



Planning,
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Plan finalisation report – PP 2016_WOLLY_005_00

Wollondilly Local Environmental Plan 2011 – 80
Silverdale Road and 1 - 22 Browns Road, The Oaks

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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Wollondilly Local Environmental Plan 2011.

1.1.2 Site description

Table 1 Site description

Site Description	Type	Council Name	LGA
The planning proposal (Attachment A) applies to part 80 Silverdale Road (Part Lot 3 DP 1201486) and 1-22 Browns Road (Lots 1 – 22 DP 775993), The Oaks (Figure 1)	Site	Wollondilly Shire Council	Wollondilly

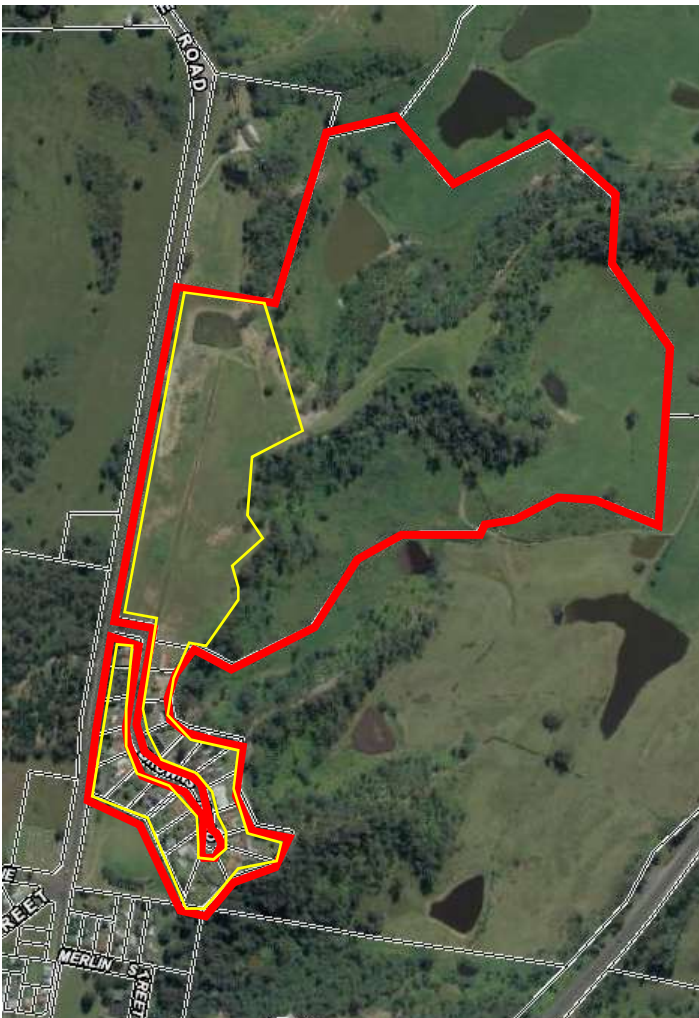


Figure 1 Subject site

The entire property is identified in Figure 1. The site area to which the planning proposal applies is outlined in yellow in Figure 1. The entire property is 38ha in area whilst the land to which the planning proposal relates (herein referred to ‘the site’) is 12ha.

The site has a frontage of 670m to Silverdale Road. The site’s northern, eastern and southern boundaries adjoin rural land or residential allotments.

The southern portion of the site contains detached dwellings on Torrens title allotments of approximately 1,500m². The remainder of the site is cleared, except for some sparsely spread trees extending in a north-east to south-west direction. The trees are identified as Shale Hills Woodland, which is a component of the critically endangered ecological community (CEEC) Cumberland Plain Woodland. Two dams are located along the sites northern (side) boundary.

An electricity easement extends across the site in an east-west direction, and a drainage easement in a north-south direction.

1.1.3 Purpose of plan

The planning proposal seeks to make the following changes to the Wollondilly Local Environmental Plan 2011 (Wollondilly LEP 2011):

South Western corner of 80 Silverdale Rd

- Amend zoning from RU2 Rural Landscape to R5 Large Lot Residential;
- Introduce a 9m building height control; and
- Amended lot size from 40ha to a minimum lot size to be determined by specialist studies.

