



Planning,
Industry &
Environment

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Plan finalisation report – PP_2014_Wolly_003_01

Wollondilly Local Environmental Plan 2011
(Amendment 39). River Road, Cross St, Tahmoor
Road and Progress St, Tahmoor

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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 land at River Road, Cross Street, Tahmoor Road and Progress Street, Tahmoor. (Lots 1 - 6 DP 1128745 and Lot C DP 374621) (Figures 1 and 2). | Site | Wollondilly Shire Council | Wollondilly |



Figure 1 Subject site (site outlined in red)

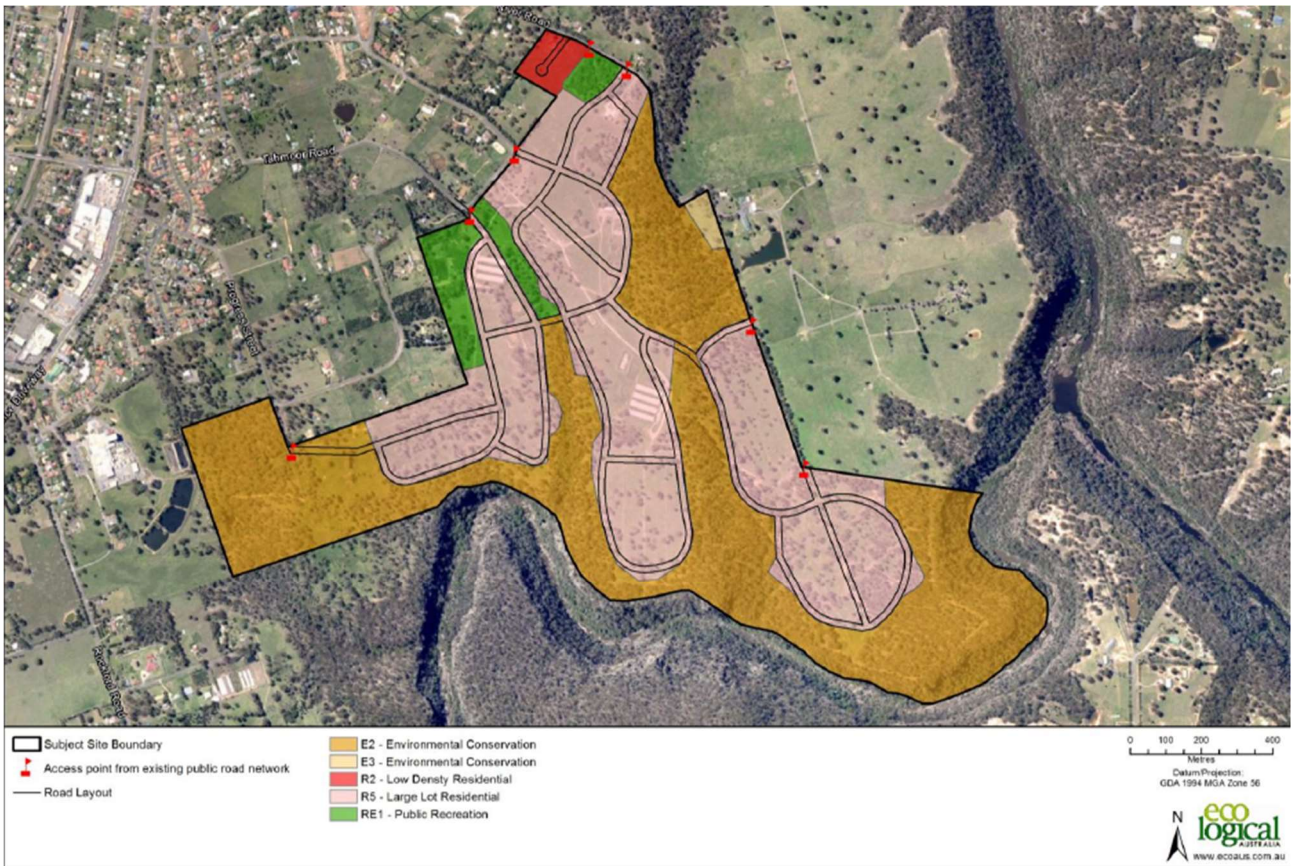


Figure 2: Conceptual rezoning plan indicating access points (Source: Bushfire Assessment 2013)

The site is located on the south-eastern fringe of Tahmoor and comprises eight lots with a combined area of 167 hectares. Approximately half its area is forested, with the remainder pasture. There are four creek lines that traverse the site and the Bargo River and Gorge adjoin its southern boundary. The site is used for duck farming and grazing.

