

Planning Services

Plan Finalisation Report

Local Government Area: Wollondilly

PP Number: PP_2011_WOLLY_017_00

1. NAME OF DRAFT LEP

Wollondilly Local Environmental Plan 2011 Amendment No. 32 (draft LEP). The draft instrument is at **Attachment LEP**.

2. SITE DESCRIPTION

The planning proposal applies to land at 15 Fairsleys Road, Picton, part Lot 1 DP 1086066 by the intersection of Abbotsford and Fairleys Road (the site).

The site is approximately 66.62ha in size and is located approximately 1.5km north-west of the Picton Town Centre. The land is cleared of native vegetation with only a few scattered shade trees around the paddocks which contain several farm dams. The site contains a State Heritage Item known as the Abbotsford Group. The group consists of a main residence (in dilapidated condition), a smaller cottage and a demolished gaol positioned around a central courtyard, driveway and selected trees.

Figure 1 below shows the whole of Lot 1 DP 1086066 (outlined in red) and the portion of the lot to which this planning proposal relates (filled in blue).

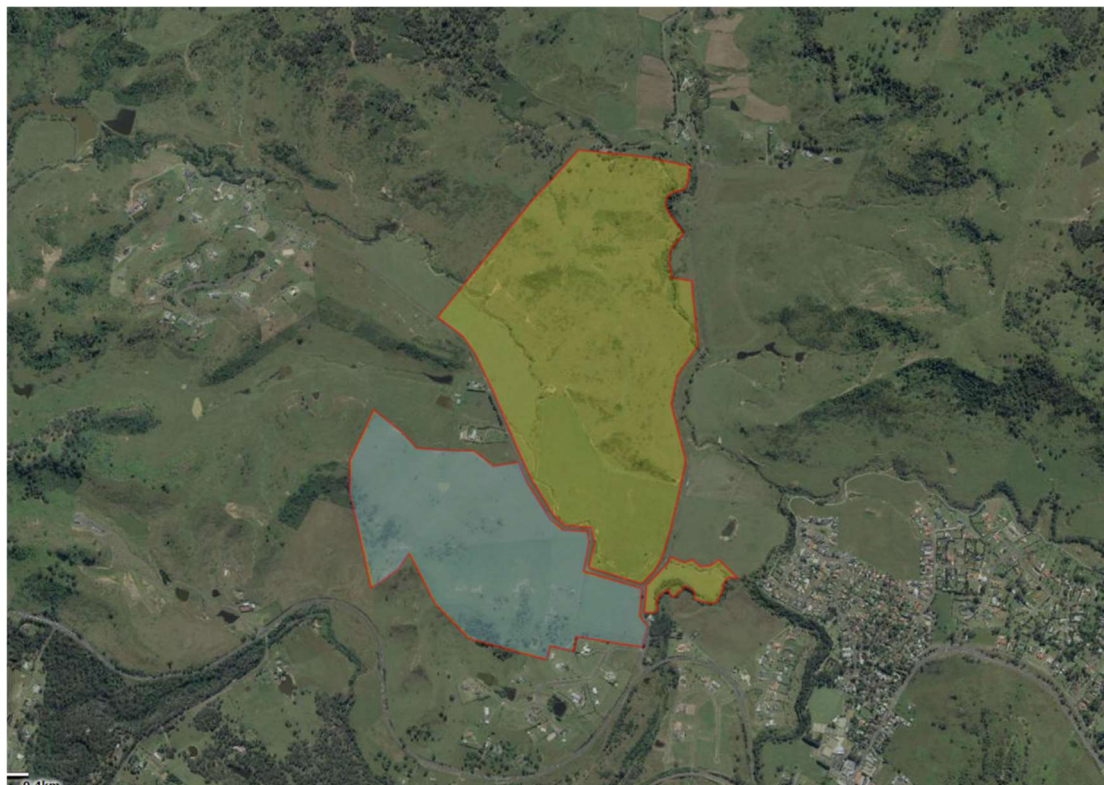


Figure 1 – The Site

Figure 2 below shows the items of heritage significance on site.

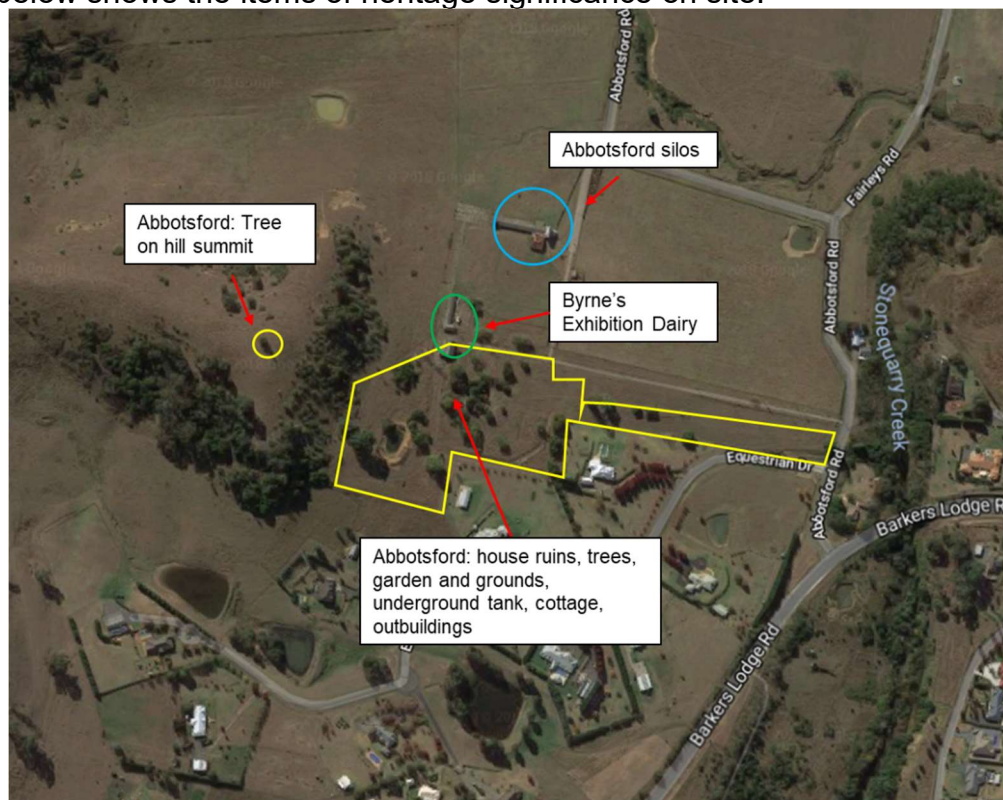


Figure 2 - Items of heritage significance

3. PURPOSE OF PLAN

The final planning proposal (**Attachment B**) seeks to undertake amendments to the written provisions and maps under the Wollondilly Local Environmental Plan (WLEP) 2011 to facilitate the development of the site at Abbotsford Road, Picton for rural residential style housing, while safeguarding items of historical interest across the site and facilitating the environmental management of sensitive land. It is anticipated that the proposed controls would facilitate up to 40 dwellings.

