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Plan finalisation report – PP-2020-3135

Planning proposal to amend Wollondilly Local
Environmental Plan 2011.

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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Wollondilly Local Environmental Plan 2011 (Map Amendment No 2).

The planning proposal involves rezoning various parcels of land in Bargo, NSW from RU1 Primary Production to RU2 Rural Landscape and part E2 Environmental Conservation under the *Wollondilly Local Environmental Plan 2011* (Wollondilly LEP 2011) to facilitate the expansion of the Wollondilly Anglican College and the conservation of adjoining land.

1.1.2 Site description

Table 1 Site description

Site Description	<p>The planning proposal (Attachment A) applies to land in Bargo, NSW</p> <p>‘The Site’ comprises the following land:</p> <ul style="list-style-type: none"> • 3000 Remembrance Driveway (Lot 12 DP 1122904), • 1 Olive Lane (Lot 2 DP 877585), • 5 Olive Lane (Lot 4 DP 1010127) and • Part of 3 Olive Lane (Lot 3 DP1010127)
Type	Site
Council / LGA	Wollondilly Shire Council (Council)
LGA	Wollondilly Local Government Area



Figure 1 Subject site (source: Wollondilly Shire Council, 2021)

The site has a total land area of 38.16 ha. The site is bound by Remembrance Driveway to the East, Olive Lane to the North and bordered by the Bargo River to the West, which connects to the Nepean River. The site comprises an established school campus known as Wollondilly Anglican College which is a co-educational school catering from pre-school to year 12.

The school campus is sited along the eastern portion of the site. Adjoining the school is the Wollondilly Anglican Community Church. The remainder of the site is densely vegetated.

The northern portion of the site consists of agricultural land with several outbuildings bisected by Olive Lane.

The surrounding area comprises rural uses to the north primarily for Olive farms, Tahmoor Colliery to the east and Shell Service Station, wrecking yard and a poultry farm to the South.

1.1.3 Purpose of plan

The draft LEP aims to amend the zoning of the subject site from RU1 Primary Production to RU2 Rural Landscape and part E2 Environmental Conservation via a map only amendment.

The intent of the planning proposal is to allow for the expansion of the Wollondilly Anglican College school infrastructure such as and provide further environmental protection for a portion of the site through additional environmental zoning.

The planning proposal will:

- Rectify a historical planning anomaly, which currently prohibits the existing Education Establishment on the subject land.
- Formalise the conservation of environmental land adjoining the school campus.

To achieve this outcome at the site, the planning proposal seeks to amend the Wollondilly LEP 2011, as follows:

1. Amend Land Zoning Map 'Sheet LZN_008D' to rezone Lot 12 DP 1122904 from 'RU1 Primary Production' to part 'RU2 Rural Landscape' and part 'E2 Environmental Conservation'.
2. Amend Land Zoning Map 'Sheet LZN_008D' to rezone Lot 2 in DP877585, Lot 4 in DP1010127 and part of Lot 3 DP1010127 from 'RU1 Primary Production' to 'RU2 Rural Landscape'.

No other changes are proposed as part of the planning proposal, as shown in **Table 2**.

Table 2 Proposed zoning amendments

The current and proposed zoning is represented below:

Site Details	Current zoning	Proposed zoning
3000 Remembrance Driveway (Lot 12 DP 1122904)	'RU1 Primary Production'	'RU2 Rural Landscape' and part 'E2 Environmental Conservation'
1 Olive Lane (Lot 2 DP 877585)	'RU1 Primary Production'	RU2 Rural Landscape'
5 Olive Lane (Lot 4 DP 1010127)	'RU1 Primary Production'	RU2 Rural Landscape'
Part of 3 Olive Lane (Lot 3 DP1010127)	'RU1 Primary Production'	RU2 Rural Landscape'

1.1.4 State electorate and local member

The site falls within the Wollondilly state electorate, represented by Nathaniel Smith MP.

The site falls within the Hume federal electorate, represented by Angus Taylor MP.

To the team's knowledge, no MPs have made any written representations regarding the proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required. There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and alterations

The Gateway determination issued on 11 August 2020 (**Attachment B**) determined that the proposal should proceed subject to conditions (refer also to the Gateway Determination Report at (**Attachment C**)).

