

11.2 BIODIVERSITY CERTIFICATION APPLICATION - MACQUARIEDALE ROAD, APPIN**File Number: 10619#357****EXECUTIVE SUMMARY**

- The purpose of this report is to inform Council of the Application for Conferral of Biodiversity Certification (the Application) for land which forms part of the Macquariedale Road, Appin Planning Proposal.
- The Application was considered by Council at its Ordinary Meeting in November 2018 and the matter was deferred.
- The Application was placed on public exhibition with the Macquariedale Road Planning Proposal and Draft Voluntary Planning Agreement. Consultation on the Biocertification Application was undertaken in accordance with Clause 126N of the now repealed *Threatened Species Conservation Act 1995*.
- The Application and a report on the public consultation will be submitted for approval to the NSW Minister for the Environment.
- Under legislation, a person who makes a relevant planning application or public submission is required to disclose any reportable political donations. The disclosure requirements extend to any persons with a financial interest in the application or any associate of the person making a public submission. No disclosure of political donation has been made in association with this application.
- It is recommended that:
 - Council support the Application for conferral of Biodiversity Certification for the land at Lot 1, DP 1218358, No. 55 Macquariedale Road, Appin;
 - The Application and public consultation report be submitted to the NSW Minister for the Environment for approval; and
 - That Council delegate authority to the Chief Executive Officer to sign the submission to the Minister for the Environment.

REPORT**Background and Previous Report to Council**

The Biodiversity Certification Application supports a planning proposal to rezone land at Macquariedale Road and Appin Road, Appin (known as the Macquariedale Road Planning Proposal) (a map showing the proposed land use zoned on the site and an indicative lot layout is included in attachment 1). The Biodiversity Certification Application was considered by Council at its Ordinary Meeting in November 2018 (A copy of the report considered by Council at this meeting is included as Attachment 2 of this report). At the ordinary meeting Council resolved the following in respect of the proposal:

"1. That the matter be deferred;

2. That following receipt of a revised Flora and Fauna Assessment from the proponent and finalisation of Council's Wollondilly Koala Conservation Project, the Biodiversity Certification application be amended (if required) to ensure that any land identified as core koala habitat on the site is identified as conservation lands and not land to be cleared; and

3. That a further report be presented to Council following resolution of the outstanding matters above."

Addendum Flora & Fauna Assessment

An addendum Flora & Fauna Assessment has been provided by the proponent and the findings have resulted in an extension to the E2 zone boundary which now applies to all areas identified as 'important koala habitat' on the site (important koala habitat is shown by the purple line on the plan in Attachment 4).

The areas identified as E2 on the site also form the conservation lands within the Biodiversity Certification Strategy. The revisions to the E2 zone boundary provide the following:

- Protection of the recorded activity areas and most notably including the high use area within the south-western boundary, the central low use area and on land adjoining the oval;
- Maintains the minimum width of the current corridor such that the connective link to adjoining lands is not reduced (286m from creek to Council's oval). In all cases the proposed conservation area exceeds the existing connective minimum width;
- Protects the majority of the preferred foraging vegetation communities that contains Grey Gum. An additional area of forest red gum habitat adjacent to the high use grey gum area in the south, which showed a high number of koala scratch marks on two trees has also been protected, and
- Areas that did not appear to have any evidence of scats or scratches and that has limited connectivity value has been excluded because there is no evidence that the immature or degraded forest red gum stands have high value to the existing koalas within the site.

In relation to the requirement in the Council Resolution for core koala habitat to be identified as conservation lands, the proponent's consultant contends that adjustment of the E2 zone (i.e. conservation lands) on the basis of core koala habitat is not appropriate for this site.

Core Koala Habitat is defined under State Environmental Planning Policy No. 44 – Koala Habitat Protection. Part 1 of Section 4 of the policy defines core koala habitat as *'an area of land with a resident population of koalas, evidenced by attributes such as breeding females (that is, females with young) and recent sightings of and historical records of a population.'*

Part 2 of the SEPP which outlines the land to which the policy applies and is based not on the koalas activity or usable habitat but rather *"land in relation to which a development application has been made and has an area of more than 1 hectare, or has, together with any adjoining land in the same ownership, an area of more than 1 hectare, whether or not the development application applies to the whole or only part of the land"*.

On this basis the proponents Flora and Fauna consultant states that *"the core koala habitat is not necessarily the area of core activity or importance but rather the cadastre land ownership to which the development application is made"*.

The amendments to the E2 zone boundary have rather been based on 'important koala habitat' rather than core koala habitat. Council's Environmental Services Team agree with interpretation of Core koala habitat provided by the proponent and agree with the approach of identifying land described as 'important koala habitat' as E2 zoned land and with this land being reflected as conservation lands in the Biocertification strategy.

Council's Environmental Services Team also agreed that a Koala Plan of Management (KPOM) will be required as part of any future development application on the site which deals with management actions both in the core koala activity areas as well as in the proposed development area to prevent harm to the local population.

The land identified as important koala habitat has been captured by the amended E2 Environmental Conservation zone and the Biocertification Strategy (including the credits for both the conservation lands and development footprint) have been updated to reflect the additional conservation lands and reduced development footprint. The proponent has also provided further information committing to providing an asset protection zone outside the E2 Environmental

conservation zone which will further improve the environmental conservation outcomes. The amendments to include the asset protection zones outside the E2 zoned land is consistent with the recommendations in the report to Council on the proposal in November 2018.

The outcomes of the koala plan of management required as part of a future development application would relate to the whole site (including the E2 Environmental Conservation zoned land) but would not override the Biodiversity Certification Strategy or conservation requirements of the E2 zoned land by enabling removal of important koala habitat vegetation as the KPOM incorporates management actions across the site.

Draft Application for Conferral of Biodiversity Certification

An application was made under section 126N of the *Threatened Species Conservation Act 1995* to confer biodiversity certification on land at Macquariedale Road, Appin to protect areas of high conservation value and to offset areas suitable for development.

The *Threatened Species Conservation Act 1995* (TSC Act) is now repealed. The *Biodiversity Conservation Act 2016 No 63* commenced on the 25 August 2018. The savings provisions in Part 7 of the Biodiversity Conservation (Savings and Transitional) Regulation 2017, enable the draft application to continue to be assessed in accordance with the TSC Act, 1995.

The report placed on public exhibition included all three stages of the Biodiversity Certification process namely the:

- Biodiversity Assessment Report (BAR);
- Biodiversity Credit Assessment Report, and
- Biodiversity Certification Strategy.

The three reports referenced above have all been updated to reflect the amendments made to the planning proposal and the additional conservation lands included in the proposal since the matter was considered by Council in November 2018.

The Draft Application now proposes to protect and manage in perpetuity for conservation 40.35 ha of land at the Planning Proposal site of which 39.70ha is native vegetation communities comprising two vegetation types (Cumberland Plain Woodland and Shale Sandstone Transition Forest). Both vegetation types are listed as critically endangered ecological communities under the NSW *Threatened Species Conservation Act 1995* and Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*. The remaining 0.65 ha is cleared land comprising a dam and 4wd trail.

