

### Planning report

Local government area: Wollondilly

#### 1. SITE DESCRIPTION

The planning proposal (**Attachment A**) applies to Lot 2 DP 596515, 55 Government Road, Bargo which has 500m frontage along Government Road (**Figure 1**).

The site is north east of Bargo township. The site adjoins densely vegetated land at its eastern boundary, while the remainder of the site adjoins rural-zoned land (**Figure 2**). The 95 Great Southern Road (PP\_2014\_WOLLY\_005\_00) site adjoins the north-west boundary.

The site is an irregular shaped lot with an area of 11.2ha and contains scattered vegetation with a riparian corridor running along the southern boundary.



Figure 1: Aerial view of site (red outline)

Under the Wollondilly Local Environmental Plan (LEP) 2011, the following planning controls apply to the site:

- zoned RU1 Primary Production (Figure 2 below);
- a minimum lot size of 16ha; and
- partially identified as bushfire prone land (Category 1, 2 and Buffer).

The site is within the Bargo Mine Subsidence District.



**Figure 2: Current land zoning map with approximate site boundary (red)**

The site adjoins RU1 Primary Production zoned land to the north and south, E2 Environmental Conservation separated by a RU2 Rural landscape zone buffer to the east and RU4 Primary Production Small Lots with RU2 zone buffer to the west.

## 2. PURPOSE OF THE PROPOSAL

The planning proposal seeks to amend the Wollondilly LEP 2011 to:

- rezone part of the site from RU1 Primary Production to E2 Environmental Conservation, and E4 Environmental Living (Figure 3, overleaf);
- amend the minimum lot size from 16ha to 2ha; and
- include certain land on the Natural Resources – Biodiversity Map.

It is anticipated that the proposal would facilitate the development of 5 residential lots on the site.

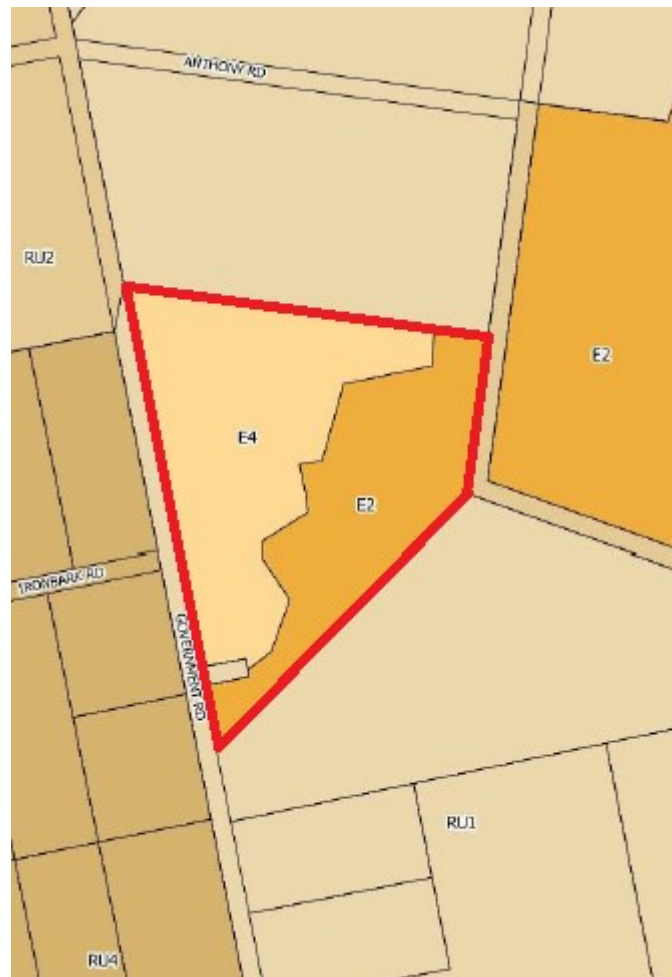


Figure 3: Rezoning plan with approximate site boundary (red) from the planning proposal

## 3. STATE ELECTORATE AND LOCAL MEMBER

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

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

To the Western team's knowledge, neither MP has made any written representations regarding the proposal.

Representations were made in relation to mine subsidence in the Bargo area by Mr Nathaniel Smith MP to the Minister for Planning and Public Spaces. This planning proposal was not discussed directly and there was no outcome related to this planning 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:** There are no donations or gifts to disclose and a political donation disclosure is not required.