The planning proposal has been informed by various studies as required by the Gateway Determination. The additional development potential is generally consistent with the planning approach in the surrounding area.

The planning proposal seeks to amend the WLEP 2011 as follows:

Map Amendment:

- Land Zoning (LZN_008F) – rezone the site from RU2 Rural Landscape to E4 Environmental Living;
- Lot Size (LSZ_008F) – reduce the minimum lot size from 40 ha to 20ha for the western portion of the site and 4000sqm for the eastern portion of the site;
- Height of Buildings (HOB_008F) – apply a maximum building height to 6.8 metres;
- Natural Resources – Biodiversity (NRB_008F) – amend the natural resources – biodiversity map to identify sensitive land on the site;

- Heritage (HER_008F) – amend the heritage map to identify two (2) additional heritage items and to reduce the curtilage for the existing listed archaeological site for the state significant Abbotsford Homestead (identified as Item No. A7 under WLEP 2011).

The current and proposed maps are included in **Appendix 1** of this report.

Written Amendment:

- Schedule 5 Environmental Heritage: Amend Part 1 Heritage Items to include the following heritage items:
 - Abbotsford Silos, 15 Fairleys Road, Picton, Part Lot 1 DP 1086066; and
 - Byrne’s Exhibition Dairy (2 buildings), 15 Fairleys Road, Picton, Part Lot 1 DP 1086066.

Draft Voluntary Planning Agreement (VPA)

A draft VPA (**Attachment I**) is associated with the planning proposal. The key elements of the draft VPA include heritage works to Abbotsford heritage item and road works and improvements.

Draft Development Control Plan (DCP)

Council proposes to include site specific planning controls within the DCP in relation to future development on the site. Council resolved on 19 November 2018 to publicly exhibit the draft amendments to the Wollondilly DCP for site specific controls applying to the Abbotsford site. The amendments are on exhibition between 28 November 2018 and 30 January 2019.

4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Hume Electorate. Jai Rowell MP is the State Member for Wollondilly. Angus Taylor MP is the Federal Member for Hume.

To the regional planning team’s knowledge, neither MP has made any written 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: A political donation disclosure statement has been provided.

5. GATEWAY DETERMINATION

The Gateway determination issued on 24 April 2012 (**Attachment C**) determined that the proposal should proceed subject to conditions.

The Gateway was altered in February 2016 (**Attachment F4**) to reflect the current Planning Proposal, which had been amended in response to the findings of specialist reports required by the Gateway determination. The alteration included changes to land to which the planning proposal applies, land zoning, minimum lot size, height of buildings and the inclusion of 2 additional heritage items.

At the time of the Gateway alteration in February 2016, it was concluded that Council had satisfied Condition 1 (completion of specialist reports (**Attachment G1—G19**)), Condition 2

(address Section 9.1 Directions and SEPPs), Condition 3 (specialist reports provided to the Department prior to exhibition) and Condition 4 (updated planning proposal provided to the Department prior to exhibition).

The Gateway determination has also been altered on a further 6 occasions for extensions of time and did not otherwise change the conditions of the Gateway determination (**Attachment F1-F7**). The extensions of time were as follows:

Date Requested	Amended Deadline
October 2013	1 st May 2014
January 2015	1 st August 2015
October 2015	1 st August 2016
September 2016	30 th June 2017
July 2017	31 st March 2018
May 2018	31 st July 2018

The current timeframe for the draft LEP to be finalised is 31 July 2018. The Department received the request to finalise the proposal on 31 July 2018.

The Department is satisfied that Council has met the conditions of the Gateway determination and the planning proposal is adequate for finalisation.

6. PUBLIC EXHIBITION

Conditions 1, 3 and 4 of the Gateway Determination required that public exhibition may not commence until a number of required specialist studies were undertaken and an amended planning proposal had been provided to the Department. In February 2016, the Department wrote to Council to confirm that these conditions had been satisfied and to proceed with public exhibition of the proposal.

In accordance with Condition No. 5 of the Gateway determination, Council exhibited the planning proposal for 28 days, from 23 August 2017 to 22 September 2017 and consulted all required government agencies. The proposal was re-exhibited from 26 October - 23 November 2017 as an adjoining landowner was omitted from the initial notification.

Council received eight (8) submissions from the community during exhibition which are summarised in the Council report. The Council report and resolution are provided at **Attachment H**.

The keys issues raised in the community submissions and how these have been addressed are detailed below.

Issue	Response
Impact on traffic network - <i>Concerns in relation to increased congestion on surrounding streets and intersections and concerns in relation to the adequacy of traffic and transport studies</i>	The Traffic and Transport study prepared in 2012 to support the proposal concluded that the concept development (40 lots) would not result in a significant amount of congestion on the surrounding street network. The report did however, identify nearby intersections that may warrant upgrades in the future as a result of development in the area.