The Biodiversity Certification Assessment area including the land proposed for biocertification and the land proposed for conservation measures is shown in the map below:

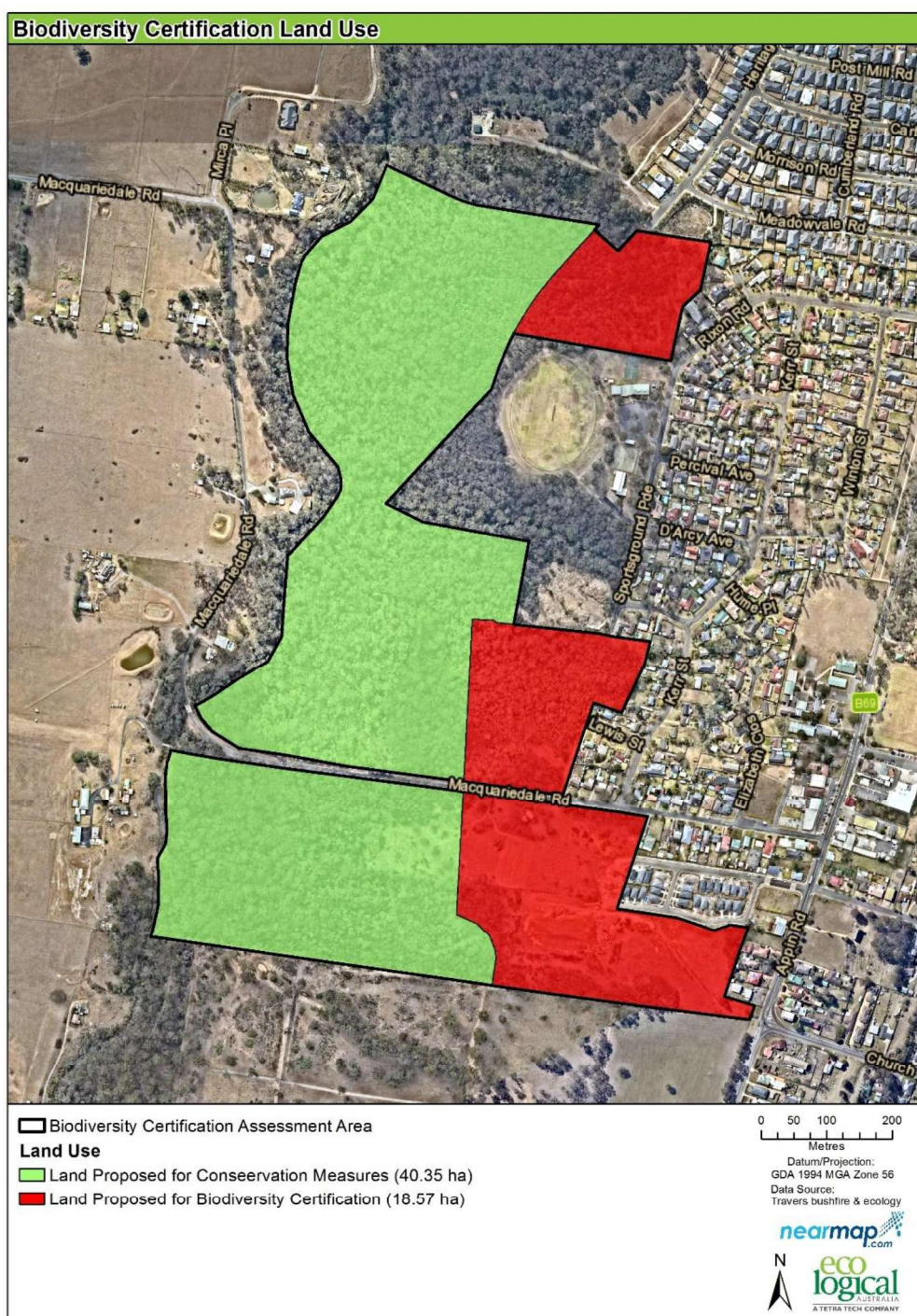


Figure 1 – Biodiversity Certification Assessment Area

The application now proposes to develop 18.57ha of the assessment area, primarily for residential housing, which includes 10.63ha of the two Endangered Ecological Communities (EECs) in moderate to good biometric condition of which 7.36ha constitute a red flag or 'areas of high biodiversity conservation value'. When a Biodiversity Certification application is proposed to be conferred on land that is, or forms part of a red flag area, the Director General may, in certain circumstances, decide that the impacts of certification on the red flag area may be offset in accordance with the rules and requirements of section 10 of the Biodiversity Certification Assessment Methodology (BCAM).

The areas of the site that satisfy the red flag criteria are shown in the map below:

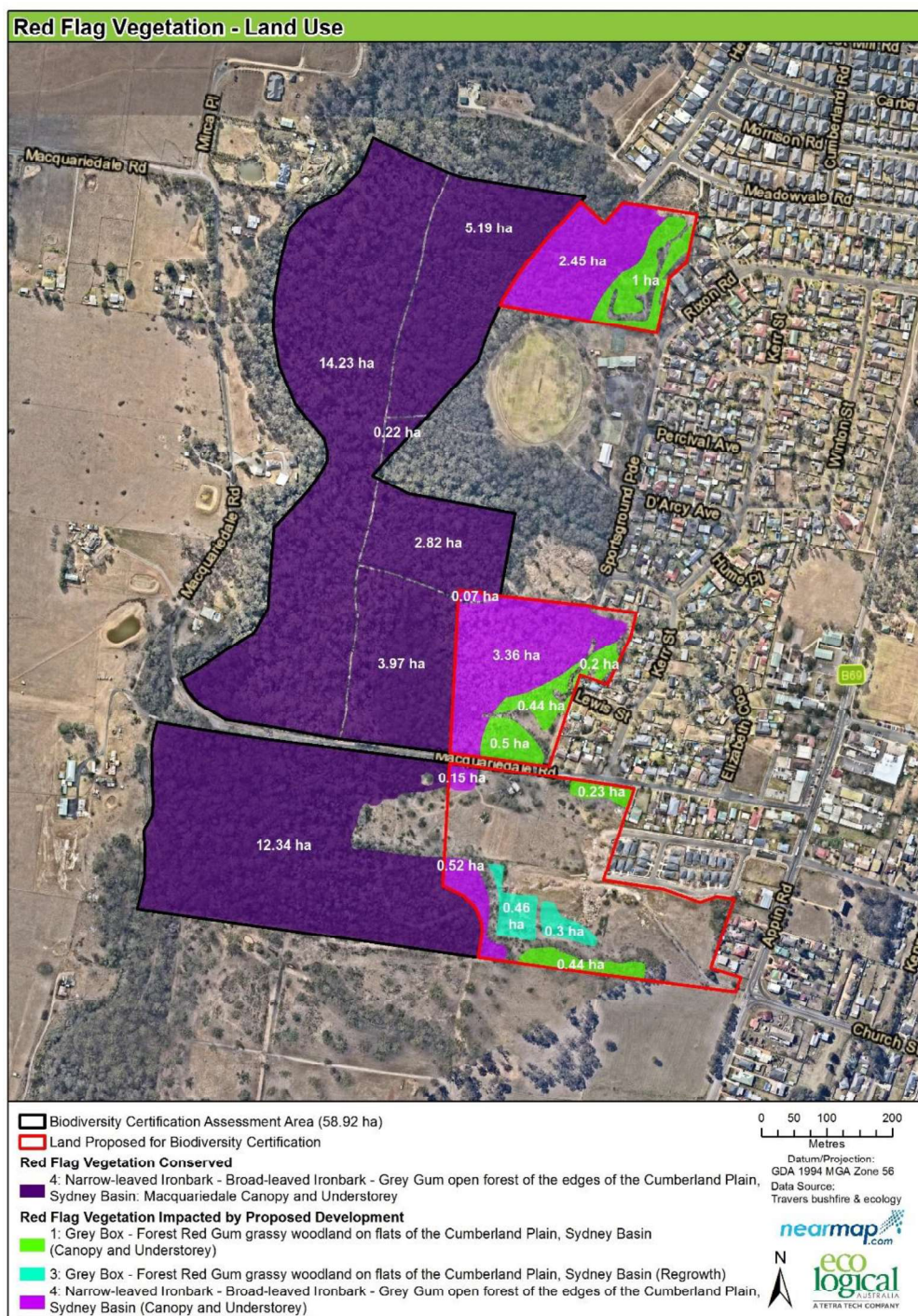


Figure 2 – Red Flag Vegetation

In order for the Director General to be satisfied that the impacts on a red flag area are able to be offset, each of the criteria set out in sections 2.4.1 to 2.4.4 of the BCAM (where relevant) must be satisfied.

Accordingly, the application for biodiversity certification must address the criteria set out in sections 2.4.1 to 2.4.4, including:

- section 2.4.2 where the red flag area contains a vegetation type which is greater than 70% cleared or is a critically endangered or endangered ecological community;

- section 2.4.3 where the red flag area contains habitat for a threatened species that cannot withstand further loss in the CMA area, and
- section 2.4.4 where the red flag area includes land with regional or state biodiversity conservation significance.