1 – 22 Browns Road

- Amend the minimum lot size from 700m² to 1,500m².

Table 2 below outlines the current and proposed controls for the LEP.

Table 2 Current and proposed controls

Control	Current	Proposed
Zone	Part R2 – Low Density Residential Part RU2 – Rural Landscape	Part R2 – Low Density Residential Part R5 – Large Lot Residential Part RU2 – Rural Landscape
Maximum height of the building	9m for that part of the site within R2 No height standard applies to that part within zone RU2	9m for those parts of the site within zones R2 and R5 No change to RU2 lands
Floor space ratio	N/A	N/A
Minimum lot size	700m ² for that part of the site within zone R2 40ha for that part of the site within zone RU2	1,500m ² for that part of the site within zone R2 Lot size for that part of the site within the proposed R5 zone to be determined through specialist studies

Control	Current	Proposed
Number of dwellings	22	22 based on proposed development standards. Final number is subject to specialist studies.
Number of jobs	N/A	N/A
Reclassify land from	N/A	N/A

1.1.4 State electorate and local member

The site falls within the Wollondilly State electorate. Mr Nathaniel Smith MP is the State Member.

The site falls within the Hume Federal electorate. The Hon. Angus Taylor MP is the Federal Member.

To the Western team's knowledge, neither MP has 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 8/12/2016 (**Attachment B**) determined that the proposal should proceed subject to conditions. Condition 1 required the preparation of the following technical studies to inform the next stages of planning:

- Updated Stage 2 Contamination Assessment;
- Traffic and Road Safety Audit;
- Geotechnical and Salinity Assessment;
- Stormwater and Flood Assessment;
- Bushfire Assessment Report;
- Noise and Vibration Study; and
- Neutral or Beneficial Effect on Water Quality Assessment.

The reports were required to be submitted to the Department for endorsement prior to public exhibition.

The Gateway determination was altered twice as follows:

- 20/7/2017, to amend Condition 1 and recommending the adoption of smaller (i.e. 1,500m²) lots for land at 80 Silverdale Road, as well as amend Condition 8 to extend the time frame for completing the LEP until 15/09/2018 (12 months); and
- 10/10/2018 to amend Condition 8 by extending the timeframe for completing the LEP until 15/12/2019.

In accordance with the Gateway determination (as altered) the proposal was due to be finalised on 15/12/2019.

The conditions of the Gateway determination have not been met as the required technical reports have not been referred to the Department for endorsement.

In November 2020, Council resolved to return all planning proposals which remained unresolved for more than four years since gateway determination to the Department for consideration. The Department has considered each proposal individually and with regard to the prevailing strategic planning framework for Wollondilly including the Local Strategic Planning Statement assured by the Greater Sydney Commission in early 2020.

3 Public exhibition and post-exhibition changes

Public Exhibition as required by the Gateway determination has not taken place.

3.1 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with agencies listed below in Table 4 who have provided the following feedback.

Table 3 Advice from public authorities

Agency	Advice raised
Former Office of Environment & Heritage (now)	<p><i>10 August 2017</i></p> <p>In principle support, subject to specialist studies in relation to archaeology, flood plain risk management and biodiversity (i.e. Shale Hills Woodland, which is a component of critically endangered ecological community [CEEC] Cumberland Plain Woodland)</p>
NSW Rural Fire Service	<p><i>20 December 2017</i></p> <p>Requirement for a Bush Fire specialist assessment is supported</p> <p><i>15 December 2020</i></p> <p>RFS provided further advice that it is preferable that the council carries out its Shire wide Natural and Manmade Hazards and Emergency Management Study and that any proposal for the site would be required to be assessed against the updated Bush Fire Protection 2019 provisions (in particular chapter 4 – Strategic Planning).</p> <p>The RFS also mentioned it was concerned that based on the recent 2019/2020 bush fire season experienced by Wollondilly a number of evacuation and traffic management issues as a result of bush fires were evident and therefore it held concerns that the cumulative impacts of ‘spot rezoning’s’ such as this may exacerbate these adverse experiences.</p>
Sydney Water	<p><i>24 January 2020 and 23 October 2020</i></p> <ul style="list-style-type: none"> • Drinking water main is available for connection • There is sufficient capacity in the wastewater system to support the development
Water NSW	<p><i>10 August 2017</i></p> <ul style="list-style-type: none"> • A Neutral or Beneficial Effect Water Quality Assessment shall be undertaken • Support requirement of Gateway to demonstrate availability of reticulated sewerage • A stormwater management plan is required to protect water quality in catchment