## **4. GATEWAY DETERMINATION AND ALTERATIONS**

### **4.1 Gateway Determination**

The Gateway determination issued on 26 November 2014 (**Attachment B1**) determined that the planning proposal should proceed subject to conditions requiring Council to:

- Increase the minimum lot size from 2ha to 3ha;
- Prepare studies for flora and fauna, European and Aboriginal heritage, waste water, preliminary contamination investigation, drainage, and consider the need for a noise, odour, vibration, dust and traffic study taking into account the proposed waste transfer station to the north; and
- Consult with NSW Trade and Investment – Resources and Energy regarding Direction 1.3 Mining, Petroleum Production and Extractive Resources, Office of Environment and Heritage regarding Direction 2.1 Environmental Protection and Direction 2.3 Heritage Conservation, Local Land Services regarding Direction 2.1, Mine Subsidence Board regarding Direction 4.2 Mine Subsidence and Unstable Land, and Rural Fire Service regarding Direction 4.4 Planning for Bushfire Protection; and to demonstrate consistency with Direction 4.3 Flood Prone Land and Consult with Sydney Water.

### **4.2 Gateway Alterations**

There have been 3 Gateway alterations (**Attachment B2-B4**) issued as follows:

- On 21 January 2015, to reduce the minimum lot size from 3ha to 2ha and amend community consultation requirements to clarify timing for consistency with 9.1 Directions. Council was also issued local plan making authorisation.
- On 19 September 2016, to extend the timeframe to complete the plan by 23 months; and
- On 17 November 2017, to give a further 6 months to complete the plan.

The plan was due to be finalised by 31 April 2018. On 10 September 2018 Council submitted a request to extend the Gateway a further 9 months to 31 January 2019.

## **5. PUBLIC EXHIBITION**

The proposal has not yet progressed to public exhibition and it was expected that the proposal could be placed on exhibition following the extension to the Gateway determination timeframe.

## **6. ADVICE FROM PUBLIC AGENCIES**

The Department sought advice from the Division of Resources and Geoscience [now Mineral Exploration Geoscience – Geological Survey NSW (GSNSW)] and Subsidence Advisory NSW (SA NSW) before progressing the Gateway alteration because there are outstanding and unresolvable objections from both agencies for an adjoining site at 95 Great Southern Road, Bargo.

Several submissions regarding mining and land-use coexistence have been made by GSNSW and SA NSW during the assessment of the planning proposal.

**Table 1** provides a summary of mining and land-use coexistence agency comments.

Table 1: Summary of mining and land-use coexistence agency comments

State agency	Summary of Comment
<p>Mine Subsidence Board (now SA NSW) 9 April 2015 <b>(Attachment G1)</b></p>	<ul style="list-style-type: none"> <li>The Board advised it does not object to the proposal and advised to seek the Board's approval for any proposed subdivision or the erection of improvements at the appropriate time.</li> </ul>
<p>NSW Trade and Investment – Resources and Energy (now GSNSW) 25 February 2015 <b>(Attachment H1)</b></p>	<ul style="list-style-type: none"> <li>GSNSW has no issues to raise with the above planning proposal.</li> </ul>
<p>Division of Resources and Geoscience (now GSNSW) 25 October 2018 <b>(Attachment H2)</b></p>	<ul style="list-style-type: none"> <li>The Division previously advised Council of no resource concerns regarding the proposal given the limited number of additional dwellings that were likely to result from the rezoning.</li> <li>Subsequent to the previous advice in 2015, SEARs (Secretary Environmental Assessment Requirements) were issued for the Tahmoor South Project (SSD17-8445) on 9 June 2017. The site is located within Consolidated Coal Lease (CCL) 747 held by Bargo Collieries Pty Ltd (a subsidiary of Tahmoor Coal) and lies directly over proposed longwall panels of the project.</li> <li>The planning proposal area is likely to be subject to subsidence impacts resulting from longwall extraction of coal. The subject area is also within the Bargo Mine Subsidence District.</li> <li>With recent changes to Mine Subsidence legislation, the subsequent cost of property repairs potentially represents a significant financial disincentive to mining companies seeking to operate in areas that will be subject to further intensification of urban development.</li> <li>Accordingly, the Division has concerns regarding the location of the rezoning within the Tahmoor South Project area and objects to the planning proposal because it is inconsistent with Section 9.1 Direction 1.3 Mining Petroleum and Extractive Industries as it has the potential to restrict the development of coal resources.</li> <li>The Division supports sequential development of the area with rezoning of surface lands to facilitate residential development taking place after completion of longwall mining of underground coal seams.</li> </ul>

