

Greater Sydney, Place and Infrastructure

IRF19/5734

Plan finalisation report

Local government area: Wollondilly

1. NAME OF DRAFT LEP

Wollondilly Local Environmental Plan (LEP) 2011 (Amendment No. 35)

2. SITE DESCRIPTION

The planning proposal (PP_2018_WOLLY_002_00) applies to all land zoned R2 Low Density Residential, R3 Medium Density Residential and B4 Mixed Use in the Wollondilly Local Government Area under Wollondilly Local Environmental Plan (LEP) 2011 (Figure 1, below). It will not affect land zoned under State Environmental Planning Policy (Sydney Growth Centres) 2006.

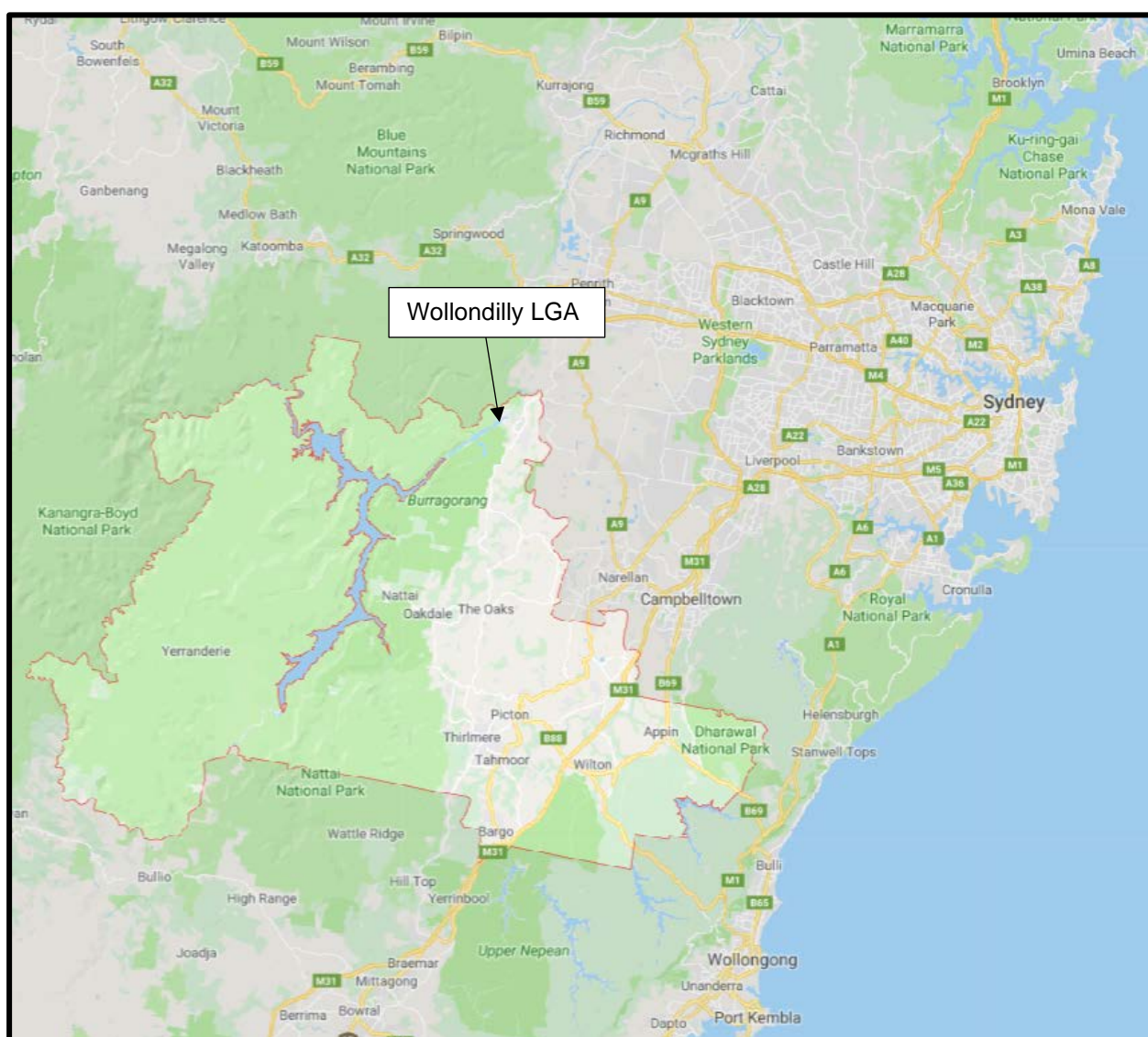


Figure 1 Land applicable to the proposal outlined in red (Wollondilly LGA).