Issue	Response
	<p>In 2016, Council appointed a consultant to undertake the Picton Town Centre Master Plan which took into account all planning proposals in the pipeline in the Picton precinct, including the subject proposal. The draft study identifies roads requiring intersection upgrades.</p> <p>It is noted that the Traffic and Transport study submitted with the proposal is dated, the recent Council led study is considered adequate to be able to assess the potential impact on the street network and identify areas that warrant future upgrade.</p> <p>The draft Planning Agreement (Attachment I) proposes a number of community benefits, including a monetary contribution of \$5,000 per lot towards road works identified by Council in the Picton Centre Master Plan.</p>
<p>Flooding and Stormwater drainage</p> <p>- <i>Submissions considered that the study does not represent the true extent or accurate depiction of flooding on the site.</i></p>	<p>The Flood Assessment Report (Attachment G5) submitted with the proposal is considered to use appropriate methodologies and the conclusions are adequately considered.</p> <p>Overland flow will be thoroughly considered at the development application (DA) stage and any future dwellings on site are required to be built above flood planning levels.</p> <p>Flooding and stormwater are considered to have been adequately addressed for the progression of the planning proposal.</p>
<p>Character of local area and growth</p> <p>- <i>Impacts of proposed development and residential growth on the existing locality and rural aspects of the Wollondilly area.</i></p>	<p>The planning proposal will facilitate the provision of approximately 40 allotments. The proposed planning controls are in keeping with surrounding developments.</p> <p>It is considered that the proposal provides additional housing in an area accessible to the Picton town centre and nearby sportsground.</p>
<p>Essential services</p> <p>- <i>Submissions raised concerns regarding future development and access to drinking water, effects on existing water pressure and disposal of wastewater.</i></p>	<p>Future development will be connected to Sydney Water's network via an extension to be built by the developer. Sydney Water have no objections to the proposal and have advised that it would be unlikely to affect water pressure.</p>

Issue	Response
	Wastewater disposal will be managed via on-site sewerage management systems provided by each lot owner. Future development will be required to comply with Council's 'Onsite Sewage Management and Greywater Reuse Strategy'. This matter will be further considered at DA stage.
Contamination <i>- Concerns relating to the accuracy of the provided study and lack of detail or discussion regarding proposed methods of revitalisation.</i>	A 'Contaminated Land Study' (Attachment G12) dated June 2013 concluded that there are no contamination issues that would prevent the rezoning of the site for residential use. The study has identified areas of potential contamination which can be further investigated as part of a detailed site investigation for a future DA which will be required to include a Remedial Action Plan if necessary.
Heritage <i>- Requests that silo and barn buildings be preserved.</i> <i>- Preservation of heritage on site is important and development should be sympathetic to this.</i>	The silo and barn buildings are being recognised as heritage items in the WLEP. Site specific controls are being prepared for inclusion in the DCP to ensure future development on the site respects the heritage of the site.
Draft Voluntary Planning Agreement <i>- Recommendation that the draft VPA be updated to include additional road upgrades</i>	The draft VPA agrees to undertake works to Abbotsford road, as well as a monetary contribution towards road works identified by Council in the draft Picton Town Centre Transport Master Plan. Any additional road works will be assessed as part of a future DA if necessary.

The proposed site specific DCP is a mechanism to address DA relevant matters such as heritage and contamination. The draft DCP is on exhibition between 28 November 2018 and 30 January 2019 and is due to be adopted by Council mid-2019.

It is considered that Council has adequately addressed the issues raised by the community during the exhibition period.

7. ADVICE FROM PUBLIC AUTHORITIES

Council consulted with Office of Environment and Heritage (OEH), Roads and Maritime Services (RMS), Department of Education and Communities, NSW Department of Primary Industries – Agriculture, Integral Energy, Subsidence Advisory NSW, NSW Trade and Investment, Transport for NSW, NSW Health, NSW Rural Fire Service, Sydney Water, Telstra and adjoining LGAs in accordance with Condition No. 6 of the Gateway determination.

Comments and recommendations were provided by Department of Education, Department of Primary Industries, Division of Resources & Geoscience, Subsidence Advisory NSW,

Sydney Water, RMS and Heritage Council of NSW. In general, the authorities supported the proposal.

A summary of relevant submissions is provided below:

Heritage Council

The Heritage Council made a number of comments on the planning proposal. In their third submission dated February 2018 (**Attachment I**), the Heritage Council recommended that further studies and assessments of the heritage aspects of the site to enable the detailed assessment of the rezoning and impacts of future development.

In March 2018, Council wrote to the Department requesting additional time to finalise the planning proposal and assistance in addressing comments from the Heritage Council. The Department responded to this request in May 2018 stating that it considers the Heritage Council's comments to be recommendations to consider prior to finalisation of the planning proposal, rather than an objection and that it would be appropriate for matters raised in the submission to be considered in further detail at the DA stage.

Department Comment:

Given the extent of the heritage related studies undertaken to date, it is considered that the heritage component of the planning proposal has been adequately addressed at the planning proposal stage. Detailed assessment including additional studies will be considered at DA stage and the protection of heritage items supported by controls in a future DCP.

Department of Primary Industries (DPI)

In September 2017, DPI noted that it had no objection to the planning proposal however suggested that landscape features or roadways should be provided to reduce the risk of land use conflict between agricultural and residential.

Department Comment:

Noted. These matters are to be addressed as part of the DCP.

Department of Resources and Geoscience (DRG)

In September 2017, DRG noted that the preference is for land identified within the Wollondilly Growth Management Strategy to be developed before new greenfield sites but would not object to proposed development adopting appropriate building guidelines.

Department Comment:

Noted. This matter can be addressed further at the DA stage.

NSW Health

In May 2018, NSW Health did not object to the planning proposal and provided a variety of recommendations for consideration, including further assessment of contamination at DA stage, consideration of culminative impact and noting that the proposal will not impact upon agricultural land or food security.

Department Comment:

Noted.

NSW Rural Fire Service (RFS)

NSW RFS provided comments in September 2017 which included various recommendations such as complying with 'Planning for Bushfire Protection' 2006 and consulting with relevant stakeholders which is to be considered at DA stage.

Department Comment:
Noted.

Roads and Maritime Services (RMS)

RMS provided a response dated September 2017, which provided recommendations including footpaths, speed zones, and road widening for consideration at DA stage. RMS did not object to the proposal.

Department Comment:
Noted.

Sydney Water

In their submission dated April 2018, it was noted that Sydney Water currently does not have sewer capacity to service the site until future upgrades take place.