Condition 1 of the Gateway determination required the Planning Proposal be further endorsed by the Department prior to exhibition. On 11 March 2021 the Department confirmed that the updated planning proposal included the required revisions in accordance with condition 1 of the Gateway determination and could proceed to public exhibition.

Council has met all the Gateway determination conditions excluding the designated LEP completion timeframe condition. In accordance with the Gateway determination, the planning proposal was due to be finalised by 11 August 2021. Council endorsed the planning proposal on 20 July 2021 (**Attachment F**).

Whilst this Gateway determination date was not met, the extended completion time to complete the LEP is considered justifiable in this instance given the proposal was returned to DPIE for finalisation prior to 11 August 2021.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 28 April until 26 May 2021, as required by section 29 of the *Local Government Act 1993*. Council's report of 20 July 2020 (**Attachment F**), outlined the public submissions and Council's responses.

During the public exhibition period, a total of 2 community submissions were received and 5 public agencies provided feedback. Error! Reference source not found. (below) summaries the key issues raised in the submissions.

3.1 Submissions during exhibition

3.1.1 Community Submissions

Two community submissions were received, one for the proposal and one against.

The key points raised have been summarised below:

- Impacts on Olive Lane (including drainage management and lighting)
- Privacy, building design and waste management
- Loss of native wildlife.
- Additional traffic generation on Olive Lane
- Impacts from future sportsgrounds

- Removal of deceased olive trees and other vegetation

Department's Response:

Matters raised relate to the design and specifics of the college expansion. This level of detail would be ascertained at Development Application Stage and adjoining landowners would have the opportunity to provide comment. Any future development at the site would need to be consistent with the relevant planning controls at the time of lodgement. The proposal seeks to rectify a planning anomaly relating to zone permissibility; therefore, no further amendments are required based on community submissions.

3.2 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with the agencies listed below in **Table 3**. **Table 3** also outlines the advice raised in the agency submissions, Council's response and the Department's assessment.

Table 3 Advice from public authorities

Agency	Advice raised	Council response
Department of Premier and Cabinet - Heritage NSW	No submission received	N/A
NSW Rural Fire Service	NSW RFS confirmed there were no concerns in relation to the proposal.	<u>Council Response:</u> No response provided. <u>Department Response:</u> No response is required.
Environment, Energy and Science Group within DPIE (EES)	ESS confirmed that the amended Proposal was consistent with previous advice provided by ESS on 27 October 2020 and no further comments or issues were raised.	<u>Council Response:</u> No response provided. <u>Department Response:</u> The E2 Zone was updated in accordance with ESS recommendations prior to public exhibition. No further action is required to address this submission.
NSW Environment Protection Authority	No submission received	N/A
Department of Primary Industries - Agriculture	No submission received	N/A
Transport for NSW	No submission received	N/A
DPIE - Division of Resources and Geoscience;	No submission received	N/A

Agency	Advice raised	Council response
Subsidence Advisory NSW	<p>SA NSW expressed support for the planning proposal and confirmed the following:</p> <ul style="list-style-type: none"> • The site is located within an active mining lease area held by SIMEC mining. SIMEC had no objection to the proposal. • The likelihood of future mine subsidence causing damage to the land located to the north of the existing college is low. • Applications for future development consistent with the proposal will be assessed in accordance with SA NSW merit assessment policies. 	<p><u>Council Response:</u></p> <p>No response provided.</p> <p><u>Department Response:</u></p> <p>The status of the active mining lease, likelihood of subsidence and any future impacts to be reassessed as part of the Development Application process for any future development at the site.</p>
Sydney Water	<p>Sydney Water raised no objection to the proposal and provided preliminary advice on servicing requirements in relation to potable and wastewater.</p>	<p><u>Council Response:</u></p> <p>No response provided.</p> <p><u>Department Response:</u></p> <p>Detailed requirements for servicing the site will be confirmed via a Section 73 application.</p>

As noted above Council has not provided a formal response to the agency submissions that were received. However, the Department has considered each of the matters raised by agencies and deems the planning proposal acceptable to proceed.

3.3 Post-exhibition changes

As demonstrated above all submissions have been considered by Council and the Department, and no further amendments are required for finalisation of the planning proposal.