3. BACKGROUND

The intent of this planning proposal is to introduce minimum and maximum lot size provisions for dual occupancies in all R2 Low Density Residential, R3 Medium Density Residential and B4 Mixed Use zones in the Wollondilly LGA when the Low Rise Medium Density Housing Code (the Code) under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 applies on 1 July 2020.

The planning proposal was prepared in response to the commencement of the Code. The Code permits the construction of medium-density housing under a complying development certificate and permits subdivision, but only where it complies with the provisions of the Code.

The Code commenced on 6 July 2018 and permits new types of medium-density development, being manor houses and multi-dwelling housing (terraces), as complying development in residential zones where multi-dwelling housing is permitted under a council's LEP.

On 5 July 2018, Wollondilly Shire Council was advised that commencement of the Code was deferred in the Wollondilly local government area until 1 July 2019, which allowed preparation and finalisation of the subject planning proposal.

A further extension of the deferral of the Code to 1 July 2020 was announced on 18 September 2019 following an independent review. The extension allowed councils to progress strategic planning initiatives (i.e. the Local Strategic Planning Statement) and consider local housing needs through the preparation of a local housing strategy.

4. PURPOSE OF THE PLAN

The planning proposal seeks to strengthen existing development controls for minimum lot sizes required for the construction of a dual occupancy in R2 Low Density, R3 Medium Density and B4 Mixed Use zones in order to maintain local character, encourage orderly subdivision of larger lots and reflect the restricted capacity of infrastructure.

The draft LEP intends to amend Wollondilly LEP 2011 by:

- introducing a new clause applicable to all R2 Low Density Residential, R3 Medium Density Residential and B4 Mixed Use zones which permits:
 - dual occupancies (attached) on lot sizes of between 800m² and 1,400m²; and
 - dual occupancies (detached) on lot sizes of between 975m² and 1,400m².
- introducing a new savings and transitional clause to ensure that the proposed amendment does not affect any development applications or appeal processes.

When this amendment is finalised, 'dual occupancies' will only be permitted where a minimum lot size is specified for dual occupancies in the LEP rather than the 400m² minimum lot area prescribed in the code.

Council's review of the code raised concerns over the impacts of dual occupancies on lots of 400m² on the local character of the towns and villages. Council's review also raised concerns over:

- the amount of growth in Wollondilly beyond the capacity of existing infrastructure including sewer capacity;
- that on-site waste water treatment systems are not a consideration under the code; and
- the impacts on master planned areas based on a capped number of dwellings such as Bingara Gorge.

To better align the code with local planning objectives, Council submitted the planning proposal to transfer minimum lot size controls for dual occupancy development currently set at 800m² for attached and 975m² for detached and a maximum lot size that prohibits dual occupancy on lots greater than 1,400m² from the Development Control Plan (DCP) to the LEP.

5. STATE ELECTORATE AND LOCAL MEMBER

The Wollondilly LGA falls within the Wollondilly state electorate and within the Hume federal electorate. Mr Nathaniel Smith MP is the State Member. The Hon Angus Taylor MP is the Federal Member.

On 29 May 2019 the State Member nominated the planning proposal as a matter for discussion on behalf of Jamie McLaughlin of Larodan Pty Ltd at a meeting with the Minister for Planning and Public Spaces. It is noted that there was no outcome for the proposal from the meeting.

To the team's knowledge, the Federal Member has not made any representations regarding the 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.

6. GATEWAY DETERMINATION AND ALTERATIONS

The Gateway determination issued on 17 September 2018 (**Attachment B**) determined that the proposal should proceed subject to conditions.

The proposal was due for finalisation by 1 July 2019. At its meeting on 15 July 2019 Council resolved to finalise the planning proposal and forward to the Department to make the LEP.

The Department received the request by Council to finalise the proposal after the due date. Council has advised that it has addressed the conditions of the Gateway determination. Accordingly, the Department is satisfied that an alteration to extend the timeframe to complete the LEP is not required and the planning proposal is adequate for finalisation.

7. PUBLIC EXHIBITION

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 5 December 2018 to 1 February 2019.

Council received 14 submissions from the community. Of these, nine objected to the proposal, three were in support and two indicating no position of support or objection.

