

DoP Ref: PP_2016_WOLLY_005_00 (16/15141)

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24 January 2017

Planning Panels - Gateway Determination Review
NSW Department of Planning & Environment
320 Pitt Street
Sydney NSW 2000

Dear Sir/Madam,

**Re: Gateway Determination Review Application
Planning Proposal to amend the Wollondilly Local Environmental Plan 2011
The Oaks North (80 Silverdale Road, The Oaks)**

This letter is submitted to the Department of Planning & Environment (DoP) on behalf of A H Clinch Investments P/L ('Owner') as the land owner of the parcel referred to as 80 Silverdale Road, The Oaks ('Site').

The Site is included in a Planning Proposal which received Gateway determination from DoP on 8 December 2016 and this letter accompanies the Gateway Determination Review (Review) Application Form. The request for a Review only relates to 80 Silverdale Road and not the adjacent residential allotments located at Browns Road which are also considered in the Gateway Determination.

The Owner has consulted with Wollondilly Shire Council (Council) frequently since 2015, prior to submission of the Planning Proposal, and has expressed opposition to some of the proposed planning controls.

Recently it has become evident that Council is considering a minimum lot size of 4,000m² which would limit the Site to a maximum of four lots, significantly less than the expectations of the Owner and of DoP as detailed in the Planning Team Report which states "*It is expected this rezoning will create approximately 13 lots*".

The Planning Proposal prepared by Council requested the Wollondilly Local Environmental Plan 2011 (WLEP) be amended for the Site including the following:

- the Land Zoning Map from RU2 Rural Landscape to **R5 Large Lot Residential**.
- that the Lot Size be determined after the preparation of the Gateway Determination and specialist studies and reported back to Council for endorsement. The lot size shall **not be less than the average lot size for the existing allotments in Browns Road, The Oaks**.

The Owner requests DoP consider 'alternative planning controls' to amend the WLEP as follows:

- the Land Zoning Map from RU2 Rural Landscape to **R2 Low Density Residential** consistent with the Browns Road allotments.
- A minimum lot size of **1,500m²** to be consistent with the balance of the Gateway Determination.

The proposed R5 Large Lot Residential zoning was proposed against the recommendations of the Council's Strategic Planning team and with no justification. A zoning of R2 Low Density Residential would be consistent with the lots immediately adjacent on Browns Road and is unlikely to prevent the objectives of the R5.

The Owner estimates that a maximum of 12 lots would be achieved under the proposed alternative planning controls (R2 and 1,500m²) as per the indicative Concept Layout Plan in **Attachment 2**. In the instance that specialist studies do not demonstrate that the Site is suitable to accommodate up to 12 lots, it will be addressed in the planning process.

Additionally, the Owner and representatives attended the Ordinary Meeting of Council in which the Draft Planning Proposal was discussed and dispute any reference to R5 Large Lot Residential or a minimum lot size concept incorporating the adjacent Browns Road allotments, as is reflected in the Minutes.

Attachment 1 to this letter provides a background of the planning process, details justification for the Review and the appropriateness of the 'alternate planning controls'.

Council was made aware that the Owner was considering request a Review on Tuesday 10/01/2017 and it was confirmed prior to the lodgement of the application.

The Review request was foreshadowed to the relevant Planning Officer from DoP on 12/12/2016, two business days after the Gateway determination was issued (8/12/2016). It was agreed that the Review request be submitted and that any further information or documentation required by DoP, would be requested. As such, please do not hesitate to contact me if you have any questions.

Regards



Tim Colless
Director
COPRAD



ATTACHMENT 1

1. Background

The following relevant documentation is referenced and supplied as attachments to the Review application form.

- *Planning Proposal, 680 Burragorang Road, The Oaks*, by Willoughtree Planning, February 2016 ('Willoughtree Planning Proposal').
- *PE7 – Draft Planning Proposal – The Oaks North, Silverdale Road, The Oaks* for Ordinary Meeting of Council, Monday 18 July 2016 ('Draft Planning Proposal').
- Minutes of Ordinary Meeting of Council, Monday 18 July 2016 ('Minutes').
- *Planning Proposal* by Wollondilly Shire Council, November 2016 ('Council Planning Proposal').
- *Planning Team Report* by DoP dated 6/12/2016.
- *Gateway Determination* by DoP including cover letter, dated 8/12/2016.

The Owner is supportive of the recommendations of the Draft Planning Proposal submitted to the Ordinary Meeting of Council of 18 July 2016 (Meeting). Specifically the Draft Planning Policy included "...the easement for transmission line forming the northern boundary to the proposed R2 Low Density Residential zone. That the amendments include changing:

- *The Land Zoning Map from RU2 Rural Landscape to R2 Low Density Residential*".

The Minutes of the Ordinary Meeting of Council describe the following two conditions which are strongly opposed by the Owner:

- "...changing... the Land Zoning Map from RU2 Rural Landscape to R5 Large Lot Residential..."
- *The lot size shall not be less than the average lot size of the existing allotments in Browns Road, The Oaks.*"

The amendments to the Draft Planning Proposal proposed by Councillors are unfounded however possible justifications are considered later in Section 4 of this Attachment.

