



Planning,
Industry &
Environment

IRF20/5697

Plan finalisation report – PP_2013_WOLLY_014_00

Wollondilly Local Environmental Plan 2011 –
Burraborang Rd & Steveys Forest Road, Oakdale
(1590 Burraborang Rd, Oakdale)

December 2020



Published by NSW Department of Planning, Industry and Environment

dpie.nsw.gov.au

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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 | Council Name | LGA |
|--|---------------------------|-------------|
| The planning proposal (Attachment A) applies to land at 1590 Burrangor Road, Oakdale (Lot 21 DP 862841) (Figure 1). | Wollondilly Shire Council | Wollondilly |

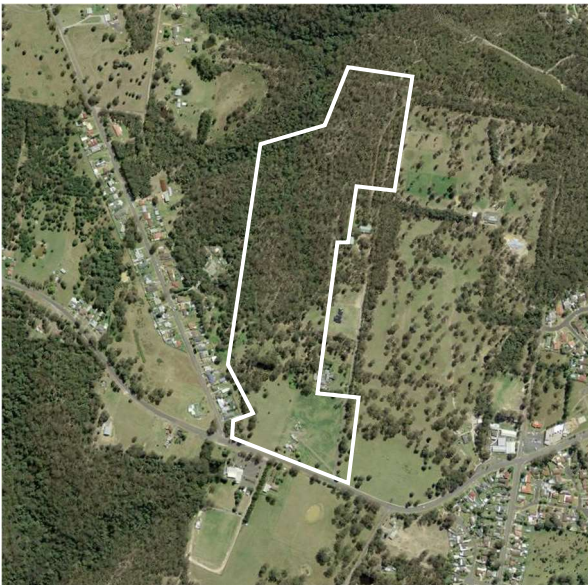


Figure 1 Subject site

The site is located 500m from the Oakdale town centre and has a 250m frontage to Burrangor Road and 40m frontage to Steveys Forest Road. The northern (rear) boundary is 200m in length, the eastern and western (side) boundaries are variable in alignment and 950m (approx.) in length.

The site is 22 hectares in area. The southern portion of the site is mostly cleared and used for a variety of rural purposes, with the remainder of the site densely vegetated.

Shale Sandstone Transition Forest, which is an Endangered Ecological Community has been identified within the site's vegetation. A moderate gradient extends generally in a north to south direction across the site.

1.1.3 Purpose of plan

The planning proposal seeks to rezone the site to part R2 Low Density Residential, part R5 Large Lot Residential, and part E3 Environmental Management zones. It also seeks to amend minimum lots size and height of building development standards.

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

Table 2 Current and proposed controls

| Control | Current | Proposed |
|--------------------------------|--|---|
| Zone | RU1 Primary Production | Part R2 Low Density Residential, part R5 Large Lot Residential and Part E3 Environmental Management |
| Maximum height of the building | A height development standard currently does not apply | 9.0m |
| Floor space ratio (FSR) | An FSR development standard currently does not apply | None proposed |
| Minimum lot size | 16ha | Proposed R2 land – 700m ² Proposed R5 land – 2,000m ² |
| Number of dwellings | 2 | Approximately 50 |

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. Mr 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 23/02/2014 (**Attachment B**) determined that the proposal should proceed subject to conditions. The conditions included requirements to prepare supporting technical reports including potable water and wastewater servicing, flood and traffic impact.

The reports have not been prepared and therefore the Gateway determination conditions have not been satisfied.

The Gateway determination was altered four times since the originally issued Gateway determination as follows:

- 23/04/2015, to amend Condition 8 by extending the timeframe for completing the LEP until 23/05/2016 (12 months);
- 16/06/2016, to amend Condition 8 by extending the timeframe for completing the LEP until 27/01/2017(12 months);
- 05/04/2017, to amend Condition 8 by extending the timeframe for completing the LEP until 30/04/2018 (15 months); and
- 07/05/2019, to amend Condition 8 by extending the timeframe for completing the LEP until 30/04/2020 (24 months).