Two vegetation types recorded on-site ('Grey Box - Forest Red Gum grassy woodland on flats of the Cumberland Plain, Sydney Basin', and, 'Narrow-leaved Ironbark - Broad-leaved Ironbark - Grey Gum open forest of the edges of the Cumberland Plain, Sydney Basin') meet the definition of Critically Endangered Ecological Communities listed under the schedules of the TSC Act and will be impacted by the proposed development. These trigger a red flag when assessing the biodiversity certification for this site. Tables showing the vegetation areas including impacts and offsets, as well as credits required to offset the impacts are included in attachment 5 of this report.

Threatened Fauna Species have been recorded in the study area, including the endangered Cumberland Land Snail. The koala has also been recorded in the locality and on the site.

The application proposes to permanently protect and manage for conservation 40.35ha of land as an on-site biobank site. The proposed biobank site comprises 39.70ha of Shale Sandstone Transition Forest as well as large areas of habitat and confirmed records of the Cumberland Land Snail and habitat for the koala. In addition to the on-site conservation measure, it is proposed that a separate site of at least 19.72 ha located at Elladale Road (located off-site) which includes Cumberland Plain Woodland and important Koala habitat will also be established as a BioBank site. The location of the Elladale Road site is identified in the map below:

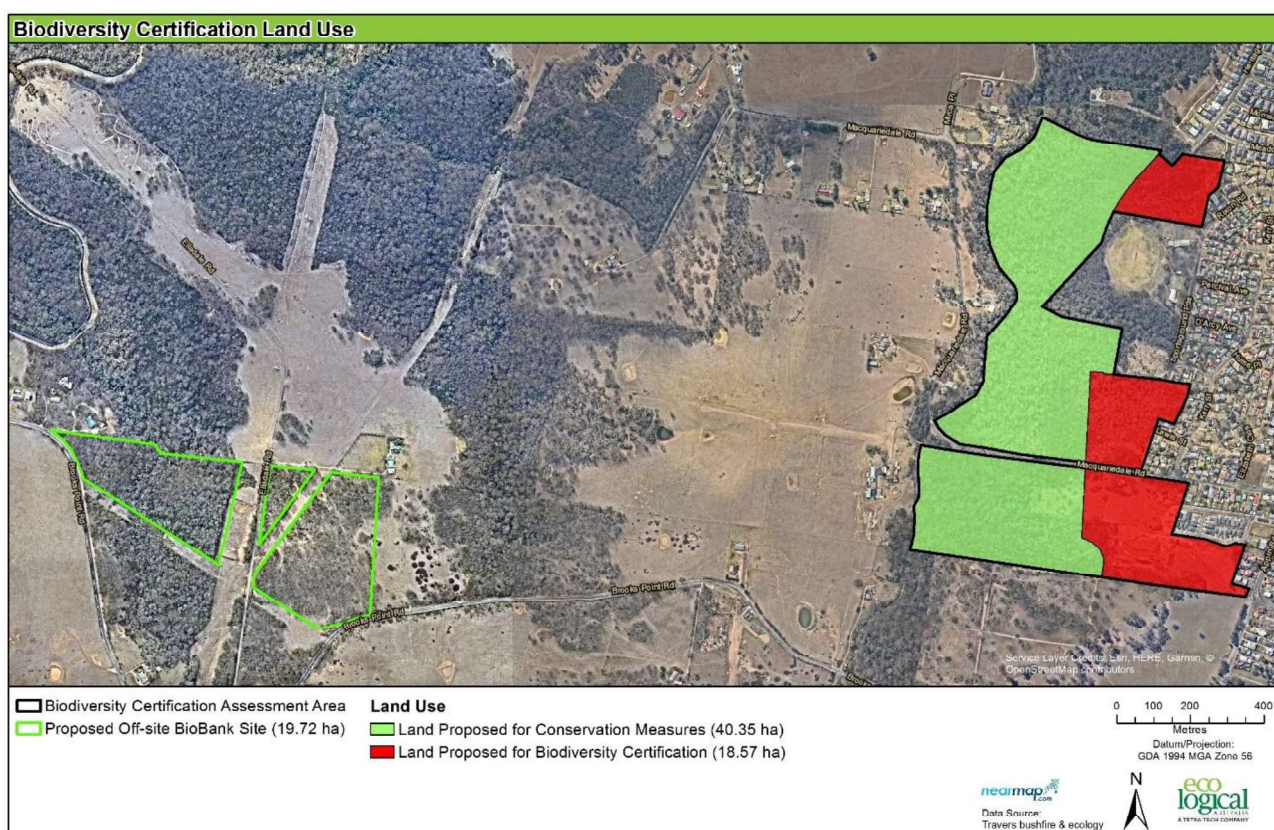


Figure 3 – Proposed Off-Site Biobank Site

Avoiding and Minimising Impacts on Red Flags

The proposal has significantly reduced the proposed residential zone area to reduce the impact on the red flag areas (endangered Shale Sandstone Transition Forest community and the critically endangered Cumberland Plain Woodland community) and associated habitat. The proposal has seen a reduction in the Shale Sandstone Transition Forest Red Flag area from 10.1ha to 6.55ha,

and a reduction in the Cumberland Plain Woodland Community red flag area from 3.4ha to 2.81ha from the version of the proposal that was considered by Council at its November 2018 meeting. The residential zone area has been placed in a location that strategically extends the developed area of the Appin township and protects a core area of connected vegetation to the west.

Conservation Measures

Off-site conservation measures

Walker Corporation will register a second BioBank site of 19.72ha on land owned by Walker Corporation at Elladale Road, 1.45 km west of Macquariedale Road. The BioBank Agreement will be registered on title and will be enforceable against the owner of the land (i.e. Walker Corporation) or any future land owner. The offset site on Elladale Road will provide the Cumberland Plain Woodland offset requirements as well as remaining koala habitat.

The application for registration of the off-site BioBank Agreement will be submitted to OEH within 12 months of biodiversity certification being conferred and prior to any clearing.

On-site conservation measures

The entire on-site Biobank site is currently zoned RU2 Rural landscape under Wollondilly LEP 2011. The site is to be managed for ecosystem and species credits. Walker Corporation will be solely responsible for the preparation and submission of the application for registration of the two BioBank Agreements by an accredited assessor. The on-site conservation area provides all of the SSTF and Cumberland Land Snail offset requirements and over 90% of the koala habitat requirements.

It is also noted that in accordance with the recommendations of the previous report to Council in November 2018, the asset protection zones are now located outside the environmental conservation zone area.

Summary of Amendments to Biodiversity Certification Application

- Biocertification Assessment Area is now 58.92 ha, down from 60.47 ha as a result of areas deleted in south of study area.
- Vegetation impacts now 10.63 ha down from 14.09 ha.
- Conserved vegetation is now 39.7 ha + 0.65 tracks/dam up from 34.31 ha (due to the addition of the road corridor to offset area).
- Shale Sandstone Transition Forest (SSTF) impacts now 6.62 ha, requiring 193 SSTF credits (incl. 6.55 ha red flags) down from 10.24ha (including 10.1 ha red flags) which required 279 credits.
 - 39.7 ha of SSTF in on-site offset area generating 415 credits;
 - All SSTF offsets met by on-site offset.
- Cumberland Plan Woodland (CPW) impacts now 4.01 ha (including 2.81 ha red flags) requiring 82 credits up from 3.85 ha (including 3.4 ha red flags) which required 92 credits due to additional impact area in north east and revised vegetation condition benchmarks.
 - 0.0 ha of CPW in on-site offset area;
 - Elladale Rd offset area still required to meet CPW offset requirements (approx. 9-10 ha required) and small area of Koala habitat.
- Koala now 9.8 ha habitat impacted (258 Koala credits required)
 - 39.7 ha Koala habitat in offset area generating 238 credits) i.e. >90% of Koala offsets are met by on-site offset, small area of Koala habitat (20 credits or approximately 3 ha) required at Elladale Rd.

