

Greater Sydney, Place and Infrastructure

IRF19/3798

Plan finalisation report

Local government area: Wollondilly

1. SITE DESCRIPTION

The planning proposal (PP_2014_WOLLY_007_00) (**Attachment A**) applies to land at 45 Noongah Street and 25 Gwynn Hughes Street, Bargo known as Lot 22 DP 619150 and Lot 95 DP 13116, respectively (Figure 1 below).

The site is vacant with an area of approximately 20.55ha. It has access to both Gwynn Hughes Street to the west and Noongah Street to the east. The site contains a large amount of existing vegetation and Hornes Creek traverses the centre of the site.

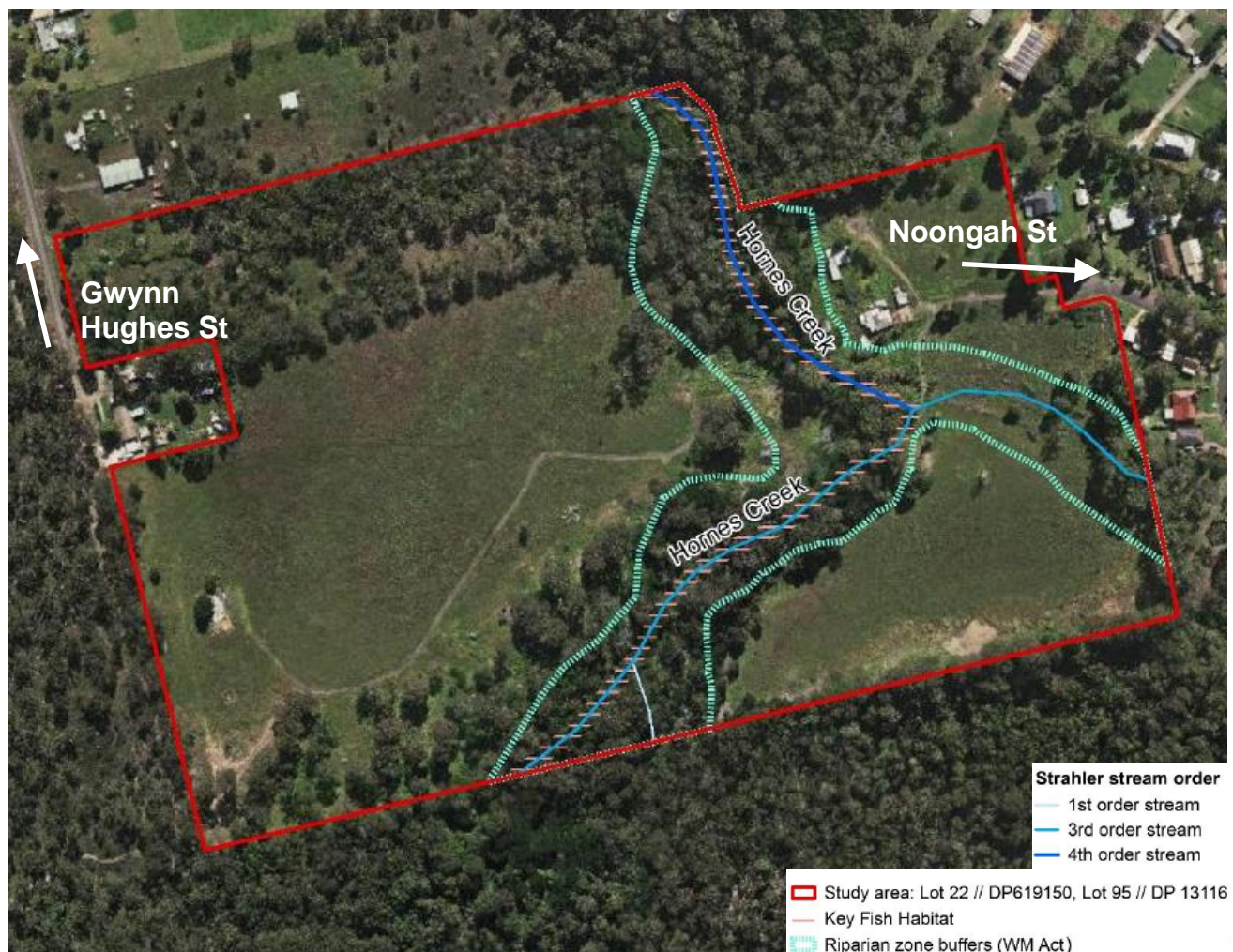


Figure 1: Aerial view of site.