In accordance with the Gateway determination (as altered), the proposal was due to be finalised on 30/04/2020.

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

The planning proposal has not proceeded to public exhibition in accordance with the Gateway determination.

3.1 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with agencies listed below in Table 3 which includes a summary of the agencies feedback and Council view on all matters. The Department does not share Council's view on all matters and the Department's assessment follows in Section 4 of this report.

Table 3 Advice from public authorities

| Agency | Advice raised |
|---|--|
| Former NSW Office of Environment & Heritage (now Environment, Energy and Science) | <p>30 May 2014</p> <p>The number of native species within the relevant quadrant is high. Impacts should be avoided or minimised in the first instance. Offsets should only be considered where impacts cannot be avoided or mitigated.</p> <p>An Aboriginal Cultural Heritage Assessment is to be undertaken in consultation with the local aboriginal community.</p> <p>Unable to provide comments in relation to flooding as a Flood Impact Statement and Stormwater Management Plan had not been prepared.</p> |
| Sydney Water | <p>12 November 2020</p> <p>The trunk water and wastewater systems should have adequate capacity to service the proposed development area. A Water Servicing Coordinator should be engaged to determine detailed availability and requirements for the proposal.</p> |
| NSW Rural Fire Service | <p>26 May 2014</p> <p>Minimise bushfire interface, adopt necessary Asset protection Zones (APZ), retain radiant heat level to 10kW/m², provide a reticulated water supply, maintain management of bushfire loads.</p> <p>15 December 2020</p> <p>Before providing detailed advice on the subject proposal the RFS's preference is that the council carries out its Shire wide <i>Natural and Manmade Hazards a Emergency Management Study</i> and that any proposal for the site would be required to be assessed against the updated <i>Planning for Bush Fire Protection 2019</i> 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 raised concerns that the cumulative impacts of 'spot rezoning's' such as this may exacerbate these adverse experiences.</p> |

| Agency | Advice raised |
|---|---|
| Sydney Catchment Authority (note now WaterNSW) | <p>4 July 2014</p> <p>Any future development must have neutral or beneficial effect on water quality.</p> <p>According to SCA's strategic land and water capability maps, the site has major constraints.</p> <p>Unsewered lots would pose a high to extreme risk to water quality and threatened species on the site.</p> <p>SCA mapping is broad scale only and detailed site testing is recommended.</p> <p>The site is beyond Council's endorsed growth area limits.</p> <p>Land clearing is likely to affect the quality of nearby Horse Creek.</p> <p>Insufficient information is available to support the proposal.</p> <p>If proposal remains unsewered, lots within the proposed R2 and R5 zoning should be a minimum of 4,000m² in area. The proposed E3 zone should include lots with a minimum area of 20ha.</p> |
| Heritage Council of NSW | <p>11 June 2014</p> <p>No objection</p> |
| NSW Roads & Maritime Service | <p>4 May 2014</p> <p>No objection</p> |
| NSW Education & Communities | <p>3 June 2014</p> <p>Insufficient capacity for student placements</p> |

3.2 Post-exhibition changes

The proposal has not proceeded to public exhibition and the Department is not aware of any other changes made to 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. As indicated earlier, the planning proposal has not been exhibited post Gateway determination and a number of issues raised by authorities and agencies cannot readily be resolved as such cannot proceed.

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 Gateway determination was:

- consistent with the regional plan and district plans in place at the time of Gateway determination;

- inconsistent with Ministerial Directions 2.1 Environmental Protection Zones, Direction 4.3 Flood Prone Land, Direction 4.4 Planning for Bushfire Protection and Direction 5.2 Sydney Drinking Water Catchments; and
- consistent with all relevant SEPPs.

The following tables identify whether the proposal is 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 |
| 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 | |
| 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 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 checked="" 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 given 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 Assessment

Strategies at Gateway determination

Sydney Metropolitan Strategy and Draft South West Subregional Strategy

The planning proposal was found to be consistent with these strategies as it promoted opportunities for housing adjacent to existing urban areas.