Agency	Advice raised
	<p>29 July 2019</p> <ul style="list-style-type: none"> Stormwater plan not required if applicant grades land away from catchment
Endeavour Energy	<p>21 August 2017</p> <p>No objection</p>
NSW Roads & Maritime Service	<p>18 August 2017</p> <p>The planning proposal does not seek access to a State classified road.</p> <p>It is recommended that Council require preparation of a Traffic Impact study.</p>
NSW Heritage Council	<p>30 December 2016</p> <p>A European & Aboriginal Cultural Heritage Assessment should be prepared for 80 Silverdale Rd to inform the next stage of planning</p>

As will be detailed in Section 4.1, it is considered that several matters raised in advice from various agencies have not been adequately addressed.

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.

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

- consistent with the regional and district plans in place at the time of Gateway determination;
- inconsistent with section 9.1 Directions 1.2 Rural Zones, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection and 5.2 Sydney Drinking Water Catchments; and
- inconsistent with several SEPPs, including State Environmental Planning Policy (SEPP) No 44 – Koala Habitat Protection, SEPP 55 – Remediation of Land, and SEPP – Sydney Drinking Water Catchment 2011.

The following tables identify whether the proposal submitted for finalisation remains consistent with the assessment undertaken at the Gateway determination stage. 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 type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
District Plan	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1

	Consistent with Gateway determination report Assessment
Local Strategic Planning Statement	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No, refer to section 4.1
Local Planning Panel (LPP) recommendation	Lodged prior to commencement of LPP referral requirements.
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 type="checkbox"/> Yes <input checked="" 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

In November 2020 Council resolved to return all planning proposals which remained unresolved for more than four years since gateway determination to the Department for consideration. The Department has considered each proposal individually and with regard to the prevailing strategic planning framework for Wollondilly including the Local Strategic Planning Statement assured by the Greater Sydney Commission in early 2020.

The following section provides details of the Department's assessment of key matters and conclusions.

4.1.1 Strategic Alignment

Strategies at gateway determination

Greater Metropolitan Plan for Sydney to 2036 and Draft South West Subregional Strategy to 2031

The planning proposal was found to be consistent with the aims of the Metropolitan and sub-regional strategy at Gateway determination in relation to providing suitable land to increase housing opportunities while having minimal environmental impact.

Wollondilly Growth Management strategy

The Wollondilly Growth Management strategy, since superseded by the Local Strategic Planning Statement, identifies the site as having potential for some growth. It was demonstrated at gateway that the planning proposal is consistent with the key directions in the strategy.

Current strategies and policies

Greater Sydney Regional Plan (A Metropolis of Three Cities)

The planning proposal received a Gateway determination before the release of the Greater Sydney Regional Plan (A Metropolis of Three Cities) (Regional plan). Planning proposals are to be consistent with plan. The Regional plan nominates the site as being part of the Metropolitan Rural

Area (MRA). The MRA is identified as having environmental, social and economic values that contribute to the region, and of importance for its capacity to produce agricultural products.

Strategy 24.3 identifies the need to protect and support agricultural production by preventing inappropriately dispersed urban activities in rural areas. Limited urban investigation areas are identified within the MRA to enable long term growth.

The site is not identified with the regional plan within an urban investigation area and as such the proposal for urban residential development is inconsistent with the Regional Plan.

Western City District Plan

This planning proposal received a Gateway determination before the release of the *Western City District Plan*. The Western District Plan supports the aims of the Regional Plan with action 29, identifying the need to limit urban development, except to those areas identified for urban investigation.

- The planning proposal is inconsistent with the following District Plan planning priorities W14 Protecting and enhancing bushland and biodiversity;
- W17 Better Managing Rural Areas; and W20 Adapting to the impacts of urban and natural hazards and climate change.