- Cumberland Land Snail now 9.18 ha impacted (requiring 122 credits).
 - 20.4 ha of snail habitat in on-site offset area generating 122 credits (i.e. all snail offsets are met on site, no need for Elladale Rd Offset).

Land adjoining Gordon Lewis Oval

As identified the Voluntary Planning Agreement Report to Council, the proponent has offered to dedicate 1,930 square metres of land to Council to be incorporated into the Gordon Lewis Oval for open space. The Council Property Panel originally resolved to accept dedication of this land and to incorporate it into Gordon Lewis Oval subject to the land being cleared.

Since then and at the request of Council, the Biocertification reports indicate that the land is likely to contain koala habitat therefore making land clearing an undesirable environmental outcome. The VPA report therefore recommends that Council does not seek cleared land as a condition of dedication. Accordingly, the land to be dedicated to Council has been excluded from the revised Biodiversity Certification Strategy.







Consultation

The Biodiversity Certification Strategy and application was placed on public exhibition from 15 November 2017 to 28 February 2018. The concerns raised in the submissions were addressed in the report considered by Council at its November 2018 Council Meeting which is included in Attachment 1 of this report. Many of the concerns raised in submissions are further addressed through the amendments made since the November 2018 Council meeting which are detailed in this report.

Financial Implications

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

ATTACHMENTS

1. **Proposed Land Use zoning map and indicative Lot Layout** 
2. **Biodiversity Certification Report to Council - 19 November, 2018** 
3. **Ordinary Council Meeting Minutes - 19 November, 2018 (Biodiversity Certification Application)** 
4. **Map Showing the location of important Koala Habitat (purple Outline)** 
5. **Species Credit Tables** 
6. **Updated Biodiversity Certification Assessment Report and Biocertification Strategy - 21 January, 2019** 

RECOMMENDATION

1. That Council support the Application for conferral of Biodiversity Certification for the land at Lot 1, DP 1218358, No. 55 Macquariedale Road, Appin;
2. That the Application and public consultation report be submitted to the NSW Minister for the Environment for approval; and
3. That Council delegate authority to the Chief Executive Officer to sign the submission to the Minister for the Environment.

11.3 DRAFT PLANNING AGREEMENT - MACQUARIEDALE ROAD, APPIN

File Number: 10619#359

EXECUTIVE SUMMARY

- The purpose of this report is to advise Council of the outcome of public Notification of a draft Voluntary Planning Agreement for the Macquariedale Road, Appin Planning Proposal.
- The Draft Voluntary Planning Agreement (draft VPA).and Explanatory Note were publically notified in accordance with the *Environmental Planning & Assessment Act 1979* between 15 November 2017 and 28 February 2018. A number of submissions were received in regards to the planning proposal with 2 raising issues in relation to the draft VPA. On 19 November 2018, Council considered a series of three reports for Maquariedale Road, including a report for the Biocertification, Draft VPA, and the planning proposal. Council resolved at its ordinary meeting of 19 November 2018 to defer consideration of this draft VPA.
- Minor modifications to the draft VPA have been incorporated to resolve concerns raised during public notification, implications from additional environmental conservation studies and to adopt mandatory references from the amendment of the *Environmental Planning & Assessment Act 1979*.
- It is recommended, that Council:
 - adopt the Voluntary Planning Agreement attached to this report;
 - authorise the Chief Executive Officer to execute the Voluntary Planning Agreement on behalf of Council;
 - accept the dedication of the land as provided for in the Voluntary Planning Agreement; and
 - agree for the proposed land dedication to be classified as Community Land under the Local Government Act, 1993.

REPORT

Background

The draft Voluntary Planning Agreement (draft VPA) for Macquariedale Road, Appin was reported to Councils Ordinary meeting of 19 November 2018. Council resolved:

“That the matter be deferred until the bio certification matters and the planning proposal matters have been resolved”.

The draft VPA is now being reported back to Council with the Biocertification Report and a report for the planning proposal.

Walker Corporation submitted a proposal to Council in 2011 to rezone the land known as the Macquariedale Road Planning Proposal, primarily for residential development and environmental conservation. At that time, the proposal was for approximately 245 residential lots.

An early draft VPA was exhibited with the planning proposal in 2014. In order to address concerns of Council and the community a revised planning proposal and draft VPA was resubmitted to Council in 2016.

The Draft VPA was publically exhibited from 15 November 2017 to 28 February 2018 with the revised planning proposal. This was to align the exhibition of the planning proposal and all other documents to ensure the community had an opportunity to consider the proposal in its entirety.

Assessment of Draft Voluntary Planning Agreement

As a result of changes made to the planning proposal (refer to Council reports on Biocertification and for the planning proposal), the current draft VPA has been prepared to accompany the amended planning proposal for Macquariedale Road, Appin, for 220 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 at least 1,930 square metres for open space.

A minor amendment to the draft VPA was made to the "Appin Road Intersections" works items to address concerns arising from the exhibition process. The table below summarises the benefits to be provided under the notified draft VPA and compares it against the minor post-notification amendment.

Category	Amount notified VPA 2018	under Draft	Amount under Post-notification Draft VPA	Comments
Cycleways (3 separate stages, providing two connections to existing cycle ways)	\$700,000		\$700,000	No changes to proposed cycleways.
Undergrounding of power lines in Appin Rd and Macquariedale Rd	\$1,400,000		\$1,400,000	The revised VPA includes this item separately. Under the exhibited VPA, it was included within the Appin Road Improvements.
Macquariedale Rd upgrades (cycle ways, street trees, pavement improvements)	\$250,000		\$250,000	Actual works to be decided by Council in consultation with the community.
Appin Road – improvements such as trees, furniture, parking, landscaping, pedestrian refuge etc.	\$500,000		\$500,000	Works to be decided by Council in consultation with the community.
Gordon Lewis Oval and Engineers Ground – various works to be selected from netball court upgrades, fitness circuit, pathways, drainage and irrigation	\$1,200,000		\$1,200,000	Works to be decided by Council in consultation with the community.
Intersection upgrades on Appin Road – may include traffic signals or roundabouts at various locations	\$2,500,000		Works included but not value given, but will be at least a minimum of \$2,500,000	Intersection upgrade works will be required to manage the impacts of the development and would still benefit the existing community. This item was clarified subsequent to public exhibition in 2017-2018 and is dependent on completion of a works authorisation deed between the developer and Roads & Maritime Services (RMS).

Category	Amount notified under Draft VPA 2018	Amount under Post-notification Draft VPA	Comments
Community chest – to fund local community projects	\$2,500,000	\$2,500,000	Funds a Grants Program for Community projects to be run by Council.
Green Fund – to fund environmental projects	\$500,000	\$500,090	Supports community led environmental projects in Appin.
Expansion of Gordon Lewis Oval – achieved through dedication of 1,930 sq metres to Council	Included but not valued	Included but not valued	Bio-certification reports indicate that the land is likely to contain koala habitat therefore making land clearing an undesirable environmental outcome.
Total	\$9,550,000	A minimum of \$9,550,000	

Local infrastructure identified in the table above will either be delivered as works by the developer, with the timing of delivery specified in the Agreement or as a monetary contribution to Council, for its delivery. There is some flexibility as to the specific details of these works to be delivered, allowing Council and the community to consider these priorities. Monetary contributions will be made for the following items:

- An amount of \$2.5 million to fund a 'Community Chest' program which can be used to support local community groups. This will help provide the incoming population with sufficient community services required as a result of this and other developments in the area.
- An allocation of \$500,090 to support an "Environmental Fund" which can be used to fund local environmental projects that may help mitigate the impacts of this (and other) development of the natural environment. Examples of the types of projects which could be funded included wildlife crossings, bush regeneration and similar projects.

Land dedication will be made as following:

- The dedication to Council of 1,930 square metres of land to be incorporated into the Gordon Lewis Oval for open space. The Council Property Panel originally resolve to accept dedication of this land and to incorporate it into Gordon Lewis Oval subject to the land being cleared. Since then and at the request of Council, Bio-certification reports indicate that the land is likely to contain koala habitat therefore making land clearing an undesirable environmental outcome. It is therefore recommended that Council no longer makes it a condition of dedication that the land be cleared.