It is not desirable that DoP were not alerted to the concern of the Owner previously and that the request for Review was not made pre-Gateway however the Owner has retained a preference to work with Council and the potential for fewer, larger lots has only recently become clear. Further, the deferred request should not prevent the appropriate planning controls from being applied to the Site.

While this request is three (3) business days beyond the forty-two (42) day period referenced in the application form, DoP was alerted to the intention to lodge a Review request two business days after the Gateway determination and submission was delayed by the Christmas and New Year break. Council has also been consulted throughout.

2. Process

The following table provides a summary of the planning process in relation to the Site. The final column tracks the proposed Site controls including approximate Area, Proposed Zoning (PZ) and Minimum Lot Size (LS) to demonstrate the changes of the Planning Proposal as the works have evolved.

The Owner accepts that Council is not willing to rezone the portion of the land including and north of the transmission easement and excludes that land from this request. Ultimately, it is requested that the same planning controls are applied to the Site as the adjacent land considered in the Gateway determination.

Timeframe	Details	Planning controls
2011	The Site is identified as a 'Potential residential growth area' in Council's Growth Management Strategy.	N/A
February 2016	Willowtree Planning Proposal lodges a Planning Proposal.	Area: 7 hectares PZ: R2 Low Density Residential LS: 700m ²
18 July 2016	Draft Planning Proposal prepared by Council's Strategic Planning team considered at Meeting. "Cr Hannan declared a Non-Pecuniary (Less than Significant) Conflict of Interest" and proposed an alternate motion.	Area: South of easement only PZ: R2 Low Density Residential LS: 700m ²
July 2016	Minutes for the Meeting are published introducing R5 Large Lot zoning and a concept for calculation of minimum lot size.	Area: South of easement only PZ: R5 Large Lot Residential LS: 1,883m ² *
August 2016	Council adds the Browns Road allotments to a Draft Planning Proposal with an increased minimum lot size of 1,500m ² in lieu of 700m ² .	N/A
November 2016	Council submits Planning Proposal to DoP for Gateway Determination.	Area: 1.9222 hectares PZ: R5 Large Lot Residential LS: 1,883m ²
8 December 2016	Gateway Determination issued by DoP.	Area: 1.9222 hectares PZ: R5 Large Lot Residential LS: 1,883m ²
January 2017	Gateway Determination Review submitted requesting DoP consider consistency with adjacent Browns Road allotments.	Area: 1.9222 hectares (TBC) PZ: R2 Low Density Residential LS: 1,500m ²

* 1,883m² is the average lot size of the existing Browns Road allotments.

It is also important to note that the amendment of minimum lot size of Browns Road, The Oaks from 700m² to 1,500m² was an afterthought to the Meeting and as such the rezoning at the Site (80 Silverdale Road) has not been considered in the context of the change. Therefore the rationality of applying the same zoning (R2) and minimum lot size (1,500m²) has not been considered.

3. Justification of R2 Low Density Residential

The Gateway determination has considered aspects of the Site which support an amendment to the WLEP in accordance with the Council Planning Proposal and these are supported by the Owner.

The following issues are raised in support of an R2 Low Density Residential (R2) with 1,500m² minimum lot size in lieu of a zoning of R5 Large Lot Residential (R5).

- Lot yield: The Planning Team Report references the expectations of DoP that the approximately 13 lots will be yielded on the Site. While the number of lots is not considered as part of the Planning Proposal, the appropriate zoning to achieve this yield is more likely to be R2 consistent with the Browns Road lots rather than R5 which could lead to a form of development that differs greatly from that envisaged by DoP and preferred by the Owner.

- Housing targets: While targets for The Oaks and Oakdale have been achieved under some frameworks, this should not restrict responsible development from continuing and the ‘alternate planning controls’ allow for a “modest increase” (Planning Team Report) in any case. Targets of Wollondilly LGA as prescribed in the draft District Plans and A Plan for Growing Sydney should be considered in conjunction with Council’s Growth Management Strategy and the Site could assist other localities which are not likely to achieve targets.
- Site suitability: The Owner should be given the opportunity to investigate the potential of the Site to accommodate the number of lots through completion of specialist studies and subsequent planning processes. It is unlikely the owner will be provided this opportunity by Council under a R5 zoning. The R2 zoning would likely allow more properties offering the following characteristics:
 - An alternate style of property to the large-scale developments which are being developed on the south side of The Oaks. This increased diversity of option to residents is favourably to manufactured outcomes in other areas.
 - Exceptional views across metropolitan Sydney in a unique location.
 - Walking distance the shops at The Oaks.
 - The Site is contains similar characteristics (eg geotechnical, flooding, bushfire) to the Browns Road which has successfully confirmed the physical capability of the land.
- Consistency of development with the existing Browns Road properties which are zoned R2 and proposed for 1,500m² minimum lot size under the gateway determination. Additionally Silverdale Road to the west, the escarpment to the east and the zoning of the residual parcel “*prohibits further development at the scale identified in the proposal*” (Planning Team Report).
- It is unlikely that Council would implement a minimum lot size of 1,883m² so the minimum threshold would likely be increased to the next limit.
- The “rural character” can be maintained by adopting similar controls to those in the existing Browns Road community.
- Sydney Drinking Water Catchment (SDWC): Visual inspection suggests none of the Site is within the SDWC which flows west of Silverdale Road. For confirmation in specialist studies.
- The R2 zoning will not prevent Council from requiring certain sound justification for a certain number of lots however the R5 zoning is likely to guide future development.
- An increased number of lots under a R2 zoning would likely stimulate the local economy more so although only modestly in comparison the R5 zoning.