1.1.3 Purpose of plan

The proposal would facilitate 240 low density and large lot residential allotments and the dedication of 76 hectares of environmentally sensitive land for conservation.

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

Table 2 Current and proposed controls

| Control | Current | Proposed |
|--------------------------------|--|--|
| Zone | RU4 Primary Production Small lots E2 Environmental Conservation | Part R2 Low Density Part R5 large Lot Residential Part E2 Environmental Conservation Part E3 Environmental Management |
| Maximum height of the building | N/A | 9m and 6.8m (south east lobe) |

| Control | Current | Proposed |
|------------------------|---------|--|
| Minimum lot size | 2ha | R2 zone: 700m ² R5 zone: 975m ² , 1500m ² & 4000m ² E2: 60ha E3 zone: 1ha & 1.5ha |
| Natural Resources Map | N/A | Apply 10m riparian buffer along 4 watercourses within site |
| Urban Release Area Map | N/A | Add site to Urban release map |

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 17/07/2014 (**Attachment B**) determined that the proposal should proceed subject to conditions. The conditions included public consultation, agency consultation and assessment of potential flooding of site. The Gateway determination provided for the completion of the LEP within 15 months from the week following the date of Gateway determination.

The Gateway determination five times on the following dates :

- 12/11/2015, to amend condition 2 to extend the timeframe for completion of the LEP to 24/10/2016 (12 months)
- 19/09/2016, to amend condition 2 to extend the timeframe for completion of the LEP to 30/09/2017 (11 months)
- 03/07/2017, to amend condition 2 to extend the timeframe for completion to 24/04/2018 (6 months)
- On 24/04/2018 to amend condition 2 to extend the timeframe for completion to 24/09/2018 (5 months) and
- 07/05/2019 to amend condition 2 to extend the timeframe for completion to 30/09/2019 (3 months)

The Gateway alterations were to provide Council and the landowner additional time to resolve the various environmental, local infrastructure and servicing issues.

Council has not yet satisfied conditions 7, 8 and 9 of the Gateway determination as it has not demonstrated the planning proposals consistency with the following Section 9.1 Directions (as applied at the time):

- Direction 1.3 Mining, Petroleum Production and Extractive Industries;
- Direction 4.3 Flood Prone Land; and
- Direction 4.4 Planning for Bushfire Protection.

In accordance with the Gateway determination (as altered), the proposal was due to be finalised on 30/10/2019.

In November 2020 Council resolved to return all planning proposals that 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.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 11/04/2018 to 14/05/2018.

Council identified in its report (16 July 2018) that it received 9 community submissions (2 by the same person), comprising 6 objections, 1 submission in support and 2 neutral on their position.

3.1 Submissions during exhibition

Council summarised the community submissions as follows:

Overcrowding – raised in 5 submissions

- lots are too small;
- too many people crammed into the site; and
- larger lots to reduce impact on biodiversity.

Roads and Transport – raised in 4 submissions

- cumulative impact of traffic;
- poor and damaged roads; and
- better access to the freeway.

Environmental – raised in 3 submissions

- runoff (nitrogen and phosphorus) from fertilisers will pollute watercourses;
- vegetated buffer needs to be managed well; and
- ensure environmental land is maintained in one landholding.

Provision of facilities – raised in 2 submissions

- no parks or schools proposed; and
- need tourist facilities and walking trails.

Mining

- no objection is raised to the planning proposal subject to future development adhering to mining subsidence guidelines.

Other – raised in 1 submission

- rezone land around Progress Street to residential as odour no longer a problem.