Traffic management works will include the following:

- An allocation of \$500,000 for amenity improvements on Appin Road which may include street trees, furniture, parking, landscaping and pedestrian refuges. These works to be decided by Council in consultation with the community.
- Intersection improvements on Appin Road intersection upgrades, including the construction of traffic lights and/or a roundabout along Appin Road will be fully funded. This will require a Works Authorisation Deed to be entered into between the developer and RMS. Although a monetary value on works is no longer included, it is expected that construction would cost at least \$2.5 million or more. Concept plans in the VPA represent an optimal design solution at the time of the planning agreements. Refinement during the development assessment process is anticipated by the VPA, with final designs being dependent on consultation with and the consent of Council, RMS, and any affect land owners.

With contributions of over \$9.55 million (or \$44,418 per lot) the draft VPA represents a generous offer and will deliver significant benefits to the existing and future Appin community. The value of the contribution secured is more than 2.2 times what would be received under the Section 7.11 development contributions totalling approximately \$4.3 million.

Consistency with Planning Agreements Policy

The Environmental Planning & Assessment Act 1979 (the Act) requires that Voluntary Planning Agreements must include suitable means for enforcement in the event of a breach of the Agreement. In accordance with Council's Policy, the draft VPA contains a suite of security that ensures timely development contributions whilst protecting Council interests. This includes:

- The draft VPA being registered on title, binding current and future owners of the development land;
- Withholding of Subdivision Certificate prior to monetary contributions being made;
- Financial security in favour of Council to ensure works are completed in accordance with the draft VPA;
- Council having the ability to acquire land to be dedicated under the terms of the draft VPA for \$1 if the land is not dedicated, and
- Council having the ability to take action under the Act to remedy any breach of the agreement.

This package of security gives Council certainty that the agreed undertakings will be completed and reflect the scope of the land and works contributions being offered and the length of time the agreement will operate.

The draft VPA provides legal mechanism to receive a monetary contribution and dedication of land outside Council's adopted Development Contributions Plan. Without the VPA, there are no alternative means for Council to receive land being dedicated. The benefits offered by this Agreement have been calculated in accordance with Council's Planning Agreement Policy, and it is considered that they represent significant value to the public. It is considered that the draft VPA is consistent with Council's Planning Agreements Policy.

Consistency with Dedication of Lands Policy

The draft VPA proposes to dedicate 1,930 square metres to extend Gordon for open space purposes. The draft VPA has been reviewed against the relevant clauses of the Dedication of Land Policy, including the criteria for ensuring that only appropriate lands are dedicated to Council. The review did not identify any matters that would prevent land dedication from occurring, although any development consent that is issued should ensure that some of the matters included in this clause are addressed. This includes matters such as confirming that the site is free from contamination, landscaping, access arrangements and the like. These are matters that Council staff typically consider through the use of appropriate conditions of consent.

Consultation

Notification of the draft VPA and associated planning proposal occurred from 15 November 2017 to 28 February 2018 resulting in 37 submission being received. These submissions are discussed in more detail in the report to Council addressing the planning proposal. Two submissions received made comment of the draft VPA, one private submission and one agency submission from RMS.

The private submission made specific reference to concerns that development contributions in the draft VPA not being delivered.

Council comment: VPAs are legally binding documents and are enforced by Council. Works under the draft VPA are linked to staging of the proposed subdivision and are required to be undertaken in accordance with the terms in the Agreement.

The comments raised by RMS are discussed in detail in this report. The minor amend made to the draft VPA clarifies the extent of intersection upgrades required to Appin Road and clarifies the role played by RMS with any Works Authorisation Deed in relation to detailed design and construction. It is considered that the minor amendment will provide a better outcome for traffic safety in Appin.

Financial Implications

There will be positive financial impacts to Council and to the Appin community if the benefits under the Planning Agreement are realised. The draft VPA will provide over \$9.55 million worth of public benefit, which is \$5.25 million more than if the developer elected to pay their Section 7.11 contributions. A VPA offer in the order of 2.2 times the Section 7.11 contributions represents a generous offer and will deliver significant benefits to the Appin community.

ATTACHMENTS

1. **Draft Macquariedale Road Appin VPA** 
2. **Copy of Council's Resolution from the 19 November 2018 meeting** 

RECOMMENDATION

That Council:

1. adopt the Voluntary Planning Agreement attached to this report;
2. authorise the Chief Executive Officer to execute the Voluntary Planning Agreement on behalf of Council;
3. accept the dedication of the land as provided for in the Voluntary Planning Agreement; and
4. agree for the proposed land dedication to be classified as Community Land under the *Local Government Act, 1993*.

11.4 PLANNING PROPOSAL - MACQUARIEDALE ROAD POST EXHIBITION REPORT**File Number: 10619#356****EXECUTIVE SUMMARY**

- The purpose of this report is to seek Council's support to finalise the planning proposal relating to land at Macquariedale Road and Appin Road, Appin (known as the Macquariedale Road Planning Proposal);
- The planning proposal seeks to amend the provisions of *Wollondilly Local Environmental Plan 2011* to allow low and medium density residential development on the site for 220 residential lots and to protect 40.35ha of vegetation;
- The planning proposal, Biodiversity Certification Strategy, Draft Voluntary Planning Agreement and draft amendments to Wollondilly Development Control Plan 2016 were exhibited from 15 November 2017 to 28 February 2018. During the community consultation 37 submissions were received. Of these submissions, 35 objected to the proposal with one submission neutral and one submission in support;
- The matter was reported to Council for consideration at its Ordinary Meeting on 19 November 2018 and at the meeting Council resolved to defer the matter to seek further clarification on a number of matters, particularly those relating to koala habitat on the site and clarification of the maximum lot yield from the proposal;
- Under legislation, a person who makes a relevant planning application or public submission is required to disclose any reportable political donations. The disclosure requirements extend to any person with a financial interest in the application or any associate of the person making a public submission. No disclosures of political donations have been made in respect to this application;
- It is recommended that Council support the planning proposal in the manner described in this report and that in accordance with section 3.36 (formerly section 59) of the *Environmental Planning and Assessment Act, 1979* the planning proposal be forwarded to the Minister with a request to make arrangements for the drafting of the amended Local Environmental Plan and that the Minister make the plan in the form as detailed in this report.

REPORT**Site Description**

The subject site comprises of a total 32 allotments. A description of each lot and its associated Deposited Plan (DP) is contained in **Table 1** below. The site is an irregular shape stretching across approximately 62.8 hectares of mostly rural land at Macquariedale Road and Appin Road, Appin.

Table 1 – Lots contained in Planning Proposal		
Lot	DP	Street address
1	1218358	55 Macquariedale Road
2035	1198686	112 Heritage Drive
1	245866	40 Sportsground Parade
3	1218358	65 Appin Road
2	529457	61 Appin Road
11	270989	1 Thomas Street
18	270989	2 Thomas Street
10	270989	3 Thomas Street
19	270989	4 Thomas Street
9	270989	5 Thomas Street
20	270989	6 Thomas Street

8	270989	7 Thomas Street
21	270989	8 Thomas Street
2	270989	8 Sykes Avenue
3	270989	10 Sykes Avenue
4	270989	12 Sykes Avenue
5	270989	14 Sykes Avenue
6	270989	16 Sykes Avenue
7	270989	18 Sykes Avenue
22	270989	28 Sykes Avenue
23	270989	30 Sykes Avenue
24	270989	32 Sykes Avenue
17	270989	11 Koolahs Street
16	270989	13 Koolahs Street
15	270989	15 Koolahs Street
14	270989	17 Koolahs Street
13	270989	19 Koolahs Street
12	270989	21 Koolahs Street
27	270989	29 Koolahs Street
26	270989	31 Koolahs Street
25	270989	33 Koolahs Street
1	270989	Koolahs Street

The site is bound on the western side by Ousedale Creek and contains three minor tributaries which drain in a westerly direction across the site. The northern portion of the site is accessed from Appin Road via Rixon Road and Sportsground Parade and the southern part of the site is accessed from Appin Road and Macquariedale Road.