Council has addressed the issues raised within the community submissions in its post-exhibition report to Council (**Attachment F1**). A summary of the issues raised by the community and Council's response to each issue is provided below:

Table 3: Summary of community concerns and Council's response.

Community concerns	Council's response
Inappropriate lot size	The re-evaluation of the appropriate lot size is outside the scope of this planning proposal, however, it has long been held that applying a minimum lot size of this nature for dual occupancy developments

Community concerns	Council's response
	would assist in retaining the low density housing character of the R2 zone.
Inaccurate development estimates	The additional dwelling estimates calculated was based on the assumption of maximum development potential of 400m ² lots versus lots that could currently be developed for the purposes of a dual occupancy using Council's existing DCP controls (i.e. lots greater than 800m ²). Explicit clarification of this point has been included in the Council report. It is acknowledged that other factors will reduce this number.
Housing diversity	An assessment of the proposal against the potential impacts on housing diversity has been undertaken in the body of this report.
Development contributions	<p>It is recognised that higher levels of development would result in an increased receipt of development contributions.</p> <p>The Contributions Plan is intended to provide local infrastructure in line with growth. Therefore, the additional dwellings and the subsequent contributions would align with the resultant increase in population. The Contribution Plan aligns with Council's Works Program for each period. It is not designed to address infrastructure deficiencies but support growth.</p> <p>The Contributions Plan outlines what and where the contributions are to be directed.</p>
Location of development	<p>Intensification of urban development in existing towns and villages through dual occupancies will be able to continue (where permissible and subject to a development application).</p> <p>The code will also allow dual occupancies to be completed as complying development (subject to Wollondilly's minimum lot size requirement) on appropriately sized lots.</p>
Infrastructure – stormwater and waste water	<p>A larger lot size provides greater scope for on-site waste water disposal in accordance with s68 of the Local Government Act 1993 and the relevant health policies. Council is not seeking to prevent the construction of dual occupancies on unsewered sites but, if permissible, seek to ensure sufficient consideration is given to the on-site requirements for waste-water management.</p> <p>The code currently requires a section 68 certificate to be lodged and determined by Council for an approved on-site waste water management system prior to the issuing of a Complying Development Certificate.</p>
Infrastructure – kerb and guttering	The implications of a minimum lot size of 400m ² must be considered in a holistic manner.

Community concerns	Council's response
	Kerb and guttering is important infrastructure in terms of amenity and drainage. Assurance must be made that infrastructure is available to support future growth.
Infrastructure – roads / traffic / parking	The proposed lot size inclusions currently exist within the DCP. The proposal is effectively a continuation of Council's current planning controls, and reflects the character and infrastructure constraints of the area.
Infrastructure – public transport	The proposed lot size inclusions currently exist within the DCP. The proposal is effectively a continuation of Council's current planning controls, and reflects the character and infrastructure constraints of the area. If the planning proposal is not completed, the commencement of the code would permit dual occupancies on lots as small as 400m ² , which in many cases will be in areas that do not contain adequate public transport.
Infrastructure – pedestrian and bike	Council has the ability to condition the construction of footpaths with dual occupancy if there is an existing network to connect to. It is recognised that if no network exists, footpaths would not be appropriate to condition as it would result in an unconnected network, and ad-hoc development. Under the code footpaths would not be mandated.
Development controls – design	Design controls are outside of the scope of this planning proposal. Any changes to the current design controls would need to occur through an amendment to the DCP.
Impact on house prices	The proposed lot size inclusions currently exist within the DCP. The proposal is effectively a continuation of Council's current planning controls, and reflects the character and infrastructure constraints of the area.
Affordable housing	<p>The delivery of affordable housing is outside the scope of this proposal. The proposed lot size is consistent with the DCP. The proposal is effectively a continuation of Council's current planning controls, and reflects the character and infrastructure constraints of the area.</p> <p>A Local Housing Strategy (including an Affordable Housing Study) will be undertaken as part of the LEP review project, this will consider this matter and any necessary action.</p>
Local character / rural living	The proposed lot size inclusions currently exist within the DCP. The proposal is effectively a continuation of Council's current planning controls, and reflects the character and infrastructure constraints of the area. Dual occupancies are not considered high density.
Full effects of the proposed changes unknown	Due to the diversity in lots across the Shire it would not be possible to fully advise the effects of this proposal on each lot due to the various site constraints that exist. The proposal will not change the permissibility of dual occupancies to the land use table and is applying the existing controls contained in the DCP into the LEP.