Wollondilly Growth Management Strategy

The Wollondilly Growth Management strategy (GMS), since superseded by the Local Strategic Planning Statement did not identify the site as a potential residential growth area. Council determined that the planning proposal was consistent with the key policy directions and assessment criteria of the GMS (based on the information available at that time) and supported it on that basis.

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

The planning proposal received a Gateway determination before the release of the *Western City District Plan* (the District Plan). The 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:

- W12 Protecting and improving the health and enjoyment of the District's waterways
- 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:

- insufficient information has also been provided to in relation to water management, including potential flooding impacts and stormwater management;
- 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.

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 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 required to demonstrate consistency with the hazard's management approach being implemented under the LSPS. The planning proposal does not include such a study.

The site is located within the Metropolitan Rural Area, 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.

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.

Ministerial Directions

Direction 2.1 – Environmental Protection Zones

This Direction aims to protect and conserve environmentally sensitive areas.

The majority of the subject site is heavily vegetated, much of which contains endangered ecological community (EEC) Shale Sandstone Transition Forest.

It is unclear whether potential impacts will be adequately mitigated as such a land use zone permits dwelling houses. That is, it has not been demonstrated that a dwelling house, particularly any associated wastewater, would not unreasonably impact the EEC.

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 4.4 - 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 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 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.

Direction 5.2 – Sydney Drinking Water Catchments

The site is within the Warragamba (Schedule 2) Special Area within the Sydney drinking catchment. Under the Direction the proposal is required to have a neutral or beneficial effect on water quality.

In accordance with the Gateway determination, Council sought advice from the Sydney Catchment Authority (SCA), now Water NSW. The advice, dated 4 July 2014, concludes that insufficient information was provided to conclude whether the proposal would not affect the catchment's drinking water quality. This is specifically because insufficient information was provided in relation to whether all or some of the site would have access to offsite sewer services. As such, it cannot be confirmed whether the objective of this direction has been met.

The inconsistency with Direction 5.2 Sydney Drinking Water Catchments is unresolved.

4.1.2 Environmental Impacts

Drinking Water Catchment

The site is within the Warragamba (Schedule 2) Special Area of the Sydney Water Drinking Catchment. It is also within proximity to Horse Creek, which is a tributary of the drinking water catchment. The proposal has not adequately demonstrated an avoidance of impact to the catchment water quality is possible. This is particularly as wastewater provisions for land proposed to be zoned E3 have not been confirmed. Should the proposal seek to rely on onsite wastewater management, this is considered to be inappropriate due to its potential impacts to the drinking water catchment.

Endangered Ecological Community

As outlined earlier, the majority of the site contains dense, established vegetation. This vegetation includes Shale Sandstone Transition Forest, which is a Critically Endangered Ecological Community. The proposal seeks to zone much of the vegetated portion of the site to E3 Environmental Management. However, it has not been demonstrated that these ecological features would be adequately protected, particularly from any wastewater as a result of dwelling house development within such a zone.

Bushfire

In the absence of evidence provided as part of the planning proposal that the proposed development is suitably protected from the threat of bushfire and adequate evacuation arrangements can be in place (if required), the proposal is deemed to be unsuitable for the site as it may potentially expose future residents and property to this threat of bush fire.

5 Recommendation

Despite the extensive time granted through numerous alterations to the Gateway determination, required studies have not been forthcoming. Therefore, many of the matters as outlined in this report remain unresolved and therefore the proposal fails to demonstrate that the site is suitable for the proposed development that would be expected to result from the land being rezoned in accordance with the subject planning proposal. Added to this, the proposal is presently not aligned with the directions and priorities set in the Regional, 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* because:

1. potential impacts on Shale Sandstone Transition Forest and Aboriginal Cultural Heritage have not been addressed; and
2. inconsistencies with 9.1 Directions 2.1 Environmental Protection Zones, 2.2 Heritage Conservation 4.4 Planning for Bushfire Protection and 5.5 Sydney Drinking Water Catchment remain unresolved, hence all related issues remain unresolved.

Any additional development capacity for the site should be considered as part of the Council's strategic forward planning under 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