3.2 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with agencies listed below in Table 3 which have provided the following feedback. The following table outline's Council's position on agency advice. 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 | Council's response |
|---|--|--|
| Transport for NSW- Land use & Transport Planning | <i>15 September 2014</i> No issues with the planning proposal | Comments are noted. |
| Transport – former Roads and Maritime Services | <i>24 May 2016</i> Land should be identified as an Urban Release Area to make it subject to satisfactory provisions for state infrastructure. Council must satisfy itself as to the traffic impacts on Remembrance Drive. | The site is proposed to be mapped as an Urban Release Area allowing for satisfactory arrangements to be required for State infrastructure. Council has determined the need for new traffic lights at the intersection of Progress St and Remembrance Drive, because of this and adjoining planning proposals. |
| Dept of Primary Industries – Agricultural land use | <i>3 May 2018</i> Concern about possible impacts on adjacent turkey processing plant. Residential areas should be located 500m or more away from the plant. | Residential areas are greater than 500m from the facility. The site is well suited for residential purposes adjoining residential land and being close to services and facilities in Tahmoor. |
| NSW Office of Water and Natural Resources Access Regulator | <i>25 September 2014</i> Generally supportive of proposed approach to managing riparian corridors. Further work is recommended to develop mechanisms to regulate any private ownership of riparian corridors. Water holding structures should be sized in accordance with Maximum Harvestable Rights Dam Capacity. <i>30 April 2018</i> Supports delivery of water and sewer services to site, to mitigate impacts on surface and ground water. | 10m buffers will be provided along four minor watercourses. The watercourse and buffer will be conserved in E2 zoned land, to be transferred to Council for management as a biobanking site. Dams will be sized in accordance with maximum harvestable rights. |

| Agency | Advice raised | Council's response |
|---|--|--|
| | <p>Bargo River Gorge buffer (100m) exceeds requirements of <i>Water Management Act 2000</i>.</p> <p>Supports vegetated buffers along drainage lines.</p> <p>Supports proposed retention basins ability to mitigate runoff impacts on downstream waterfront land.</p> | |
| Endeavour Energy | <p>Electrical infrastructure on site is not held under easement but is protected by legislation</p> <p>The existing local network is unable to service the development. Extension or augmentation of the network will be required.</p> <p>Specific networks requirements will be identified during the technical assessment process.</p> <p>New power lines are to be undergrounded.</p> | <p>Site can be serviced.</p> <p>Developer will need to meet with Endeavour Energy to discuss design requirements.</p> |
| Health – South Western Sydney Local Health District | <p><i>19 August 2014</i></p> <p>Introduction of early infrastructure to support healthy walking habits and to encourage use of public transport. Consider social infrastructure to create a sustainable community. Additional open space should be provided.</p> <p><i>10 May 2018</i></p> <p>Planning proposal satisfactorily responds to previous recommendations.</p> | <p>Footpaths and cycleways will be constructed.</p> <p>Cross St will be built as a bus capable road.</p> <p>Existing community facilities can accommodate increased demand.</p> <p>Significant portion of the site will be provided as open space.</p> |
| Trade & Investment – Resources and Energy | <p><i>4 September 2014</i></p> <p>Where mining has been possible, Tahmoor Coal has extracted the Bulli Seam resource from beneath the site</p> <p>Site falls within the Bargo Mine Subsidence District. Any proposed future development would require consultation with Subsidence Advisory NSW</p> <p>No resources issues with the proposal.</p> | <p>Council acknowledges the need for future development to be referred to SA NSW.</p> |
| Subsidence Advisory NSW | <p><i>4 September 2014</i></p> <p>The site overlies mining & coal leases ML 1376 and CCL716 held by Tahmoor coal. Coal able to be viably extracted has been mined per these leases.</p> <p>The site falls within the Bargo Mine Subsidence District. Any proposed future development requires approval under <i>Coal Mine Subsidence Compensation Act 2017</i>.</p> | <p>Council identifies that Tahmoor Coal advised it had no objection to the planning proposal subject to future development complying with the subsidence guidelines.</p> |