Department Comment:

The proposed dwellings are capable of having onsite treatment systems. The planning proposal indicates there will be onsite wastewater system provided for each individual lot and the Department is satisfied that the minimum lot size allows sufficient area for onsite systems.

As such, the authorities raised matters that will need to be considered and/or addressed through the design and DA phase of the development, including further consideration of heritage and traffic impacts. These matters do not prevent the draft LEP proceeding to finalisation.

8. POST-EXHIBITION CHANGES

In response to specialist studies and consultation, at its meeting on 18 June 2018 (**Attachment H**), Council resolved to make minor amendments to the planning proposal as follows:

- Identify environmentally sensitive land on the Natural Resources –Biodiversity Map.
- Expand the proposed heritage curtilage for the Abbotsford homestead heritage item to include remnant hedging and to include the western most tree in a separate curtilage.

The changes have been made in response to the Heritage Council submissions (in relation to curtilage) and community submissions (in relation to environmentally sensitive land) and are considered to be of minor significance and do not warrant a Gateway alteration or re-exhibition.

The proposed changes are provided in Figures 3 and 4 overleaf.

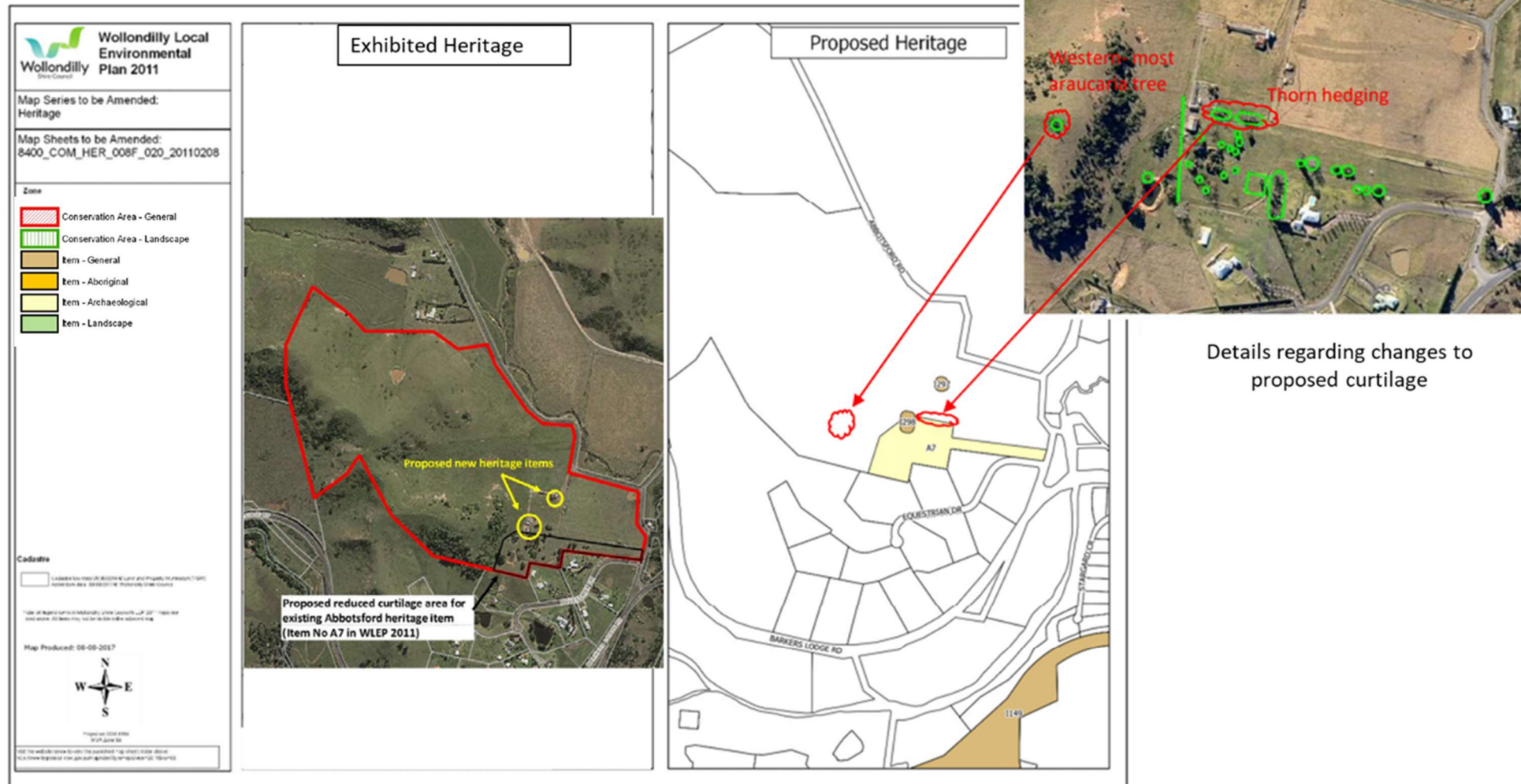


Figure 3 – Heritage Map changes

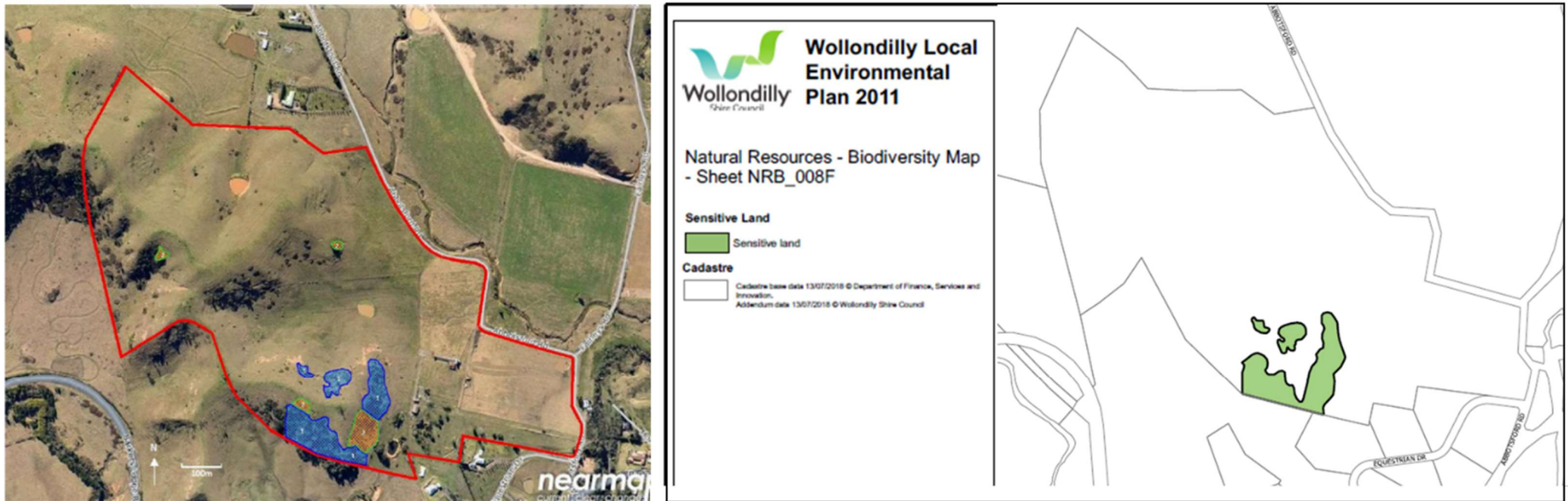


Figure 4 – Biodiversity Map

9. ASSESSMENT

The draft LEP is considered to have merit, providing development opportunity for houses of underutilised land in close proximity to existing services.

The redevelopment of the site will contribute to housing supply and choice in the area and provides benefits including the restoration and protection of significant heritage items.

Section 9.1 Directions

At the time of the Gateway alteration in February 2016, the delegate of the Secretary agreed that the Planning Proposal's inconsistency with Section 9.1 Direction 1.2 – Rural Zones, Direction 2.1 – Residential Zones and 3.1 Environmental Protections zones was of minor significance. No further approval was required in relation to these directions.

The following Section 9.1 Directions also apply to the Planning Proposal:

Direction 1.3 – Mining, Petroleum Production and Extractive Industries

The objective of Direction 1.3 is 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 Directive applies as the planning proposal affects land which is underlain by mineral resources. The site lies largely outside of any current coal title or Mine Subsidence District, however as the site is underlain with prime coking coal there is potential that the area will be undermined in the future. As per the requirements of this Direction, Council consulted NSW Trade and Investment Resources and Energy (now DRG) on the planning proposal. In their submission dated September 2017, DRG raised no objection to the proposal, subject to the development adopting appropriate building guidelines and recommending a subsidence study be included with any future DA.

In addition, Tahmoor Coal Mine (submission dated September 2017) have no objection to urban development on the site, provided that future development is consistent with mine subsidence requirements.

As such, it is considered that any mine subsidence issues can be overcome with appropriate built form and engineering construction methods, which will be assessed and addressed via the DA process. The proposal is therefore consistent with this Direction.

Direction 2.3 Heritage Conservation

The objective of this Direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance. A curtilage heritage study (**Attachment G10**) of the site was required by Condition No. 1 of the gateway Determination.