State agency	Summary of Comment
<p>Mine Subsidence Board (now SA NSW) 29 October 2018 <b>(Attachment G2)</b></p>	<ul style="list-style-type: none"> <li>Tahmoor Coal current holds a coal title over this area. Tahmoor Coal is expected to submit an Environmental Impact Statement in late 2018 after receiving SEARs in July 2017.</li> <li>Should urban development occur prior to mining, there will be subsidence damage to urban improvements such as houses and infrastructure.</li> <li>SA NSW supports a staged development where urban development occurs in due course once mining is completed. It is highly likely that future purchasers of the subdivided land would be adversely impacted when coal extraction occurs. SA NSW records in the Tahmoor / Picton area indicate that coal mine induced subsidence results in damage to approximately 40% of properties with an average cost of repair of \$75,000.</li> <li>As a result, SA NSW does not support the above land-use rezoning proposal until such time as subsidence is complete.</li> </ul>
<p>SA NSW 20 May 2020 Tahmoor South Coal Project - Impacts on future surface development comments <b>(Attachment G3)</b></p>	<ul style="list-style-type: none"> <li>SA NSW advise that additional surface development within proposed mining area will have impacts on community.</li> <li>SA NSW advise it is not possible to mitigate predicted subsidence impacts through practical engineering design and prevent further impact on the community.</li> <li>SA NSW advise that future referrals for urban development within the proposed mining area are likely to be refused should the Tahmoor Coal project be approved.</li> </ul>
<p>SA NSW 15 September 2020 <b>(Attachment G4)</b></p>	<ul style="list-style-type: none"> <li>SA NSW re-confirms that proposed rezoning directly overlies planned longwall panels as per the amended documentation submitted in support of the Tahmoor South project.</li> <li>SA NSW advise that the proposed rezoning is not considered compatible with the positioning of the longwall extraction panels</li> <li>SA NSW's position on the proposed land-use rezoning remains unchanged.</li> </ul>
<p>Mineral Exploration and Geoscience – Geological Survey NSW (GSNSW) 2 October 2020 <b>(Attachment H3)</b></p>	<ul style="list-style-type: none"> <li>GSNSW confirmed that the site is covered by Consolidated Coal Lease (CCL) 747 held by Bargo Collieries.</li> <li>The subject areas are within the Bargo Mine Subsidence District.</li> <li>GSNSW advised that with recent changes to Mine Subsidence legislation, the subsequent cost of property repairs potentially represents a significant financial disincentive to mining companies seeking to operate in areas that will be subject to further intensification of urban development.</li> <li>Coal extraction from the Bulli Seam directly beneath the subject lands is scheduled to occur around 2025 through to completion by end of 2030. There is future potential for the Wongawilli Coal Seam which sits beneath the currently targeted Bulli Coal Seam.</li> <li>GSNSW continues to prefer rezoning of surface lands for urban development to occur after completion of longwall mining despite amendments to the Tahmoor South Coal project.</li> </ul>

A summary of the outstanding key issues raised by the public agencies is provided below.

## 6.1 Mining Issues

As mentioned above, the site is in the Bargo Mine Subsidence District. Tahmoor Coal holds a Consolidated Coal Lease over the subject land and Secretary's Environmental Assessment Requirements (SEARs) were issued in June 2017 for the Tahmoor South project (Application No. SSD 17\_8445). The SEARs propose the development of an underground mining operation to extract up to five million tonnes of coal a year up to 15 years from 2021.

The mine project completed exhibition in March 2019. Tahmoor Coal has revised the mine plan by removing 2 longwall panels from under Tahmoor, significantly reducing potential subsidence impacts on existing residential development. The revised project is now under assessment and is not expected to be determined until 2021.

### Subsidence issues from longwall mining and potential impacts to properties

SA NSW is responsible for regulating and administering the mine subsidence compensation system in NSW and has developed surface development guidelines, to mitigate or eliminate the risk of damage to surface structures from mine subsidence within proclaimed mine subsidence districts.

Development applications for housing within a mine subsidence district requires an integrated development approval from SA NSW in accordance with the *Coal Mine Subsidence Compensation Act 2017*. In areas within active mining leases, the development guidelines are intended to balance the interests of property owners and mine proprietors, providing mitigation measures against subsidence damage without imposing unreasonable costs and restrictions on the landowner or unreasonably sterilising resources.

In response to the amendments made to the mine project in August 2020, the Department sought updated advice from SA NSW which confirmed that the planning proposal directly overlies planned longwall panels of the mine. Accordingly, SA NSW advises that the proposed land use is not considered compatible with the positioning of the longwall extraction panels (**Attachment G4**).

### **Department Comment:**

The Department notes the intent of the development guidelines to provide engineering solutions for dwellings in mine subsidence areas. As outlined above, SA NSW does not support the proposal, as future mining operations are likely to result in a high risk of land subsidence and damage to property. While the mine project has been amended and there is a reduction in subsidence impacts, there would still be subsidence damage to future urban development which cannot be mitigated through engineering design.

If the rezoning were to occur, there is a high probability that future urban development would not be supported by SA NSW prior to 2030 at the earliest. Further, should dwellings be supported, it is highly likely such residential development would be impacted by subsidence regardless of any design criteria proposed and that the extent of damage cannot fully be predicted.

### Potential sterilisation of coal resources

GSNSW assesses mineral resources in NSW to assist government agencies and local government on land use planning and decision making. It aims to protect access to the mineral, petroleum and extractive resources of NSW, to allow for their current and future development.