A significant portion of the site (51.17 hectares) from north to south along Ousedale Creek is densely vegetated. The remainder of the site has been cleared from previous rural activities. This area is currently used for rural residential and agricultural (grazing) land uses. The majority of the site is owned by Walker Corporation Pty. Ltd (the proponent) with two small areas of land within the planning proposal which are owned by Wollondilly Shire Council.

The site currently includes four land use zones: RU2 Rural Landscape; RE1 Public Recreation; R3 Medium Density Residential; and B2 Local Centre, under the provisions of the *Wollondilly Local Environmental Plan 2011* (WLEP).

The site contains one European heritage item known as the "Appin Inn" which is located on the south eastern portion of the site at 61 Appin Road, Appin. Restoration of the building has occurred in recent times. This planning proposal seeks to protect this item by maintaining a 975sqm minimum lot size for this site.

The site also contains an Archaeological site of local significance in the WLEP 2011 known as "Darcy's House" and is located adjacent to the Appin Inn at No. 53 Appin Road. The site of Darcy's House is significant as the location of one of the earliest Appin houses on an original land grant. The house was demolished in 1972 with the site listed as an archaeological site.

Description of Proposal and Background

The planning proposal intends to amend WLEP 2011 to enable low and medium density residential development on the site, enabling the site to be developed for 220 residential lots. The proposal would also result in the retention of 40.35ha of vegetation on the site through the application of an E2 Environmental Conservation zone. This vegetation would also be protected through a Biodiversity Certification Strategy that would apply to the site and is detailed in a separate report to Council. The planning proposal intends to achieve the above by the following amendments to the WLEP 2011:

- Amend land use zoning map from RU2 Rural Landscape to E2 Environmental Conservation to the large portion of densely vegetated land located along the western portion of the proposal area;
- Amend land use zoning map from RU2 Rural Landscape to R2 Low Density Residential to portions of the site that will form an appropriate extension to the existing adjoining residential lands;
- Amend land use zoning map from RU2 Rural Landscape to RE1 Public Recreation to a small portion of the land adjoining Gordon Lewis Oval;
- Amend land use zoning map from B2 Local Centre to R3 Medium Density Residential to lands that directly adjoin existing R3 lands in Appin;
- Amend the height of building map to lands proposed to be zoned R2 Low Density Residential and R3 Medium Density Residential to 9m to introduce a standard height limit to proposed residential areas;
- Amend the minimum lot size map to 450m² for the proposed R2 Low Density Residential zone to ensure that there is an appropriate split of small (450m²) and large lots (700m²);
- Amend the minimum lot size map to 450m² and 230m² for the proposed R3 Medium Density Residential zone which will assist in providing a range of housing options in Appin, and
- Amend the minimum lot size map to 5ha and 20ha for the proposed E2 Environmental Conservation zone; amend the Natural Resources Biodiversity Map to include lands zoned for E2 Environmental Conservation and identified as sensitive lands.

The proposal was considered by Council at its Ordinary Meeting on 19 November 2018 (a copy of that report is included in Attachment 1). At its meeting Council resolved to defer the matter and sought that further investigation be undertaken into a number of aspects of the proposal particularly relating to koala habitat and further clarification regarding the maximum number of lots on the site and a suitable approach for providing certainty over the maximum number of lots on the site. A full copy of the Council Resolution is provided at attachment 2 of this report.

Matters Arising from November 2018 Council Resolution

The matters raised in the Council Resolution, actions taken and amendments to the proposal (where required) are detailed in the table below:

	Council Resolution Matter	Actions taken and amendments to the proposal
2	<i>The specialist studies undertaken as part of the proposal be updated to reflect a maximum lot yield on the site that would be achieved if all lots in the R2 zoned portion of the site realised a lot size of 450 square metres (rather than the 220 lots which the studies are currently based upon), or alternatively, amend the minimum lot size maps to ensure that the total number of resultant lots not exceed 220, and which provides the mix of lot sizes identified in the Planning Proposal.</i>	<p>The proponent has provided an indicative plan (see Attachment 3) which shows that should the site be developed with 450 square metre lots applied across the entire site then the likely number of lots to be generated would be 295 (this involves removing land for roads and on-site detention basins).</p> <p>Rather than amendments to the minimum lot size maps or updating the specialist studies as required by the Council Resolution, the proponent has proposed the inclusion of a site specific clause within WLEP 2011 which limits the site to no greater than 220 lots. This would ensure that the maximum number of lots on the site is consistent with the specialist studies supporting the proposal and importantly the Draft Voluntary Planning Agreement which is based on a maximum lot</p>

	Council Resolution Matter	Actions taken and amendments to the proposal
		<p>yield of 220 lots.</p> <p>The inclusion of a clause in Council's LEP is an approach that has been used by many other Council's to limit the number of lots/dwellings within a new release area and provide Council's with some certainty over the infrastructure required to support a particular development site.</p> <p>It is envisaged that this clause would be supported by detailed controls in a future site specific DCP. It is likely that these controls would prescribe a mix of lot sizes and identify the areas on the site where Council sees a desire to have larger lots (for example, it is likely that future controls would prescribe larger lots along the western and southern boundaries so that residential lots can accommodate the required asset protection zones).</p> <p>It may also be possible to request that the proponent provide a suitable concept lot layout when future DCP controls for the site are being developed. Such controls in Council's DCP would avoid the scenario in the Bingara Gorge site where the dwelling cap was reached with much of the site remaining undeveloped.</p> <p>It is also noted that the R2 Low Density Residential zone permits Dual Occupancy Development (i.e. two dwellings on one lot) and Council's LEP enables an existing dual occupancy on R2 zoned land to be subdivided below the minimum lot size. Council is currently progressing a planning proposal to introduce a clause into its LEP which will provide that a dual occupancy development cannot be undertaken on land less than 800 square metres (for an attached dual occupancy) and 975 square metres (for a detached dual occupancy). It is considered that once this planning proposal to introduce a minimum lot size for dual occupancies is finalised it will prevent the subdivision of dual occupancy dwellings onto individual lots contributing towards the lot yield on the site.</p>
3	<p><i>That the Flora and Fauna Assessment prepared by the proponent be updated to give consideration of the following matters in relation to core koala habitat:</i></p> <ul style="list-style-type: none"> <i>• The significant number of koala sightings in the vicinity of Appin that have occurred</i> 	<p>A revised Flora and Fauna Assessment has been provided by the proponent which addresses the relevant matters (The Addendum Flora and Fauna Assessment provided by the proponent is provided at Attachment 4).</p>

	Council Resolution Matter	Actions taken and amendments to the proposal
	<p>since 2014;</p> <ul style="list-style-type: none"> • <i>The sighting of a pregnant female koala on the development site which occurred shortly before the public exhibition of the Planning Proposal this sighting qualifies the site as Core Koala Habitat under definitions within the current version of SEPP 44.</i> • <i>The Koala Project involving mapping and collaring of koalas that Council commenced participation in 2016 in partnership with OEH and the Australian Conservation Volunteers Trust.</i> 	<p>In regard to the significant number of koala sightings in the vicinity of Appin since 2014 and the sighting of a pregnant female on the site shortly after the exhibition of the proposal, the addendum Flora and Fauna Assessment has provided discussion and mapping of all Bionet records within the study area since 2014. A current Bionet search was undertaken and there are no new records which have since been identified.</p> <p>The vegetation mapping that has been prepared identifies the vegetation types Grey Gum and Forest Red Gum on the site which are both identified as Primary Koala Food Tree Species. The mapped areas of these species is shown in Attachment 5) The addendum Flora and Fauna Assessment states that <i>the most notable feature of the proposed rezoning is that the R2 areas will remove the majority of the Forest Red Gum habitat communities available which has been given high value to koala elsewhere in the state.</i></p> <p><i>The November, 2018 surveys were undertaken to determine the value of Forest Red Gum to koala on the site by evidence of activity. This was undertaken given that previous Spot Assessment Technique (SAT) surveys in the Forest Red Gum communities did not did not record any koala activity (including old scratches) and detailed searches of all forest red gum trees south of Macquariedale Rd (where the highest level of koala activity on the site was recorded in grey gum habitat) found very few trees with scratches.</i></p> <p><i>Within the proposed R2 areas very few Forest Red Gum trees had scratches consistent with koala and no scats have been recorded. The November, 2018 surveys have therefore demonstrated that Forest Red Gum communities located within the proposed R2 Low Density Residential areas do not provide current important feed tree or use habitat for koalas utilising the study area. Whilst this habitat may still be viewed as a supplementary feeding opportunity, the lack of use recorded suggest that protection of the Forest Red Gum is not warranted for koalas.</i></p> <p>Despite the findings above, the E2 zone boundary has been extended from the</p>