Community concerns	Council's response
Current and future needs of the community	The proposal is effectively a continuation of Council's current planning controls, and reflects the character and infrastructure constraints of the area. As such, the proposal is not expected to result in the stagnation of development across the Shire.
Inconsistent with state legislation (i.e. 400m ² minimum lot size of LRMDHC)	An assessment against the relevant Ministerial Directions (9.1 directions) is contained within the planning proposal. The Council has responded by advising that the LRMDHC SEPP allows for a larger lot size than the prescribed 400m ² size if an LEP minimum lot size or dual occupancies is in place.
Merit based assessment under Codes SEPP	Development applications lodged with Council are subject to a merit based assessment under 4.15 of the EP&A Act. The LEP and DCP apply in this case, and compliance with the relevant standards and controls.

It is considered that Council has adequately addressed the issues raised by the community during the exhibition period.

8. ADVICE FROM PUBLIC AUTHORITIES

Council consulted with Sydney Water in accordance with the Gateway determination (**Attachment B**). Sydney Water did not raise any objections to the proposal in their submission to Council (**Attachment SW**).

9. POST-EXHIBITION CHANGES

On 15 July 2019 (**Attachment F2**) Council resolved to proceed with the planning proposal without any post-exhibition changes.

10. ASSESSMENT

Section 9.1 Directions

Direction 3.1 Residential Zones

The objectives of this Direction are to encourage a variety of housing types; make efficient use of existing infrastructure and services; ensure new housing has appropriate access to infrastructure and services; and, minimise the impact of residential development on the environment and resource land.

The planning proposal is inconsistent with this Direction as it may reduce variety and choice of dual occupancy housing to lot sizes of between 800m² and 1,400m².

It is considered that the inconsistency is justified as of minor significance as the rural and dispersed nature of Wollondilly Shire affects the ability to deliver higher density housing. This outcome is consistent with Council's current planning controls for dual occupancies which rely on the DCP.

Direction 7.2 Implementation of Greater Macarthur Land Release Investigation

The objective of this Direction is to ensure development within the Greater Macarthur Land Release Investigation Area is consistent with the Greater Macarthur Land Release Preliminary Strategy and Action Plan.

Although the planning proposal does not rezone land within the Greater Macarthur area, it may be considered to undermine the achievement of the objectives, planning principles and

priorities for the area, by reducing development potential for land zoned R2 Low Density Residential, R3 Medium Density Residential and B4 Mixed Use Zones.

It is noted that the proposal does not impact upon the supply of single dwelling lots in the R2 zone or yield for higher density housing types within the R3 and B4 zones. Dual occupancy development on lots lower than 800m² will be guided by future planning investigations that may be undertaken within the growth area.

In these circumstances, any potential inconsistency of the proposal with this Direction is considered to be justified as of minor significance.

Direction 7.6 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan

The objective of this Direction is to ensure development within the Wilton Priority Growth Area is consistent with the Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan.

While the planning proposal does not apply to land within the Wilton Growth Area (except for the mostly developed Bingara Gorge precinct which is subject to the provisions of the Wollondilly LEP 2011), it may be considered to undermine the achievement of the objectives, planning principles and priorities for the area, by reducing development potential for land zoned R2, R3 and B4.

It is noted that the proposal does not impact upon the supply of single dwelling lots in the R2 zone or yield for higher density housing types within the R3 and B4 zones. In addition, dual occupancy development on lots smaller than 800m² in the growth area will continue to be guided through the preparation of precinct plans and the neighbourhood plan process.

In these circumstances, any potential inconsistency of the proposal with this Direction is considered to be justified as of minor significance.

9.2 State environmental planning policies

The draft LEP is considered consistent with relevant SEPPs except for SEPP (Exempt and Complying Development Codes) 2008. Any inconsistency is considered resolved through the drafting of this LEP.

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

On 6 April 2018, the Low Rise Medium Density Housing Code was published and came into effect on 6 July 2018 for councils where a deferral to the code was not provided.

The Code aims to provide greater housing choice and facilitate faster housing approvals for medium-density housing. It allows one-storey and two-storey dual occupancies, manor houses and multi-dwelling housing (terraces) to be developed in accordance with a complying development certificate provided this development meets the requirements of the Code.

The planning proposal seeks to limit the permissibility of dual occupancies to lot sizes over 800m². As advised by Council, the Code would enable 2,368 additional dual occupancies on lots as small as 400m² as complying development. Council has further advised there are currently 5,020 sites over 800m² where dual occupancies are permissible yet only 103 dual occupancy developments have been approved in the R2 and R3 zones in the past 5 years.