| Agency | Advice raised | Council's response |
|---|--|---|
| | <p>There are not resource issues to raise concerning the proposal.</p> <p><i>11 May 2018</i></p> <p>SA supports the proposal subject to written confirmation being received from Tahmoor Coal on their position.</p> | |
| <p>Dept of Primary Industries – Fisheries</p> | <p><i>26 April 2018</i></p> <p>The Bargo and Nepean Rivers are habitat for the Macquarie Perch (an endangered species)</p> <p>Maintenance of water quality is important for the survival of the species.</p> <p>An assessment of Significance for potential impact on the Perch is required under EP&A Act and Fisheries Management Act.</p> | <p>Site specific DCP will include provisions that require an assessment of significance to be undertaken for future developments.</p> |

| Agency | Advice raised | Council's response |
|---|---|--|
| NSW Rural Fire Service | <p><i>15 October 2014</i></p> <p>No objection subject to future subdivisions complying with Planning for Bushfire Protection 2006. Residential areas are shown to extend outside the perimeter road and within the APZ, which is not the preferred solution.</p> <p><i>7 June 2018</i></p> <p>No objection subject to future subdivisions complying with Planning for Bushfire Protection 2006.</p> <p>All bushfire measures should be contained within the development and not on adjoining land.</p> <p>All APZs should be designed to be located on private land, roads or managed land.</p> <p><i>15 December 2020</i></p> <p>RFS provided 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 <i>Planning for Bushfire 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 held concerns that the cumulative impacts of 'spot rezoning's' such as this may exacerbate these adverse experiences.</p> | <p>The application had been amended in response to initial RFS comments to comply with Planning for Bushfire Protection 2006.</p> |
| Environment, Energy and Science (then Office of Environment and Heritage) | <p><i>02 June 2016</i></p> <p>Aboriginal Cultural Heritage – a plan of management that outlines measures to protect sites, register sites on AHIMS, ongoing consultation with Aboriginal community should occur for management of items.</p> <p>Flooding – a sensitivity analysis to address climate change impact, additional post development modelling on impacts on waterways, an assessment of major overland flows within the site, and consideration of the ownership and ongoing maintenance of regional detention basins is required.</p> | <p>Aboriginal sites have now been registered. Plan of management will be prepared as DA process, if this were to occur.</p> <p>Detailed assessment will be required at DA stage to ensure infrastructure can manage flooding.</p> <p>Biodiversity certification and biobanking applications have been submitted.</p> |

| Agency | Advice raised | Council's response |
|-------------------------|--|---|
| EPA | <p data-bbox="432 277 576 309"><i>7 April 2015</i></p> <p data-bbox="432 331 1038 633">Odour - A buffer zone based on an odour contour from a modelling impact assessment may reduce the risk of odour impacts, but will not reduce the risk entirely. Odour generating processes require an ongoing and dynamic management approach in addition to zoning to reduce and mitigate the risks of odour impacts. A successful approach requires the engagement of and negotiation between all relevant stakeholders.</p> <p data-bbox="432 656 1038 824">Noise – Assessment is not sufficient to determine the suitability of the site for residential development, it hasn't considered the cumulative impacts of the proposed land rezoning nor has it included all existing and foreseeable noise sources.</p> <p data-bbox="432 846 1038 1081">Water Quality – A water impact assessment has not been provided. Water quality targets should be developed for the site. An integrated approach to water management is supported, Council should consider how any system will be monitored and maintained in the future, and who will fund those actions.</p> <p data-bbox="432 1104 1038 1238">Land Contamination – Detailed site investigation is required. Identification of contamination in a DCP to ensure the issue is addressed in Precinct planning is supported.</p> <p data-bbox="432 1261 1038 1361">Waste Management – Council should ensure that existing services can accommodate the proposed growth.</p> | <p data-bbox="1078 277 1422 521">Wastewater ponds are the primary source of odour. Most of wastewater is now connected to Sydney water sewer. Residential areas are greater than 500m from the facility.</p> <p data-bbox="1078 544 1422 779">Site is separated by a 1km from Remembrance Drive. Local traffic from development will be dispersed across three roads. Traffic noise is not considered to be any issue.</p> <p data-bbox="1078 801 1422 1037">Details regarding water quality modelling and outputs will be provided at the subdivision stage (if this were to proceed) to ensure that pollutant load targets can be achieved.</p> <p data-bbox="1078 1059 1422 1261">Requirements for a Stage 2 contamination investigation and a site auditor to confirm residential suitability are proposed to be included in site-specific controls DCP.</p> <p data-bbox="1078 1283 1422 1451">Current waste management services are considered adequate to enable incremental growth resulting from this planning proposal.</p> |
| Department of Education | <p data-bbox="432 1480 624 1512"><i>14 August 2014</i></p> <p data-bbox="432 1534 1038 1668">Proposed development will increase demand for services. Primary and high school operating at capacity. Developer contribution towards new facilities would be beneficial.</p> | <p data-bbox="1078 1480 1422 1682">Council is aware of the impact of planning proposals on schools and has worked with Education to develop solutions, including co-sharing facilities.</p> <p data-bbox="1078 1704 1422 1906">The site is proposed to be mapped as an Urban Release Area allowing for satisfactory arrangements to be required for state infrastructure.</p> |