	Council Resolution Matter	Actions taken and amendments to the proposal
		<p>proposal previously considered by Council to include the Forest Red Gum/Ironbark Forest vegetation (with high use scratches) along the southern boundary of the site (shown in yellow on the plan in Attachment 5) at the request of Council's Environmental Services Team to ensure that koala habitat on the site is not compromised.</p> <p>The report also states that <i>whilst one Forest Red Gum tree outside of the proposed R2 areas (located to the south of Gordon Lewis Oval) was found to have koala scats at the base, SAT results at this location also indicate 'low use' which is likely to be transitory.</i></p> <p>The Forest Red Gum area with reuse scratches located immediately south of the sports oval is shown in yellow on the plan in Attachment 5. Following discussions between Council and the proponent, the small rectangular area south of the sportsground has been included as E2 zoned land (this area was proposed to be zoned R2 in the version of the proposal previously considered by Council) to ensure that the appropriate movement path is retained between the Forest Red Gum area (containing reuse scratches) and the conservation land to the west. The additional E2 zoned land that has been included in the proposal is shown in Attachment 6.</p> <p>In relation to Grey Gum Habitat on the site, the addendum Flora and Fauna Assessment outlined that <i>some areas containing Grey Gum Habitat in likely combination with other tree species in the Grey Gum associated communities, are demonstrated to support high koala activity in the site. The specific areas of important high use or core activity habitat containing Grey Gum has not been detailed throughout the site but such important habitat is confirmed in the far south western corner. Based on SAT and transect results thus far it is possible that this is the only current high use area and remaining Grey Gum areas are transitory.</i></p> <p>These findings have been reviewed by Council's Environmental Services team and deemed satisfactory.</p> <p>Council's Koala Project is still ongoing. Mapping for the Appin area has been completed and will form part of an overall</p>

	Council Resolution Matter	Actions taken and amendments to the proposal
		koala strategy for the Shire. Council's Environmental Services team are satisfied with the level of additional survey work undertaken and are of the view that their previous concerns are addressed through the amendments to the proposal.
4	<p><i>That the revised Flora and Fauna Assessment and finalisation of Council's Wollondilly Koala Conservation Project (referenced above) provide clarity on the following matters and that these be addressed in a future report to Council:</i></p> <ul style="list-style-type: none"> <i>• Confirm that the E2 Environmental Conservation Zone boundary is in the most suitable location;</i> <i>• Confirm that the land identified for conservation, and the land identified to be removed through the biodiversity certification process is accurate and reflects the constraints and areas of core koala habitat across the site, and</i> <i>• Confirm that all Core Koala habitat be zoned E2 or an appropriate environmental zone</i> 	<p>An Addendum Flora and Fauna Assessment has been provided by the proponent and the findings have seen the E2 zone boundary extended to apply to all areas identified as 'important koala habitat' on the site (important koala habitat is shown by the purple line on the plan in Attachment 7).</p> <p>The revisions to the E2 zone boundary provide the following:</p> <ul style="list-style-type: none"> • Protection of the recorded activity areas and most notably including the high use area within the south-western boundary, the central low use area and on land adjoining the oval; • Maintains the minimum width of the current corridor such that the connective link to adjoining lands is not reduced (286m from creek to Council's oval). In all cases the proposed conservation area exceeds the existing connective minimum width; • Protects the majority of the preferred foraging vegetation communities that contains Grey Gum. An additional area of forest red gum habitat adjacent to the high use grey gum area in the south, which showed a high number of koala scratch marks on two trees has also been protected; • Areas that did not appear to have any evidence of scats or scratches and that has limited connectivity value has been excluded because there is no evidence that the immature or degraded forest red gum stands have high value to the existing koalas within the site. <p>In relation to the requirement in the Council Resolution for core koala habitat to be zoned E2, advice has been received from the proponents' consultant that adjustment of the E2 zone on the basis of core koala habitat is not appropriate for the site.</p>

	Council Resolution Matter	Actions taken and amendments to the proposal
		<p>Core Koala Habitat is defined under State Environmental Planning Policy No. 44 – Koala Habitat Protection. Part 1 of Section 4 of the policy defines core koala habitat as <i>‘an area of land with a resident population of koalas, evidenced by attributes such as breeding females (that is, females with young) and recent sightings of and historical records of a population.’</i></p> <p>Part 2 of the SEPP which outlines the land to which the policy applies and is based not on the koalas activity or usable habitat but rather “land in relation to which a development application has been made and has an area of more than 1 hectare, or has, together with any adjoining land in the same ownership, an area of more than 1 hectare, whether or not the development application applies to the whole or only part of the land”.</p> <p>On this basis the proponents Flora and Fauna consultant states that <i>the core koala habitat is not necessarily the area of core activity or importance but rather the cadastre land ownership to which the development application is made.</i></p> <p><i>The amendments to the E2 zone boundary have rather been based on ‘important koala habitat’ rather than core koala habitat.</i> Council’s Environmental Services Team agree with interpretation of Core koala habitat provided by the proponent and agree with the approach of identifying land described as ‘important koala habitat’ as E2 zoned land.</p> <p>Council’s Environmental Services Team also agreed that a Koala Plan of Management will be required as part of any future development application on the site which deals with management actions both in the core koala activity areas as well as in the proposed development area to prevent harm to the local population.</p> <p>The land identified as important koala habitat has been captured by the amended E2 Environmental Conservation zone. The proponent has also provided further information committing to providing an asset protection zone outside the E2 Environmental conservation zone which will further improve the environmental conservation outcomes. The amendments to include the asset protection zones outside the E2 zoned land is</p>

	Council Resolution Matter	Actions taken and amendments to the proposal
		<p>consistent with the recommendations in the report to Council on the proposal in November, 2018. The modified E2 zone boundaries and Asset Protection Zones are shown on the plan in Attachment 8.</p> <p>The Biodiversity Certification Strategy has also been updated to reflect this land as being retained for conservation purposes throughout the life of the development. The outcomes of the koala plan of management required as part of a future development application would relate to the whole site (including the E2 Environmental Conservation zoned land) but would not override the Biodiversity Certification Strategy or conservation requirements of the E2 zoned land by enabling removal of important koala habitat vegetation as the KPOM incorporates management actions across the site.</p>
5	<i>Following completion of the updated Flora and Fauna Assessment and Council's Wollondilly Koala Conservation Project, that the Planning Proposal and Biocertification Application be amended (if required) to ensure that future development of the site does not impact on any land identified as Core Koala Habitat across the site;</i>	<p>Further studies have been undertaken on the site to identify important koala habitat areas on the site and the E2 Environmental Conservation zone has been adjusted as a result. The changes have resulted in an additional 14,442m² of E2 zoned land being included in the proposal as shown in Attachment 9. Attachment 10 also shows a reduced impact of 39,626m² when consideration is given to the asset protection areas now being located outside the E2 zoned lands.</p> <p>The Biocertification Strategy and application has also been updated to reflect the additional conservation lands in the proposal and is detailed in a separate report. A future Koala Plan of Management will apply to the whole site and will include future management actions.</p>
6	<i>Further consideration be given to the consistency of the proposal with the Greater Macarthur Priority Growth Area Interim Land Use and Infrastructure Plan which was released by the NSW Department of Planning and Environment on 19 November, 2018;</i>	<p>The planning proposal is generally consistent with the Greater Macarthur Priority Growth Area Interim Land Use and Infrastructure Implementation Plan as that plan identifies the residential component of the site as urban capable land.</p> <p>It is noted, however, that the site appears to be affected by an indicative east west connection for Stage 2 of the Outer Sydney Orbital to Illawarra connection</p>
7	<i>A further report be presented to Council following resolution of the outstanding</i>	This report deals with the matters relating to the planning proposal and separate reports

	Council Resolution Matter	Actions taken and amendments to the proposal
	<i>matters above and that the reports on the biocertification and the voluntary planning agreement be placed for consideration at the same meeting;</i>	for the Draft Voluntary Planning Agreement and Biocertification Strategy are provided at this meeting.