The site is rich in European heritage and includes the state heritage listed Abbotsford Homestead Archaeological site (Item A7 in list of heritage items include at Schedule 5 Environmental heritage of the Wollondilly Local Environmental Plan 2011) along with a number of farm buildings associated with the Byrne's Exhibition Dairy in the late 1930s and further dairy related buildings from the mid nineteenth century.

In terms of heritage, the planning proposal seeks to:

1. Amend the site boundary or curtilage for the existing Abbotsford heritage item; the proposed amended curtilage is smaller than the current curtilage identified within the WLEP but is still larger than the curtilage associated with the state listing of this item.
2. Heritage list historically significant buildings associated with the Byrne's Exhibition Dairy by including them within Schedule 5 Environmental Heritage of the WLEP 2011.
3. Heritage list the silo structures by including them within Schedule 5 Environmental Heritage of the WLEP 2011 to encourage their adaptive reuse.

The amendments sought by this planning proposal are considered to be consistent with the objectives of Direction 2.3 as heritage items of significance are being retained and protected.

Direction 4.2 – Mine Subsidence and Unstable Land

This direction applies as areas within the site have been identified as unstable land. The site is not located within an existing Mine Subsidence District, though it may be in the future if the underlying coal seam was to be mined.

A Geotechnical Study (**Attachment G3**) has been prepared to inform the planning proposal which has identified a number of areas within the subject site which are unsuitable for urban development. The study identifies areas or 'building envelopes' across the site are possible for residential development.

The Mine Subsidence Board (now SA NSW) were consulted and raised no objections in their submission dated September 2017 to the planning proposal, subject to future buildings complying with appropriate construction methods. Under the *Environmental Planning and Assessment Act 1979 (the Act)* integrated development provisions, Council must seek general terms of approval from SA NSW for future development applications in mine subsidence districts. As such, the proposal is consistent with this Direction.

Direction 4.3 – Flood Prone Land

Direction 4.3 applies when a planning proposal creates, removes or alters a zone or a provision that affects flood prone land.

A Flood Assessment Report (**Attachment G5**) has been prepared on behalf of the proponent by Berten Pty Ltd (dated February 2013). Areas of the subject site have the potential to be affected by floodwater in Stonequarry Creek and an unnamed tributary of Stonequarry Creek.

Clause 5 of Direction 4.3 specifies that a planning proposal shall not rezone land within the flood planning areas from Special Area, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone. Only a small portion of the total site (3.4%) is located within the flood planning level. Any development below Council's flood planning level will require development consent under existing Clause 7.4 of the WLEP, which includes various matters for consideration prior to consent being granted.

The planning proposal is considered to be substantially in accordance with this Direction as flood planning will be required to be addressed in detail at the DA stage.

Direction 4.4 – Planning for Bushfire Protection

Direction 4.4 applies when a planning proposal affects or is in proximity to land mapped as bushfire prone. A small portion to the south of the subject site is identified bushfire prone land.

A Bushfire Risk Assessment has been prepared on behalf of the proponent by ACS Environmental Pty Ltd (dated July 2013) (**Attachment G13**) considered potential constraints on future residential land use and concluded that site could readily be used for residential purposes whilst minimising impacts and preserving environmentally sensitive locations.