4 Department's Assessment

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

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

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

- Remains consistent with the regional and district plans relating to the site;
- Remains consistent with the Council's Local Strategic Planning Statement;
- Is considered with the majority of the relevant Section 9.1 Directions, excluding technical inconsistency with Directions 1.3, 1.5 and 2.3. which are justified;

- Remains consistent with all relevant SEPPs, relating to the planning proposal.

Table 4 and **Table 5** identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage as outlined in the Gateway determination report on the planning proposal (**Attachment C**). Where the proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters, these are addressed in Section 4.1.

Table 4 Summary of strategic assessment

	Consistent with Gateway determination report Assessment	
Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
District Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Planning Panel (LPP) recommendation	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1

Table 5 Summary of site-specific assessment

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

4.1 Detailed Assessment

The following section provides an assessment of the matters relating to the planning proposal that are marked as inconsistent in **Table 4** and **Table 5** with the previous Gateway determination report for the planning proposal (**Attachment C**).

4.1.1 Section 9.1 Directions

The Gateway Determination report (Attachment F) identified that the following five Section 9.1 Directions required further justification: Directions 1.3 Mining, Petroleum Production and Extractive Industries, 1.5 Rural Land, 2.1 Environment Protection Zones, 2.3 Heritage Conservation, 4.2 Mine Subsidence and Unstable Land and 4.4 Planning for Bushfire Protection.

Condition 3 of the Gateway Determination required consultation with the relevant public agencies to obtain feedback.

Section 9.1 Ministerial Directions that were noted as unresolved or weren't previously addressed as part of the Gateway determination report (**Attachment C**) that apply to the planning proposal have been addressed in **Table 6**.

Table 2: Section 9.1 Ministerial Directions Assessment

Directions	Consistent /Inconsistent	Reasons For Consistency Or Inconsistency
Direction 1.3: Mining, Petroleum Production and Extractive Industries	Inconsistent (justified)	<p>As per the Gateway Determination report on the planning proposal (Attachment C), consistency with Direction '1.3 - Mining, Petroleum Production and Extractive Industries' remained unresolved until consultation was undertaken with the Division of Resources and Geoscience (DRG).</p> <p>Council referred the proposal to DRG in April 2019. DRG confirmed that coal extraction for the Bulli Seam had occurred beneath most of the subject site however raised no further resource issues regarding the proposal.</p> <p>DRG were given another opportunity to comment during public exhibition, however, no response was received.</p> <p>The proposal is unlikely to result in land use conflicts, as the site has been established and operating as a school since 2004. Expansion of the school is limited to the eastern portion of the site. The proposed zone amendment has been to facilitate the expansion has been carefully selected as RU2 Rural Landscape rather than SP2 Infrastructure to ensure land use is not restrictive or prohibitive for future development of resources.</p> <p>Future development of the site will be subject to development assessment and Subsidence Advisory NSW approval. The Department considers any inconsistencies with Direction 1.3 to be of minor significance and justification has been provided.</p>
Direction 1.5: Rural Lands	Inconsistent (justified)	<p>As per the Gateway Determination report on the planning proposal (Attachment C), consistency with Direction 1.5: Rural Lands remained unresolved until the proposal had been referred to the NSW Environmental Protection Authority and Department of Primary Industries – Agriculture.</p> <p>Council prepared an odour report in consultation with NSW EPA and DPI-Ag to assess potential land use conflict arising from the poultry farm on the adjoining property. The report concludes no adverse air quality impacts would arise at the project site due to the operation of the chicken breeder farm.</p> <p>The proposed expansion of Wollondilly Anglican College will not result in a significant reduction of agricultural land as the school has been established at the site since 2004. The proposal seeks to amend the zoning of land to rectify a planning anomaly regarding the permissibility of the established school on RU1 - Primary Production. The proposed zoning amendment has been carefully considered and will not adversely affect the operation and viability of</p>