| Agency | Advice raised | Council's response |
|--------------------------|--|---|
| Local Land Services | <p><i>13 August 2014</i></p> <p>Support recommendations in flora and fauna report to undertake further analysis prior to submission of development application and need for referral of matter to Commonwealth. Support 100m buffer to Bargo Gorge. Funding and management measures should be put in place to ensure conservation of threatened species.</p> | <p>A significant portion of vegetation on the site is to be retained, including a 100m buffer to the gorge.</p> <p>APZs will be located within intended perimeter roads. Site specific DCP provisions will be developed to ensure this outcome as part of any eventual development in accordance with the proposal.</p> |
| Fire and Rescue NSW | <p><i>29 September 2014</i></p> <p>Roads should be designed to enable, and not hinder FRNSW access. Subdivision be serviced by a hydrant system connected to reticulated water supply, designed in accordance with Australian Standards.</p> | <p>Fire and Rescue NSW requirements will be incorporated as conditions on any future development approvals for subdivisions</p> |
| NSW Police Force | <p><i>29 September 2014</i></p> <p>A safer by design evaluation has been conducted. No issue with planning proposal.</p> | <p>Comments are noted</p> |
| Sydney Water | <p><i>23 October 2020</i></p> <p>Picton Water Recycling plant is at capacity.</p> <p>Sydney Water is endeavouring to increase capacity at the Plant to accommodate growth, and are working with the EPA on a variation to our licence. This process is still pending.</p> <p>Sydney Water intends to work with developers to consider options for alternative or Interim Operating Procedures (IOPs). IOPs would be assessed on a case by case basis, and be delivered at the developer's cost</p> | <p>In recent discussions (August 2020) Sydney Water confirmed that they will service the Cross-Street development site with reticulated sewer</p> <p>(Note, the Department considers this statement not to be consistent with advice from Sydney Water)</p> |
| State Emergency Services | <p>No comment received.</p> | <p>No response required.</p> |

Council has generally addressed or considered matters raised in submissions from public authorities, except for those raised by Sydney Water and Local Land Services.

Local Land Services' submission identified the need to establish a management and funding mechanism to facilitate long-term maintenance of the riparian corridors. Council has endeavoured to create that framework through biocertification and biobanking mechanisms, however they are not yet in place.

Sydney Water has provided Council written and verbal advice on the capacity of the Picton Water recycling plant to take wastewater from the site. The last formal (written) advice received was that the plant did not have sufficient capacity to service the development and that is taken to be Sydney Water's current position. The matter of wastewater is discussed further in Section 4.1 of this report.

3.3 Post-exhibition changes

3.3.1 Council resolved changes

Since the original Gateway determination was issued Council has considered the various aspects of the planning proposal including biocertification application, draft VPA and draft DCP at its meetings.

Council meeting 18 July 2018 - Planning Proposal

Council resolved to support the application in principle with revisions to:

- amend the Land Zoning map from the exhibited R5 Large Lot Residential to R2 Low Density Residential (for all land with a minimum lot size no greater than 1,500m²);
- the land in the south eastern portion of the site be zoned R5 Large Lot Residential with a minimum lot size of 1 hectare;
- that a maximum building height of 9m be applied across the site and 6.8 metres in the south eastern part of the site and along the ridgelines; and
- respond to Council concerns over the adequacy of local infrastructure such as roads, parks and other environmental infrastructure to service the proposal.