Consultation was undertaken with the NSW Rural Fire Service in 2012 and 2017. The NSW RFS advised of no objections to the planning proposal subject to careful consideration of access, grassland hazard, Asset Protection Zones, areas of high conservation value, services and referral to the Wollondilly Bush Fire Management Committee (BFMC). Council intend to consult with the Wollondilly BFMC in the near future. Any future DA will be required to comply with Planning for Bushfire Protection 2006 and will likely warrant referral to NSW RFS for detailed comments. The planning proposal is therefore considered to be in accordance with this Direction.

State Environmental Planning Policies

SEPP No. 55 Remediation of Land

While the planning proposal does seek to increase the height and density on the site, residential uses are already permitted on the land under the current land use zone.

The planning proposal has identified areas that require further investigation to determine whether they are affected by contamination. Council, as the planning authority, considers that any contamination and potential remediation can be addressed in any future DA process as per the recommendations of the Contaminated Land Study (**Attachment G12**).

Strategic Planning Framework

Greater Sydney Region Plan: A Metropolis of Three Cities

The Plan outlines how Greater Sydney will manage predicted population growth and provides a footprint for infrastructure delivery.

The Proposal is consistent with Objectives 10 'Greater housing supply' and 13 'Environmental heritage is identified conserved and enhanced' of the Regional Plan as it will deliver additional housing whilst protecting surrounding heritage items.

There are no directions under the Regional Plan which preclude finalisation of the Plan.

Western City District Plan

The District Plan intends to inform local councils planning, guide assessment of local Planning Proposals, and inform infrastructure agencies, the development sector and wider community of expectations for growth, change and infrastructure provision within the District.

The site is identified as a Metropolitan Rural Area (MRA) in the Plan. Planning Priority W17 (Better Managing Rural Areas) of the Western City District Plan states that "urban development in the Metropolitan Rural Area will only be considered in the investigation areas identified in the Greater Sydney Region Plan". The site is not identified as an investigation

area in the Greater Sydney Region Plan and the proposal is therefore inconsistent with the Plan.

The District Plan does outline however that “limited rural residential development could be considered where there is no adverse impact on the amenity of the local area and the development provides incentives to maintain and enhance the environmental, social and economic values of the Metropolitan Rural Area”.

In the report to the Ordinary Council Meeting of 18 June 2018 (**Attachment H**), Council staff consider that the inconsistency should not prevent the further progression of the planning proposal due to the following:

- The planning proposal received a Gateway Determination a substantial period of time prior to the release of the draft Western City District Plan;
- The proposal provides incentive to secure the stabilisation of the Abbotsford Homestead heritage item which is considered to be consistent with the values of the MRA.
- The proposal is generally consistent with the District Plan in all other respects.

In particular, the Proposal is in line with Planning Priorities W5 ‘Providing housing supply, choice and affordability with access to jobs and services’ and W6 ‘Creating and renewing great places and local centres, and respecting the District’s heritage’ as it promotes development of the site for housing, whilst promoting the protection and rehabilitation of heritage items. The site is also accessible to a variety of services and employment opportunities.

There are no directions under the District Plan which preclude finalisation of the Plan.

10. MAPPING

There are five (5) map tiles associated with this planning proposal (**Attachment Map**) that has been submitted via the ePlanning Portal. The maps have been examined by the Department’s ePlanning team and meet the technical requirements.

11. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument under clause 3.36(1) of the Act (**Attachment D**).

Council confirmed via email on 1 November 2018 that it was happy with the draft and that the draft Plan should be made (**Attachment E**).

12. PARLIAMENTARY COUNSEL OPINION

On 19 November 2018 Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

13. CONCLUSION

It is considered that Council has satisfied all conditions of the Gateway determination and that the relevant public authorities supported the proposal subject to further matters being addressed at later stages. It is noted that these matters will be subject to further referrals or the development of a site specific DCP. There are no outstanding objections.

The proposed changes to various planning controls will provide for the feasible development of the site for residential purposes and achieve a development outcome that is sensitive to the heritage values of the site and consistent with the current and planned urban character of the area. The Proposal is generally consistent with both the Greater Sydney Region Plan and the Western City District Plan.

14. RECOMMENDATION

It is recommended that Greater Sydney Commission's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) because it will:

- provide additional housing in an appropriate location within the Wollondilly LGA;
- enable the redevelopment of the subject site, which includes the protection and improvement of heritage items; and
- deliver future residential development that is compatible with the surrounding area.