Directions	Consistent /Inconsistent	Reasons For Consistency Or Inconsistency
		existing and future rural land uses. The proposed zoning amendment is considered in keeping with the objectives of Direction 1.5. Any inconsistencies with Direction 1.5 are considered adequately minor and justifiable.
Direction 2.1: Environment Protection Zones	Consistent	<p>The Gateway Determination report (Attachment C), identified that the consistency with Direction 2.1: Environment Protection Zones remained unresolved until the proposal had been referred to the Environment, Energy and Science Group (EES) within the Department prior to exhibition and update the proposal in accordance with any advice provided by EES.</p> <p>Council has since updated the planning proposal to include part of the land to be zoned as E2 Environmental Conservation to more closely align with the findings of the Flora and Fauna Study. Part 1 – Objectives and Intended Outcomes were also updated in accordance with the Gateway Determination dated 11 August 2020. The proposal is considered consistent with Direction 2.1.</p> <p>It is noted that the subject land, while outside an urban growth area, is within the area of the draft <i>Cumberland Plain Conservation Plan</i>. The area proposed to be rezoned for environmental conservation generally aligns with identified koala habitat on the site.</p>
Direction 2.3: Heritage Conservation	Inconsistent (but justified)	<p>As per the Gateway Determination report on the planning proposal (Attachment C), consistency with Direction 2.3: Heritage Conservation remained unresolved until the proposal had been referred to Department of Premier and Cabinet - Heritage NSW to determine if provisions that facilitate the conservation of Aboriginal areas are required.</p> <p>In accordance with the gateway conditions the proposal was referred to the Department of Premier and Cabinet - Heritage NSW, however, no response was received.</p> <p>Niche Environment and Heritage was commissioned to undertake an Aboriginal Cultural Heritage Assessment (ACHA) to support the proposal. The assessment identified 52 recorded Aboriginal sites within or near the subject site and undisturbed land (within Lot 12 DP 1122904) as having potential for retaining Aboriginal archaeological resources.</p> <p>The assessment process involved consultation with Aboriginal cultural groups and identified stakeholders. All stakeholders were provided the opportunity to provide comment on the cultural values of the site. A site inspection was also completed with representatives from Cubbitch Barta Native title Claimants.</p> <p>The assessment concluded that no aboriginal objects will be impacted by the proposal. The proposed expansion of the school is located on land that has been previously cleared or</p>

Directions	Consistent /Inconsistent	Reasons For Consistency Or Inconsistency
		<p>disturbed for farming or in the establishment of the existing school. The portion of the site that has remained undisturbed will be preserved under the proposed E2 zoning.</p> <p>Any future development at the site will be subject to Development Assessment which will further consider environmental or indigenous heritage significance of the site and any impacts. Therefore, the proposal's inconsistency with Direction 2.3 is considered acceptable and justified.</p>
Direction 4.2: Mine Subsidence and Unstable Land	Consistent	<p>The site is within the Bargo Mine Subsidence District and adjacent to the Tahmoor Colliery. The proposal was referred to Subsidence Advisory NSW (SA NSW) and the Division of Resources and Geoscience (DRG) for comment prior to Gateway. SANSW confirmed that coal extraction under the site had been completed and subsidence impact was considered to be complete. Prior to any future improvements at this site approval should be from SA NSW. DRG also confirmed that coal extraction had occurred at the site and raised no further resource issues regarding the proposal.</p> <p>In June 2020 the NSW Government released a Strategic Statement on coal exploration and Mining in NSW.</p> <p>As per the Gateway Determination report on the planning proposal (Attachment C), consistency with Direction 4.2: Mine Subsidence and Unstable Land remained unresolved until updated advice on mining and subsidence be obtained from SANSW and DRG to ensure consistency with this direction.</p> <p>In a submission dated 28 May 2021, SA NSW confirmed it supported the proposal and any applications for future development will be assessed in accordance with SA NSW merit assessment policies. DRG were also provided an opportunity to comment during public exhibition, however no further comments were received. The proposal is therefore considered consistent with Direction 4.2.</p>
Direction 4.4: Planning for Bushfire Protection	Consistent	<p>As per the Gateway Determination report the proposal is considered inconsistent with Direction 4.4 - Planning for Bushfire Protection, as it proposes development on bushfire prone land without proposing new bushfire controls. Consistency with this direction remained unresolved until Council had undertaken consultation with the Rural Fire Service (RFS).</p> <p>NSW RFS were consulted prior to public exhibition and given a second opportunity to provide feedback during public exhibition. RFS raised no concerns with the proposal in either submission.</p>

Directions	Consistent /Inconsistent	Reasons For Consistency Or Inconsistency
		Any future development at the site will be subject to Development Assessment and will need to consider bushfire risk and management.