The basis for this is that:

- biodiversity protection, particularly the identification of corridors and habitat for endangered ecological communities, need to be addressed in a more holistic way;
- the site is located within the Metropolitan Rural Area and is not designated as a growth area. Housing targets at a regional and district level are not expected to be met through additional housing in the Metropolitan Rural Area, but rather through the new development in growth areas such as the Wilton and Greater Macarthur Growth Areas; and
- the cumulative impacts of bushfire on the Shire are unresolved. Concerns continue to exist about the ability to defend against major bushfire events, as well as ensure safe evacuation.

Local Strategic Planning Statement

Since issuing the original Gateway determination, the Wollondilly Local Strategic Planning Statement (LSPS) provides the framework for local planning for future housing, jobs, infrastructure and environment for the LGA. The LSPS sets out a 20-year vision for growth that takes into account the principles of the Metropolitan Rural Areas established by the *Western City District Plan*, the local housing strategy and wastewater capacity limits.

However, a key action (Action 18.12) of the LSPS is to prepare a study in partnership with emergency service agencies to evaluate the threats and risk level from both natural and manmade hazards and establish appropriate management. The study will help inform Council's decisions on local growth and planning proposals. A site-specific strategic bushfire study prepared in accordance with *Planning for Bushfire Protection 2019* is also required to demonstrate consistency with the hazard's management approach being implemented under the LSPS. While a further study has been provided, the RFS feedback is clear that it is their preference that the shire wide evaluation occur first.

The site is located within the Metropolitan Rural Area (MRA), which is outside the nominated growth areas of Wilton and Greater Macarthur. Instead the LSPS identifies seeks to contain all additional housing in the short term to be met on land already rezoned for towns and villages.

The LSPS includes council's commitment to undertake a range of local studies that relate to some of the unresolved matters relating to the proposal, such as bushfire evacuation and safety, and a rural lands study. Once completed and endorsed by council these studies will

help further define the direction for use and rezoning of land in the LGA, including that in the MRA.

At this time however, the planning proposal does not give effect to LSPS as it does not provide effective planning to reduce the exposure of new urban development to urban hazards, permits incompatible urban development in a rural area and is not adequately supported by local infrastructure.

Key themes of the LSPS also include “...valuing the ecological health of Wollondilly’s waterways” and “...protecting biodiversity and koala habitat”. The proposal has not yet adequately demonstrated whether it would have any unacceptable impact on the Shale Hills Woodland towards the eastern end of the subject site. Works required to deliver the proposal as well as ongoing suburban activity such as stormwater and people movement, may impact on the quality of such trees and/or their supporting environment.

The planning proposal does not give effect to LSPS as it does not provide effective planning to reduce the exposure of new urban development to urban hazards, permits incompatible urban development in a rural area and is not supported by infrastructure.

Ministerial Direction

Direction - 2.1 Environmental Protection Zones

The objective of this Direction is to protect and conserve environmentally sensitive areas.

The proposed size and location of the E2 zoned land is insufficient and does not align with existing vegetation and biodiversity mapping. The inconsistency with Direction 2.1 Environmental Protection Zones is unresolved as the proposal does not facilitate the protection and conservation of environmentally sensitive areas.

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.

As outlined in the submission from the former OEH, it is also unclear whether the site-specific DCP has been prepared to adequately address Aboriginal heritage. The inconsistency with Direction 2.3 Heritage Conservation is unresolved.

Direction 4.3 – Flood Prone Land

The objective of this Direction is to ensure that development is consistent with the NSW Government’s Flood Prone Land Policy.

The Gateway determination required the preparation of a Stormwater and Flood Assessment. The assessment has not been undertaken and therefore, it cannot be determined whether the site may be affected by flooding, or whether the proposal may generate offsite flood impacts. This requires detailed consideration given a sizeable depression exists on the eastern portion of the subject site.

The inconsistency with Direction 4.3 – Flood Prone Land is unresolved.

Direction 4.4 – Planning for Bushfire Protection

The objective of this Direction is to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas. The objective also seeks to encourage sound management of bush fire prone areas.