Edith Barnes
Specialist Planning Officer
Sydney Region West



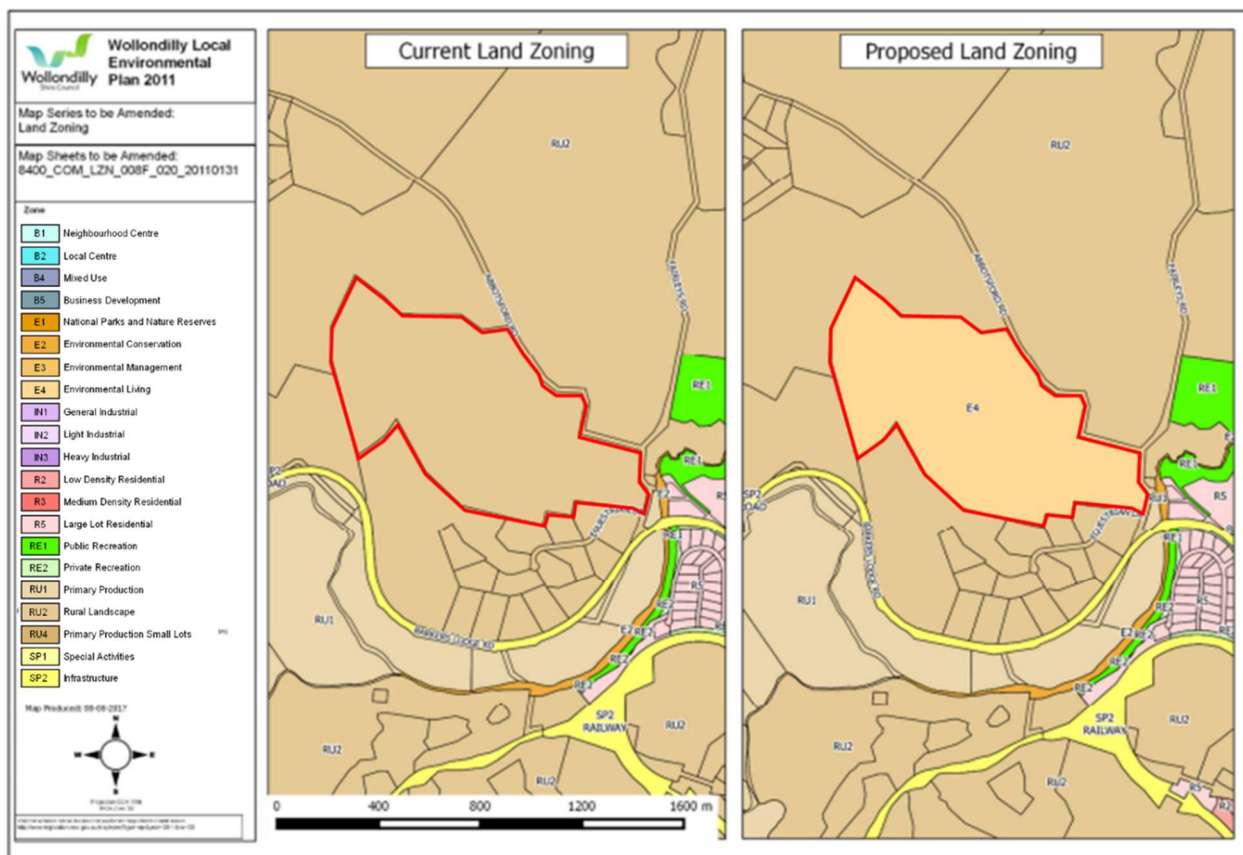
Ann-Maree Carruthers
Director, Sydney Region West
Planning Services

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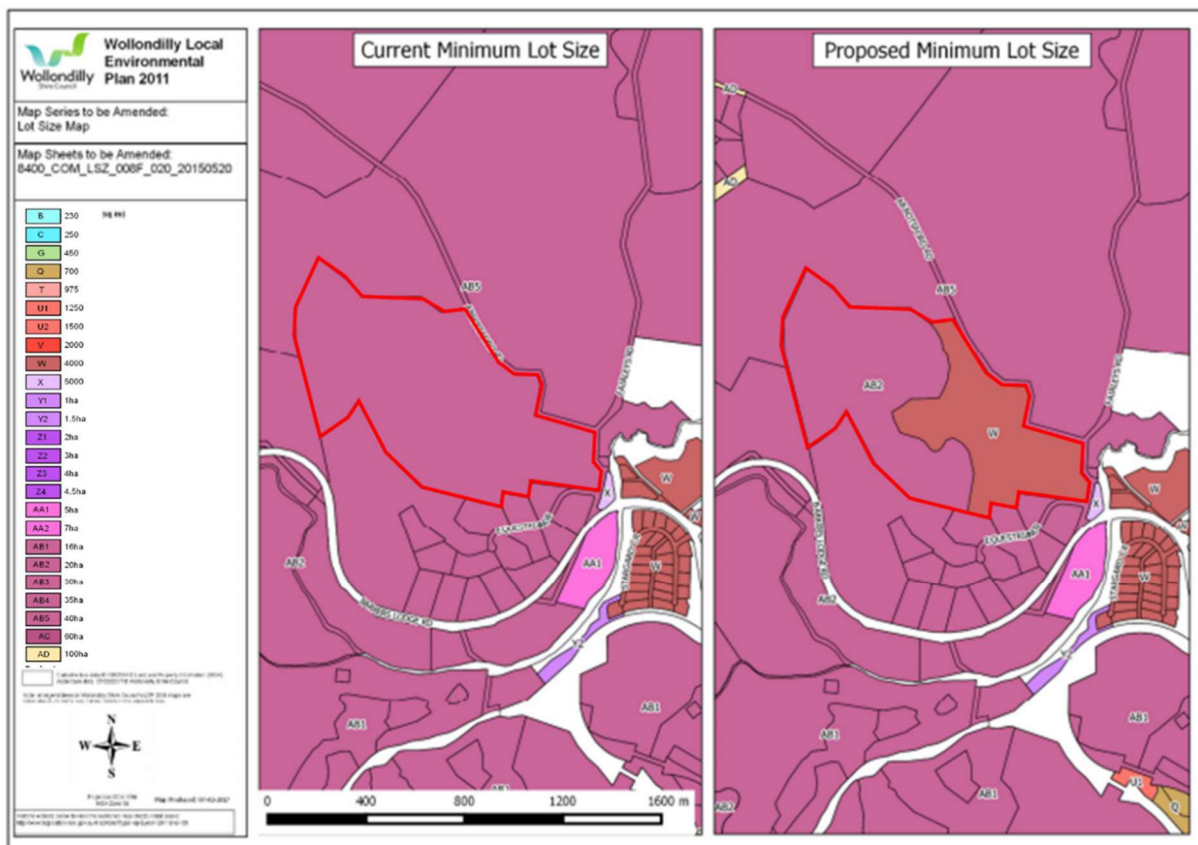
Contact Officer: Charlotte Lowe
Rezoning Officer, Accelerated Rezoning Team
Phone: (02) 9373 2875