The Department has considered the planning proposal's consistency with the relevant Section 9.1 Ministerial Directions. The proposal is generally consistent with Directions 2.1 and 4.2. Inconsistency with Directions 1.3, 1.5 and 2.3 are considered adequately justifiable or of minor significance.

4.1.2 State environmental planning policies (SEPPs)

The Gateway Determination report (Attachment F) identified three SEPPs relevant to the proposal as detailed below in **Table 7**.

Table 7: State environmental planning policies (SEPPs)

Directions	Consistent /Inconsistent	Reasons For Consistency Or Inconsistency
SEPP (Koala Habitat Protection) 2019	Consistent	The Gateway Determination report detailed in the absence of an approved Koala Plan of Management for Wollondilly Shire the SEPP Koala Development Application Map applies. Compliance with this SEPP will be required to be demonstrated at the development application stage.
SREP No 20 – Hawkesbury-Nepean River	Consistent	Part 1 – Objectives and Intended Outcomes of the proposal were updated prior to public exhibition to reflect the proposed changes in the E2 zone and the intention of this zone to protect the vegetated area and provide a buffer between the College and the Bargo River. DPIE endorsed this amendment in the Pre-exhibition review dated 11 March 2021.
SEPP Educational Establishments and Child Care Facilities 2017	Consistent	The future school expansion will be assessed against the SEPP Educational Establishments and Child Care Facilities 2017 and will be required to demonstrate consistency with this Policy at development application stage.

4.1.3 Site Specific Assessment

4.1.3.1 Environmental

The Gateway Determination dated August 2020 (**Attachment B**) contained several conditions relating to environmental matters to be addressed prior to public exhibition. An updated planning proposal and supporting documentation was submitted to DPIE for review and endorsement. A letter was provided to Council on the 11 March 2021 to confirm DPIE's endorsement to proceed to public Exhibition.

No post-exhibition amendments by the Department are required to address the agency submissions relating to environmental matters.

In addition, any future development of the site will be required to consider environmental impacts and assess these matters in further detail as part of a Development Application.

5 Post assessment consultation

The Department has consulted with the following stakeholders after the assessment (**Table 9**).

Table 9 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	An amended 'Land Zoning Map - Sheet LZN_008D' has been prepared to support the planning proposal. The Department's ePlanning team has confirmed that the amended map meets the technical requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i></p> <p>Council confirmed on 20 August 2021 that it was agreeable with the draft and that the plan should be made. Council queried the title of the instrument, which the Department advised it will be amended once the final amendment is issued.</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	Not required as the proposal is a map only amendment.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No, see below for details Not required as the proposal is a map only amendment.

6 Recommendation

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

- the planning proposal has strategic merit being consistent with the following plans and strategies:
 - Greater Sydney Region Plan
 - Western City District Plan for Metropolitan Rural Areas.
 - Wollondilly Local Strategic Planning Statement.
 - Wollondilly Community Strategic Plan
- The proposal has site specific merit, as it seeks to rectify a planning anomaly which will facilitate the expansion and upgrade of the Wollondilly Anglican College Campus. The proposal will provide 28 or more jobs for the region. The proposal will also formalise the protection for remnant bushland vegetation and biodiversity values of the land adjoining the school.
- The planning proposal is consistent with the Gateway Determination.
- The planning proposal is generally consistent with Section 9.1 Ministerial Directions 2.1 and 4.2. Inconsistency with Directions 1.3, 1.5 and 2.3 are considered adequately justifiable or of minor significance.
- The planning proposal is consistent with each of the relevant SEPPs applying to the planning proposal.
- There are no outstanding agency objections or issues regarding the proposal.

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Attachments

Attachment	Document
A	Planning Proposal
B	Gateway Determination - 11 August 2020
C	Gateway Determination Report
F	Council Report – 20 July 2020
G	Minutes of the Ordinary Meeting - 20 July 2020
Maps	Draft LEP maps
LEP	Draft LEP
Council	Letter to Council advising of the decision