It is also acknowledged that there will be increased residential density facilitated by the implementation of the Wilton and Greater Macarthur Growth Areas, which have considered the co-ordination of future and existing infrastructure and services for future residents.

Consequently, it is considered that the Wollondilly LGA has enough land to cater for dual occupancy development and the planning proposal would not adversely affect the intended outcome of the Code to increase housing supply.

State Environmental Planning Policy (Sydney Region Growth Centres) 2006

The State Environmental Planning Policy (Sydney Region Growth Centres) 2006 identifies five precincts within the Wilton Growth Area and urban land use zones for the South East Wilton and North Wilton precincts.

The Wollondilly LEP 2011 and the planning proposal does not apply to land within the growth area (except for the mostly developed Bingara Gorge precinct which is subject to the provisions of the Wollondilly LEP 2011). The provisions for dual occupancy development in the growth area will be guided by precinct planning under the SEPP and through the preparation of neighbourhood plans.

Other SEPPs

The planning proposal is consistent with all other relevant SEPPs.

9.3 State, regional and district plans

Western City District Plan

The Greater Sydney Commission released the Western City District Plan on 18 March 2018. The plan contains planning priorities and actions to guide the growth of the Western District while improving the district's social, economic and environmental values.

While the plan emphasises the need for greater housing supply and a range of housing types, it also recognises Council's role in confirming which parts of its local area are suitable for additional medium-density development (Planning Priority W5). Council has advised that it will continue to:

- deliver new and diverse housing in strategic localities and zones (i.e. land release areas);
- respond to a recognised need (and market demand) for housing in the locality; and
- provide new homes near existing infrastructure and services.

The proposal is consistent with the liveability planning priorities under the plan. It is noted that additional housing diversity and choice for medium-density development will be provided in appropriate areas zoned R2 Low Density and R3 Medium Density Residential in the Wollondilly LGA.

The Department is satisfied that the planning proposal gives effect to the district plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*.

Wilton Growth Area

The Wilton 2040 plan provides a framework to guide land release and development opportunities across six precincts. A mix of densities and housing types will provide housing choice in Wilton with detached housing on medium sized lots (400-700m²) expected to make up the majority of homes. Wilton 2040 plan anticipates medium density housing typologies to make up to 20% of homes when the growth area is fully developed.

The planning proposal is consistent with the Wilton 2040 plan as it does not apply to land within the growth area (except for the mostly developed Bingara Gorge precinct which is subject to the provisions of the Wollondilly LEP 2011). Dual occupancy development on lots less than 800m² in the growth area will continue to be guided by precinct plans under State Environmental Planning Policy (Sydney Region Growth Centres) 2006.

Greater Macarthur Growth Area

The Greater Macarthur 2040 plan provides a framework to guide land release and development opportunities across 12 precincts over 20-30 years.

The draft LEP will apply to existing R2, R3 and B4 zoned areas within the Greater Macarthur Growth Area. Provisions for dual occupancy development on lots lower than 800m² may be permitted as precinct plans are progressively made for Greater Macarthur under State Environmental Planning Policy (Sydney Region Growth Centres) 2006 or as a stand-alone provision the Wollondilly LEP 2011.

11. MAPPING

There are no mapping amendments associated with this planning proposal.

12. CONSULTATION WITH COUNCIL

Council was consulted on the draft instrument under section 3.36(1) of the *Environmental Planning and Assessment Act 1979* (**Attachment D**). Council confirmed on 28 October 2019 that it supports the terms of the draft instrument and that the plan should be made (**Attachment E**).

13. PARLIAMENTARY COUNSEL OPINION

On 18 November 2019 Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

14. RECOMMENDATION

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- the Wollondilly LGA has sufficient land to cater for dual occupancy development and the proposal would not adversely affect the intended outcome of the Low-Rise Medium Density Housing Code to increase housing supply;
- the proposal supports increased residential density in the Wilton and Greater Macarthur Growth Areas, which have considered long-term coordination of future infrastructure and services for residents;
- the inconsistencies of the proposal with section 9.1 Directions 3.1 Residential Zones, 7.2 Implementation of Greater Macarthur Land Release Investigation, and 7.6 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan are justified in accordance with the terms of these Directions; and
- the draft LEP gives effect to the Western City District Plan, and is consistent with Wilton 2040 and Greater Macarthur 2040.



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