Council meeting 18 July 2018 - Biodiversity Certification Application

Council considered the Biodiversity Certification Application and resolved:

1. that the Proponent be asked to amend the planning proposal, report on Interface with the Bargo River Gorge, dated April 2016 to exclude any future road reserve forming part of the 100m buffer to Bargo River Gorge;
2. the Proponent provide a Biocertification Strategy that would result in permanently funded and managed conservation measures for the land proposed to be conserved;
3. Council delegate to the General Manager authority to sign the Biodiversity Certification Application for submission to the Minister for the Environment; and
4. subject to the above changes the amended planning proposal, report on Interface with the Bargo River Gorge and Biodiversity Certification Application be placed on public exhibition during community consultation for the planning proposal.

Council meeting 18 February 2019 - Planning Proposal

Council made several resolutions and statements on the project at this meeting.

Council confirmed the development forms that it will support (in relation to zoning, lot size and building heights). The current planning proposal incorporates reflects those forms.

Council resolved:

- 3(a) the planning proposal be forwarded to the Department of Planning & Environment and Parliamentary Counsel with a request to make arrangements for the drafting of the amended Local Environmental Plan in the form as detailed in this report and in the planning proposal; and
- 3(b) that Council may exercise plan making powers once Council is satisfied that suitable arrangements have been made in respect of local infrastructure required to support the development.

Council directed that a report be prepared detailing proposed site-specific planning controls for inclusion within the Wollondilly Development Control Plan 2016.

Council meeting 17 November 2020 - Draft DCP

Council considered the DCP and resolved to support its public exhibition in accordance with Council's Community Participation Plan.

Council meeting 17 November 2020 - Draft VPA

Council considered the draft VPA and resolved to delegate authority to the CEO to approve minor amendments and thereafter publicly notify it.

3.3.2 Justification for post-exhibition changes

The Department notes that these post-exhibition changes are justified and would not require re-exhibition should the proposal be supported to finalisation. It is considered that the post-exhibition changes:

- Reduce building heights in sensitive locations to minimise visual impacts on Bargo gorge;
- Improve environmental outcomes for sensitive environmental by protecting riparian corridors; and
- Do not alter the intent 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 Gateway determination was:

- consistent with the regional plan and district plans in place at the time of Gateway determination;
- inconsistent with Ministerial Directions 4.4 Planning for Bushfire Protection and 1.3 Mining, Petroleum Production and Extractive Industries; 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 |

| | Consistent with Gateway determination report Assessment |
|---|---|
| Local Planning Panel (LPP) recommendation | Planning proposal lodged prior to commencement of LPP referral requirements. |
| Section 117 Directions | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No, refer to section 4.1 |
| State Environmental Planning Policies (SEPPs) | <input checked="" type="checkbox"/> Yes <input 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 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 remain 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.

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 prevailing Metropolitan and sub-regional strategy at Gateway determination in relation to providing suitable land to increase housing opportunities. Subsequent amendments have not altered that consistency.

Wollondilly Growth Management Strategy

The Wollondilly Growth Management strategy, since superseded by the Local Strategic Planning Statement, identified the site as a potential residential growth area. It was demonstrated at Gateway that the planning proposal was consistent with the key directions in the strategy. Subsequent amendments have not altered that consistency.

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 required 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:

- W1 Planning for a city supported by infrastructure;
- W17 Better Managing Rural Area; and
- W20 Adapting to the impacts of urban and natural hazards and climate change.

The basis for this is that:

- inadequate measures have been provided for wastewater servicing to demonstrate an ability for the site to be serviced in an interim or permanent state;
- 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. There are unresolved concerns about the ability to defend development 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.

