Team and sent to Parliamentary Counsel.

10. CONSULTATION WITH COUNCIL

Council was consulted on the terms of a draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979* (**Attachment I**). That draft instrument proposed to apply the Part 6 provisions of the Wollondilly LEP 2011 (Urban Release Areas) to the site. Council provided comments on the draft plan on 29 September 2020. (**Attachment J**), noting the following:

- All applicable lots for the draft concurrence clause be confirmed.
- The draft concurrence clause identify only land at Appin.
- Any changes to the proposed clause must not preclude the proposed rezoning from being subject to the existing provisions under Part 6 of the Wollondilly LEP 2011.
- The Finalisation Report confirm removal of the intention to seek to protect the Appin Bypass via the site.
- The Finalisation Report confirm intention to seek 5ha minimum lot size for the southernmost portion of proposed E2 land.

Department Comment:

Since Council provided comments on the draft LEP, the draft instrument has been amended, all Lot/DP numbers have been checked and the draft concurrence clause will only apply to the subject site. Part 6 of the Wollondilly LEP 2011 will no longer apply to the site, but the draft LEP will require the consent authority, prior to granting consent, to consider any guidelines made by the Secretary. These guidelines are considered to adequately address any site specific considerations, such as those contained in a draft DCP exhibited by Council (but not adopted). The Department notes the ongoing discussions regarding the VPA and the proposed concurrence clause will ensure provision of state public infrastructure, and that no state agencies objected to the proposal. As such, the application of Part 6 of the Wollondilly LEP 2011 is not considered necessary in this instance.

Consistent with Council's comments, the Finalisation Report notes that the proposed road corridor was removed by a previous Gateway alteration and the 5ha minimum lot size for the southernmost portion of proposed E2 land remains consistent with the proposal exhibited by Council.

11. PARLIAMENTARY COUNSEL OPINION

On 8 October 2020 Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

12. RECOMMENDATION

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- There is an appropriate regulatory framework in place to offset biodiversity impacts on the site and to ensure potential adverse impacts on biodiversity and mitigation measures are considered through the development application process.
- Rezoning the site will facilitate the protection and management of 39.3ha of environmental land (zoned E2 Environmental Conservation) in perpetuity.
- The proposed zoning approach ensures all Asset Protection Areas and access requirements would avoid the need for clearing and resolves the potential for future conflict between the planning, bushfire and biodiversity legislation at the development assessment phase.
- The Gateway determination conditions as well as the relevant community and public agencies submissions have been satisfied.
- The plan is consistent with the relevant section 9.1 Directions and State Environmental Planning Policies.



Adrian Hohenzollern
Director, Western

Assessment Officer: Sebastian Tauni
Senior Planning Officer, Western
Phone: 8217 201