4. Possible justifications for R5 Large Lot Residential

The Minutes of Meeting and Council Planning Proposal did not explain the reason for the proposed R5 zoning however the possible justifications are considered in the following table.

Reason	Detail	Response
Waste water	Limited capacity in Sydney Water’s carrier	Limitations on wastewater servicing should not determine the number of lots on the Site at a Planning Proposal stage.
Ribbon development	Development should not continue to sprawl along communications or infrastructure	The zoning of the land north of the transmission easement <i>prohibits further development at the scale identified in the proposal</i> . Further, the escarpment and Silverdale Road form barriers. The Site is closer to the existing town centre than other proposed rezoning parcels on the south side of The Oaks.
Transmission Easement	Health reasons associated with residing in proximity to a transmission line	“ <i>There is no evidence that EMF exposure is detrimental to health...</i> ” (Council Planning Proposal)

Limit residential growth	The Oaks has achieved housing targets	This should not constrain responsible development and the alternate planning controls would only permit an additional eight (8) lots (assuming 12 lots compared to four under R5). This also provides an excellent opportunity for the provision of diversity within The Oaks.
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Appendix D – ‘Preliminary Consultation’ of the Council Planning Proposal summarises “Issues raised” during the notification period and provides an “Assessment comment” in response. None of the responses provided by Council give cause for the zoning to be R5 rather than R2. Additionally, the Owner is willing to commit to the private covenant referenced which relates to the allotments of Browns Road.

5. Conclusion

This letter is submitted to DoP to request consideration of alternate planning controls to the part of 80 Silverdale Road, The Oaks which is the subject of a Gateway determination dated 8/12/2017. Specifically, the alternate planning controls are a R2 zoning in lieu of R5 and 1,500m² minimum lot size in lieu of an unknown figure which cannot be less than 1,883m².

The Review has been requested after the Gateway determination because the intentions of Council have been unclear within a zoning which provides flexibility of lot size.

The following key aspects should be accounted:

- Amending the WLEP for the Site to implement a R2 zoning and 1,500m² is not likely cause any conflict with surrounding land uses and actual lot sizes will still be the subject of further investigation and approvals processes. Conversely, a R5 zoning may lead to substantially larger and few lots than was envisaged during the assessment of the Planning Proposal by DoP.
- At a maximum, the alternate planning controls would permit 12 lots, similar to the “*relatively small lot yield (approx. 13 lots)*” referenced in the Planning Team Report.
- The Owner would still be required to justify any subdivision with relevant technical assessments.
- The alternate planning controls would likely yield less lots than was envisaged by DoP (13) and Council’s Strategic Planning team (minimum lot size 700m²). The amended motion carried at the Ordinary Meeting of Council was done so with no sound reasoning or justification.
- Provision of up to 12 lots at the Site would provide diversity to the population at The Oaks with views across metropolitan Sydney as opposed to the large-scale residential developments currently underway on the south side of town.
- Based on the Browns Road properties, the site is likely to be capable of accommodating development of a similar nature which should not be disregarded for local political reasons.

ATTACHMENT 2





The ratio shown on this plan relates to the original plan, produced by JMD only. Any photocopying or printing from digital files provided (particularly PDF files) may significantly alter the ratio of the plan.

Client: CLINCH	Origin of Levels :	John M. Daly & Associates PTY LTD A.B.N. 88051977989 Surveying Engineering Project Management Licensed Water Service Co ordinators 32 Iolanthe Street P.O. BOX 25 CAMPBELLTOWN N.S.W. 2560 email: admin@jmd.com.au	Project :	LOT 3 DP1201486 SILVERDALE ROAD, THE OAKS	Sheet 1
	DEPARTMENT OF LANDS TOPOGRAPHIC DATA				of 1 sheets
Date of Survey : N/A					Ref:
Ratio (A3) : 1:1000					17011CL
Datum : A.H.I.D.	Approved : BC 18-01-2017			Locality : THE OAKS	CAD Ref: Miscellaneous/17011CL.dgn
			CONCEPT LAYOUT PLAN		
			L.G.A. : WOLLONDILLY		