The planning proposal is partly aligned with the LSPS priorities, as outlined below:

- Planning Priority 1 – Aligning infrastructure with community needs. The planning proposal will create new infrastructure with the dedication of environmental lands for community use. However, the site cannot be connected to the wastewater system at this stage; and
- Planning Priority 16 – Enhancing and Protecting the diverse values of the Metropolitan Rural Area. Although the proposal will result in the loss of rural lands, it will enable managed growth of Tahmoor, a village within a rural landscape.

These positive aspects of the planning proposal are acknowledged.

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 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.

Draft Development Control Plan

Council has prepared site specific development control provisions to incorporate into the Wollondilly Development Control Plan 2016 to deliver the environmental and built form outcomes sought by Council. Council endorsed the draft provisions and the undertaking of public exhibition at its meeting on 17 November 2020.

Council supported finalisation of the planning proposal on the basis that the DCP be finalised prior to rezoning of the land.

Ministerial 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 former Department of Trade and Investment raised no objection to the planning proposal on the basis that all coal able to be viably mined from under the site had been removed. However, this advice predates the proposed expansion of the Tahmoor South Coal Project.

In its current form the proposal is inconsistent with this Direction as it has the potential to restrict the development of coal resources as part of the Tahmoor South Coal Project. Geological Survey NSW has not provided updated advice on potential resource conflicts from proposed development on the site.

The inconsistency with Direction 1.3 Mining, Petroleum Production and Extractive Industries is unresolved pending receipt of updated advice.

Direction 3.1 – Residential Zones

The objective of this Direction is to ensure residential zoned land is appropriately serviced by urban infrastructure.

The development cannot be adequately serviced by wastewater infrastructure. Sydney Water has advised that there is insufficient capacity in the existing wastewater system, to service the development. The inconsistency with Direction 3.1 Residential Zones 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.

Subsidence Advisory supports the proposal subject to written confirmation being received from Tahmoor Coal on their position.

The inconsistency with Direction 4.2 Mine Subsidence and Unstable Land is unresolved subject to receiving updated advice from SA NSW.

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 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 that study is complete. Therefore, the inconsistency with Direction 4.4 Planning for Bushfire Protection is unresolved.

4.1.2 Environmental impacts

Flora and Fauna

The site has high environmental values with native vegetation covering a large part of its area, including Shale Sandstone Transition Forest and Cumberland Plain Woodland - two critically endangered ecological communities listed under the *Commonwealth Environment Protection & Biodiversity Conservation Act 1999* and the *NSW Biodiversity Conservation Act 2016*. A number of threatened fauna species were also recorded in the site including the Grey-headed Flying-fox and Cumberland Plain Land Snail

A biocertification application has been submitted to NSW Environment, Energy and Science. The proposed biocertification would permit the clearing of 77 ha of vegetated areas for housing and 76ha for environmental conservation in perpetuity via a separate biobanking agreement. The proposed offsetting strategy and agreement have been drafted and are the subject of final agreement with the applicant.

The offsetting strategy and agreement are intended to offset the impacts of proposed development on biodiversity. The planning proposal cannot proceed until such time as they are confirmed.

Bargo River Gorge Buffer

The majority of the southern boundary adjoins the Bargo River Gorge, which forms part of a link between the Greater Blue Mountains World Heritage Area and the Upper Nepean to Illawarra water catchment wilderness areas.

Council has been active in negotiation on outcomes that will protect the gorge. The outcomes achieved include:

- the development footprint (including all roads, basins and residential lots) will be located a minimum of 100 metres from the top of bank;
- Asset Protection Zones (APZs) have been setback and do not encroach into the proposed E2 Environmental Conservation zone, which includes the Bargo River Gorge buffer; and
- Provision of public access to the Gorge.

Management and maintenance of the Gorge would be undertaken in accordance with the biocertification strategy and biodiversity agreements. Council is investigating options to mitigate the financial risk associated with maintenance and management.

Bushfire

As outlined in Section 4.1.1 of this report, until Council carries out the Shire wide natural and manmade hazards study to inform appropriate management outcomes for land and Council's decisions on local growth and planning proposals in rural areas, this proposal is premature as it pre-empts this evaluation.

If this work helps demonstrate the potential suitability of the site despite the risk of bushfire, a site-specific strategic bushfire study that is prepared in accordance with Planning for Bushfire Protection 2019 will be 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.