The Wollondilly local government area is highly exposed to bushfire hazard with significant areas mapped as bushfire prone land. To address requirements of *Planning for Bushfire Protection 2019* all planning proposals in bushfire prone areas are to be supported by a strategic bushfire study.

As committed to in the LSPS council will prepare a study in partnership with emergency service agencies to evaluate the threats and risk level from both natural and manmade hazards and

establish appropriate management practices. This study will help inform Council's decisions on local growth and planning proposals. A site-specific strategic bushfire study prepared in accordance with Planning for Bushfire Protection 2019 is also required to demonstrate consistency with the hazard's management approach being implemented under the LSPS. While a further study has been provided for the subject proposal, the RFS feedback is clear that it is their preference that the shire wide evaluation occur first.

The planning proposal's consistency with this direction cannot be established until such time as the shire wide assessment and detailed site assessment is complete. Therefore, the inconsistency with Direction 4.4 Planning for Bushfire Protection is unresolved.

Direction 5.2 – Sydney Drinking Water Catchment

The objective of this Direction is to protect water quality in the Sydney drinking water catchment. Part of the subject site is within the Sydney Drinking Water Catchment.

A condition of the Gateway determination was to prepare a Neutral or Beneficial Effect on Water Quality Assessment. That assessment has not been undertaken.

The planning proposals consistency with this direction cannot be established until such time as that study is complete. The inconsistency with Direction 5.2 Sydney Drinking Water Catchment is unresolved.

4.1.2 Social and Economic Impacts

The planning proposal will generate social and economic benefit, creating jobs during its construction and new demand for local business services. However, adverse outcomes may arise as a result of impacts to the existing stand of trees in the northern section of the site.

4.1.3 Environmental Impacts

Flora and Fauna

Trees in the eastern part of the site form part of the Shale Hills Woodland critically endangered ecological community. The proposal has not adequately demonstrated the absence of unreasonable impact from such trees and any related fauna, such as koalas. Impact may arise from civil works associated with delivering the proposal, as well as ongoing suburban activity such as stormwater, urban runoff, and people movement, for example.

Condition 4 of the Gateway determination required an assessment of the proposal against SEPP 44 – Koala Habitat. That assessment has not taken place. As such, it cannot be determined whether the proposal is consistent with the SEPP.

Water Quality

Parts of the site are within the Sydney Water drinking catchment and as a result, Statement Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 applies.

The Gateway determination required the undertaking of a Neutral or Beneficial Effect Water Quality assessment. That assessment has not been undertaken and neither has civil designs, in particular stormwater plans, been provided for assessment. As such, it cannot be determined whether the proposal would not have an adverse impact on the Sydney Water catchment.

5 Recommendation

Despite this time granted to address and resolve matters relating to the proposal many matters remain unresolved, nor was there the required studies and assessment to provide evidence to support or justify the proposal's suitability.

On this basis the proposal fails to demonstrate that the site is suitable for the proposed development. Added to this proposal is presently not aligned with the directions set in the District and local strategic plan framework for Wollondilly LGA.

Therefore, it is recommended that the Minister's delegate determine to alter the Gateway determination to not proceed under clause 3.34(7) of the *Environmental Planning and Assessment Act 1979* given that:

1. potential impacts on Shale Sandstone Transition Forest and Aboriginal Cultural Heritage have not been addressed;
2. many remaining matters are unresolved due to the absence of required studies and documentation required by the Gateway determination;
3. the proposal is inconsistent with regional, district and local strategic planning frameworks presently in place for Wollondilly LGA; and
4. there planning proposal inconsistent with Section 9.1 Directional 2.1 Environmental Protection Zones, 2.3 Heritage Conservation, 4.4 Planning for Bushfire Protection and 5.5 Sydney Drinking Water Catchment, hence all related issues remain unresolved.

Any additional development capacity for the site should be considered as part of the Council's strategic planning as part of its Rural Land Use Study and Local Housing Strategy and coordinated with planning for supporting infrastructure and services.



18/12/2020

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8217 2018

Attachments

Attachment A – Planning Proposal

Attachment B – Gateway Determination

Attachment C – Gateway Determination Report