Appendix 1 – Current and Proposed Maps

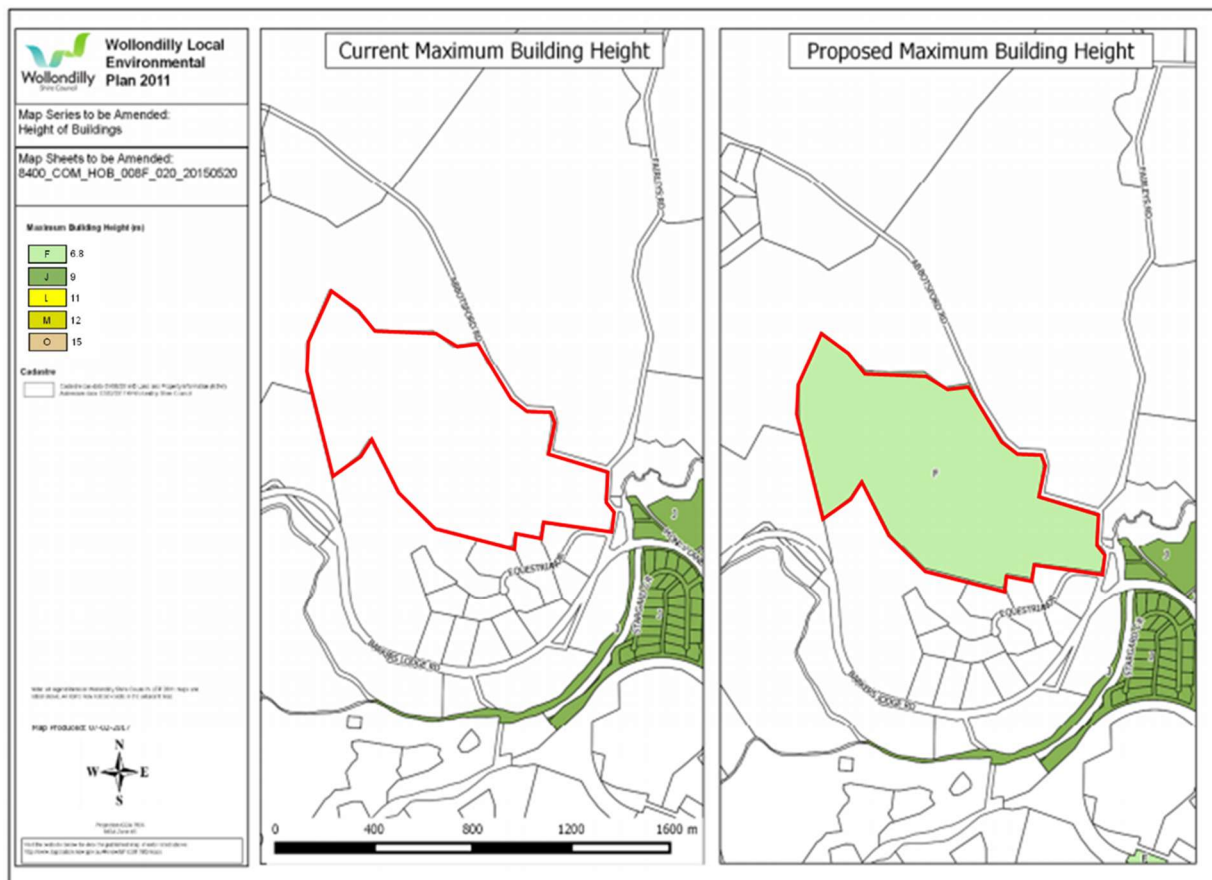
Land Zoning Map



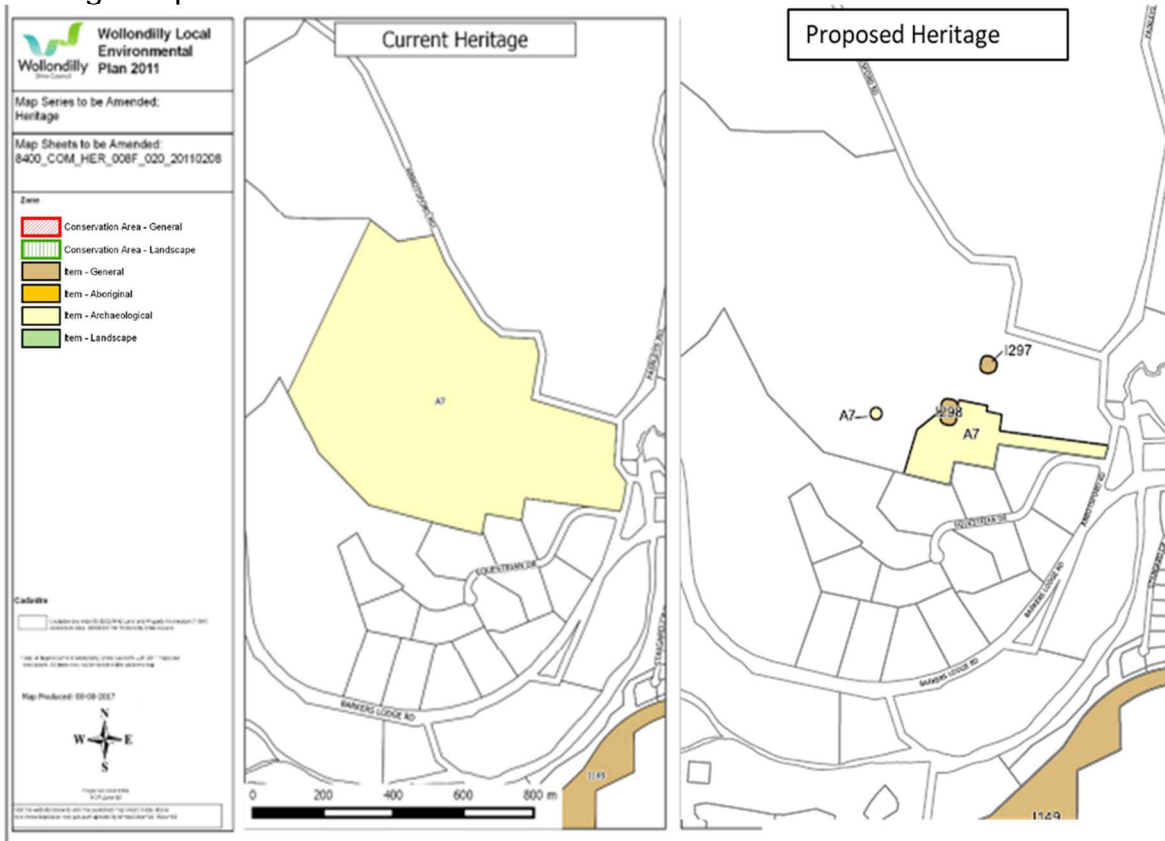
Minimum Lot Size Map



Height of Buildings Map



Heritage Map



Natural Resources Map
(no existing map)