Odour

Council's Environmental Health staff have considered the potential for conflict between the site and the poultry operation and abattoir at Koorana Road Tahmoor and are satisfied with the planning proposal. Key reasons for their support include:

- the residential lands are separated from the odour sources by 500 metres;
- the existing vegetation, undulating topography and prevailing winds would assist in mitigating the impact of odour over the major part of the site;
- the wastewater ponds at the poultry facility were the primary source of odour. Most of wastewater is now connected to Sydney water sewerage system; and
- in relation to the abattoir, an odour assessment found that readings were low at nearby properties and should the obligations of the Wollondilly Abattoir Environmental Protection Licence be met, then there should be no significant risk of odour nuisance.

4.1.3 Infrastructure

Wastewater

The Picton Water recycling plant is operating at capacity and unable to receive effluent from any development on land currently zoned non-urban. Sydney Water has developed an integrated water strategy to increase the plant's capacity by increasing the use of recycled water on nearby farms. A variation to the plant's Environmental Protection Licence (EPL) is required to permit the change. Sydney Water plans to submit its licence variation application in early 2021 and expects a decision in the second half of 2021.

The Department and Sydney Water has, under certain circumstances, permitted Interim Operating Procedures (IOPs) including pump out of effluent for transport by tanker to another operating Sydney Water facility. The IOPs were permitted where there was certainty that servicing capacity would become available within a defined timeframe. This includes cases where the new servicing infrastructure was under construction, or funding had been committed for the infrastructure and its delivery programmed. In these cases, an EPL for the wastewater treatment facility was also in place. In this instance, there is insufficient certainty to allow an IOP as the required upgrade works have not received environmental or funding approval.

The *Water Industry Competition Act 2006* (WICA) establishes the framework to allow private sector participation in the water and wastewater industry. This can apply where package treatment facilities are used as an interim or long-term measure to service development. Private sector delivery and management of infrastructure can provide significant benefit, but is not suitable in all

circumstances. Applications for a WICA licence are made to the Independent Pricing and Regulatory Tribunal which have a service commitment to process applications in thirty-four weeks.

The planning proposal does not demonstrate the ability for the site to be serviced in an interim or permanent state. Its determination should not be deferred for a further extended period to allow for preparation, lodgement and determination of a WICA licence application.

If the Environment Protection Authority approves Sydney Water's licence variation application, Sydney Water will proceed with a business case for the related infrastructure. A successful licence variation application and business case may provide sufficient evidence for the Department to support a future planning proposal for the site.

Local Infrastructure

Council has negotiated with the applicant to deliver a package of public benefits through a planning agreement. The benefits include:

- dedication of 72 hectares of environmental lands
- a 5,000m² public park including embellishments
- share path to Tahmoor Town Centre.

Council endorsed the draft VPA and the undertaking of public exhibition at its meeting on 17 November 2020. It supported finalisation of the planning proposal on the basis that the VPA would be finalised prior to rezoning of the lands.

5 Recommendation

The extensive work and time taken to attempt to address and resolve matters relating to the proposal is acknowledged. However, many of these matters as outlined in this report continue to remain unresolved or are dependent on further approvals and studies to be conducted by other authorities.

On this basis the proposal fails to demonstrate that the site is suitable for the proposed development resulting from the land being rezoned in accordance with the subject planning proposal. 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. the management of risks and hazards associated with bushfires is not resolved to the extent required to support finalisation.
2. protection and management of environmentally sensitive land is unresolved as the biocertification and biobanking agreement are not finalised;
3. the Picton Water recycling plant does not have capacity to receive effluent from development on site. The planning proposal does not demonstrate confirmed ability to provide wastewater services to the site in an interim or on a permanent basis;
4. the proposal is inconsistent with regional, district and local strategic planning frameworks presently in place for Wollondilly LGA; and
5. the planning proposal is inconsistent with Ministerial Section 9.1 Directions 1.3 Mining, Petroleum Production and Extractive Industries, 3.1 Residential Zones, 4.4 Planning for Bushfire Protection and 4.2 Mine Subsidence and Unstable Land,

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