As mentioned above, the subject land is within the Southern Coalfield, which has the highest-quality coking coal resources in NSW, and that the remaining resources within the

Tahmoor Mine holdings would continue to hold strategic significance to the state due to their continued use in steel-making.

In response to the amendments made to the mine project in August 2020, the Department sought updated advice from GSNSW which re-confirmed its preference for urban development to occur after completion of longwall mining (**Attachment H3**).

### **Department Comment:**

The Department notes the strategic significance to the state of the coal resource below the surface lands and potential sterilisation of these coal resources.

The proposed rezoning has not addressed the potential financial disincentive to mining companies seeking to operate in areas that will be subject to further intensification of urban development. To avoid the potential sterilisation of strategic coal resources, additional residential development at the site should only be permitted after the completion of longwall mining of underground coal seams.

## **7. ASSESSMENT**

### **9.1 Section 9.1 Directions**

#### Direction 1.3 Mining, Petroleum Production and Extractive Industries

The objective of this Direction 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 Direction applies to the proposal as the site is in the Bargo Mine Subsidence District and within the Tahmoor South Coal Project.

The proposal is inconsistent with this Direction as it has the potential to restrict the development of coal resources as it underlies the proposed longwall panels scheduled by the Tahmoor South Coal Project. Accordingly, GSNSW objected to the proposal and also advised that the proposed development on the site may be subject to subsidence impacts from longwall extraction of coal.

The inconsistency with Direction 1.3 Mining, Petroleum Production and Extractive Industries is unresolved.

#### Direction 4.2 Mine Subsidence and Unstable Land

This Direction aims to prevent damage to life, property and the environment on land identified as unstable or potentially subject to mine subsidence. This Direction applies to the proposal as the site is located in the Bargo Mine Subsidence District. In accordance with this Direction, Council consulted the Mine Subsidence Board [now SA NSW] to confirm if it has any objection to the proposal.

SA NSW does not support the proposal until subsidence is complete, as future mining operations are likely to result in a high risk of land subsidence and damage to property. If the rezoning were to occur there is a high probability that future urban development would not be supported by SA NSW prior to 2030 at the earliest and that the extent of damage cannot fully be predicted.

The inconsistency with Direction 4.2 Mine Subsidence and Unstable Land is unresolved as rezoning of the site would not guarantee that future urban development could proceed.

### **9.2 State environmental planning policies**

The planning proposal is not inconsistent with relevant State environmental planning policies.



### 9.3 State, regional and district plans

#### A Plan for Growing Sydney and Draft South West Sub Regional Strategy

At the time of issuing the original Gateway determination the planning proposal was consistent with these strategies as it promoted opportunities for housing adjacent to existing urban areas. This plan has been superseded by a new region plan for Sydney - *The Greater Sydney Region Plan: A Metropolis of 3 Cities*. The Western City District Plan gives effect to the new region plan.

#### Western City District Plan

While this planning proposal received a Gateway determination before the release of the *Western City District Plan*, the following assesses the proposal against the District Plan.

The site is identified within the Metropolitan Rural Area, which under the District Plan is sought to be conserved as rural land and is not to be rezoned for urban release purposes. For this reason, the proposal is inconsistent with the objective to safeguard rural land.

As raised by GSNSW and SA NSW, development in accordance with the proposal also places this development at potential risk of exposure to land subsidence and damage to property. Exposure to this risk is not supported by the District Plan.

The planning proposal does not give effect to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979* (Act) as it does not provide effective planning to reduce the exposure of new urban development to urban hazards and permits incompatible urban development in a rural area.

### 8. RECOMMENDATION

The Department acknowledges the extensive work and time taken to attempt to address and resolve matters relating to the proposal. However, the Department is of the view that many of these matters as outlined in this report remain unresolved and therefore fail to demonstrate that the site is suitable for the proposed development intended by the planning proposal.

Therefore, it is recommended that the Minister's delegate as the local plan-making authority determine to not proceed with the planning proposal under section 3.34(7) of the *Environmental Planning and Assessment Act 1979* given that:

- the site is at high risk of land subsidence and which has the potential for damage to property, until mining operations are complete;
- development resulting from the proposal could sterilise state significant reserves of coal and compromise future resource extraction; and
- the proposal is inconsistent with Section 9.1 Directions 1.3 Mining, Petroleum Production and Extractive Industries, 2.1 Environmental Protection Zones, 2.3 Heritage Conservation, and 4.2 Mine Subsidence and Unstable Land, and hence all related matters remain unresolved.



**Sebastian Tauni**  
Senior Planning Officer, Western



**Adrian Hohenzollern**  
Director, Western

Contact Officer: Sebastian Tauni  
Senior Planning Officer, Western  
Phone: 8217 2018