Other Measures Taken

Dedication of Land

The proposal involves the dedication of a small parcel (1,932m²) of land to Council adjacent to the existing sportsground (the land to be dedicated is shown on the plan in Attachment 11). Council's Property Group had previously recommended to accept the dedication of this land on the provision that the land be cleared prior to dedication. The further investigations undertaken by the proponent have identified this land as comprising important koala habitat (see Attachment 5). Access to the land is also difficult as it adjoins the proposed E2 zoned land to the east and will likely adjoin an asset protection zone to the north. The Voluntary Planning Agreement report therefore recommends that Council accept dedication of the land without requiring the land to be cleared.

Sewer Capacity

Council staff have had a number of recent meetings with Sydney Water after receiving advice that that there is limited sewer capacity in several towns and villages in the Shire. On this basis, clarification was sought from the proponent regarding their ability to service the site when future development takes place. The following response was received from the proponent responding to this matter:

"Sydney Water correspondence dated 15 October 2018 (attached) confirms that the land the subject of Council's Macquariedale Road Planning Proposal is "located within Sydney Water's area of operation and Sydney Water would be happy to be the water related service provider under the appropriate commercial terms if, following options planning, the selected preferred option is financially prudent".

In order to determine the most financially prudent option, Walker must undertake an options assessment to ascertain the optimal servicing solution for the lowest lifecycle cost. Sydney Water has provided their requirements to Walker undertake this assessment and we have consultants on standby to commence this work. This options assessment will cost approximately \$200,000 and as such, this work will not commence until we have confirmation that the planning proposal will proceed to the Department of Planning and Environment for approval.

In the unlikely event that Sydney Water deems the servicing of this land to not be financially prudent, Walker has the opportunity to contribute to the funding of the infrastructure or explore serving opportunities with other WICA license holders.

Furthermore, as a section 73 certificate must be provided to Council prior to the release of a subdivision certificate for any new lots, Council has the security that no lots will be created without appropriate service connection."

The unknown quantity in this matter is the cost for the proponent to undertake this future servicing work and whether this will make the development unfeasible. This concern has been raised with the proponent, however, they proponent wish to proceed.

Consultation

Environmental Services

Environmental Services advised that the matters that were previously outstanding and the issues raised in the November 2018 Council Resolution have been adequately addressed and the E2 Environmental Conservation Zone boundary has been adequately defined.

The staff are also now satisfied that the proposed boundaries of the E2 Environmental conservation zone will maintain the functionality of the koala habitat corridor based on the most recent available sightings and mapping.

It was also advised that the amendments to the proposal will require adjusting of the credits within the Biodiversity Certification Strategy and application for both the development footprint and conservation land. These amendments have been made and are detailed in the separate report to Council on the Biodiversity Certification Strategy for the site.

Amendments to the Proposal

The following amendments have been made to the proposal since the matter was last considered by Council at its November 2018 Meeting:

- The following site specific clause will be included in the LEP to ensure that the number of lots on the site does not exceed 220:

Macquariedale Road, Appin

(1) *The objectives of this clause are as follows:*

- (a) To allow development that has a maximum of 220 residential lots on the land to which this clause applies;*
- (b) To ensure that infrastructure is not overburdened;*
- (c) To provide for a diversity of dwelling types.*

(2) *This clause applies to land identified as "Macquariedale Road" on the Clause Application Map.*

(3) *Despite clauses 4.1, 4.1AA, 4.1B and 4.1C, the total number of lots that may be created by the development of the land specified in the Clause Application Map must not exceed 220 Lots.*

- An additional 14,442m² of E2 Environmental Conservation zoned land has been added to the proposal in lieu of land zoned R2 Low Density Residential;
- The proponent has agreed to amend the proposal to include the Asset Protection Zones outside the E2 Environmental Conservation zoned land and controls relating to this will be incorporated into future site specific DCP controls for the site, and
- The Biodiversity Certification Strategy has been updated to reflect the additional land for conservation purposes and is detailed in a separate report.

Council Options for the Planning Proposal

The planning proposal has been prepared in accordance with former Section 55 (now 3.33) to the EP&A Act, 1979 and the guidelines published by the Department. It is proposed to revise the planning proposal from the publicly exhibited version in response to matters raised through consultation. Council's options are:

1. Resolve to support the planning proposal in the form as described in this report.
2. Resolve to support the planning proposal in another form. With this option a new Gateway determination, amended specialist studies and a new public exhibition period may be required.












3. Resolve not to support the planning proposal. With this option there is no further action to be taken on the planning proposal other than to inform the applicant, submitters and the Department that the planning proposal has been terminated. The applicant could choose to submit a new planning proposal. There are no appeal rights through the Land and Environment Court against Council's refusal to support the planning proposal at this stage of the process. The proponent does however have a right to ask the state Government to reappoint the planning proposal authority (i.e., Joint Regional Planning Panel).

Option 1 is the recommendation of this report.

Financial Implications

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

ATTACHMENTS

1. **Post Exhibition Report to Council - 19 November, 2018** 
2. **Council Meeting Minutes 19 November, 2018** 
3. **Plan Showing Indicative Lot Yield based on 450 sqm minimum lot size** 
4. **Findings of Additional Koala Surveys and Addendum Flora and Fauna Report** 
5. **Map Showing Koala Feed Tree Vegetation** 
6. **Additional E2 Environmental Conservation Land included in the proposal** 
7. **Map Showing the location of important Koala Habitat (purple Outline)** 
8. **Plan Showing Modified E2 zone Boundaries, APZ's and indicative Lot Layout** 
9. **Plan showing area of additional E2 zoned land** 
10. **Plan Showing the reduced impact of amendments to Planning Proposal** 
11. **Indicative Staging Plan including land to be transferred to Council** 

RECOMMENDATION

1. That Council support the Macquariedale Road Planning Proposal to amend the provisions of Wollondilly Local Environmental Plan 2011 as follows:
 - (a) Amend the Land use zoning map from RU2 Rural Landscape to E2 Environmental Conservation, R2 Low Density Residential and RE1 Public Recreation;
 - (b) Amend the land use zoning map from B2 Local Centre to R3 Medium Density Residential for land directly adjoining existing R3 lands;
 - (c) Amend the Height of Building Map for lands proposed to be zoned R2 Low Density Residential and R3 Medium Density Residential;
 - (d) Amend the minimum lot size map to 450m² for the proposed R2 Low Density Residential zone;
 - (e) Amend the minimum lot size map to 450m² and 230m² for the proposed R3 Medium Density Residential zone;
 - (f) Amend the minimum lot size map to 5Ha and 20Ha for the proposed E2 Environmental Conservation zone;
 - (g) Amend the Natural Resources Biodiversity Map to include lands zoned for E2 Environmental Conservation and identified as sensitive lands;
 - (h) Include a site specific clause within WLEP 2011 which prescribes that no more than 220 residential lots are to be created on the site.
2. That in accordance with Section 3.36 (formerly Section 59) to the Environmental Planning and Assessment Act, 1979 the planning proposal be forwarded to the Minister with a request to make arrangements for the drafting of the amended Local Environmental Plan and that the Minister make the Plan in the form as detailed in this report and in the planning proposal;
3. That Council accept the dedication of land adjacent to the existing sportsground in its current vegetated state;

4. That the amendments to the Wollondilly Development Control Plan 2016 are to be re-exhibited and consequently reported to Council, and
5. That the applicant and persons who made submissions regarding the planning proposal be notified of Council's decision.