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

- zoned RU2 Rural Landscape and RU4 Primary Production Small Lots (Figure 2 below);
- a minimum lot size of 16ha for the land zoned RU2 and 2ha for land zoned RU4;
- a 30m riparian buffer which is recognised as “sensitive land” under clause 7.3; and
- partially identified as bushfire prone land (Category 1 and Buffer).

The site does not have a maximum building height or contain any heritage items.

The site is within the Bargo Mine Subsidence District.

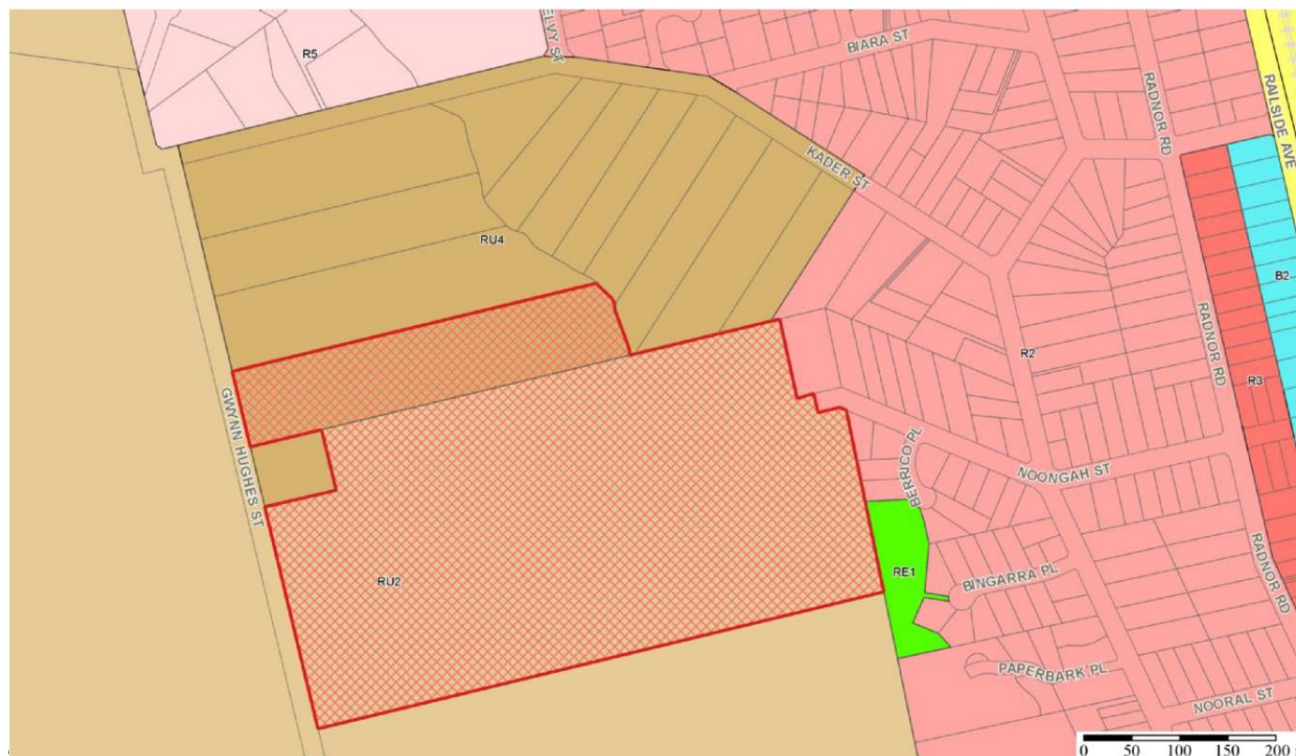


Figure 2: Current land zoning map.

The site is located to the west of Bargo village centre and adjoins R2 Low Density Residential zoned land and RE1 Public Recreation zoned land to the east, RU4 Primary Production Small Lots zoned land to the north, and RU2 Rural Landscape zoned land to the west and south.

2. PURPOSE OF THE PROPOSAL

The planning proposal seeks to amend the Wollondilly LEP 2011, as follows:

- rezone the site from RU2 Rural Landscape and RU4 Primary Production Small Lots to E3 Environmental Management and R5 Large Lot Residential (Figure 3 next page);
- apply a minimum lot size of either 1,500m² if the site can be serviced by a centralised sewage management system or 4,000m² if it is to be serviced by on-site management for the land zoned R5 Large Lot Residential and no minimum lot size for the land zoned E3 Environmental Management;
- apply a maximum building height of 9m across the entire site.

Following completion of the specialist studies and pre-exhibition consultation (page 72 of **Attachment H1**) Council has sought to replace the E3 zone with E2 Environmental Conservation.



Figure 3: Rezoning plan from original planning proposal

The revised proposal would facilitate the development of approximately 21 additional residential lots across the site as shown in the future subdivision layout at Figure 4.

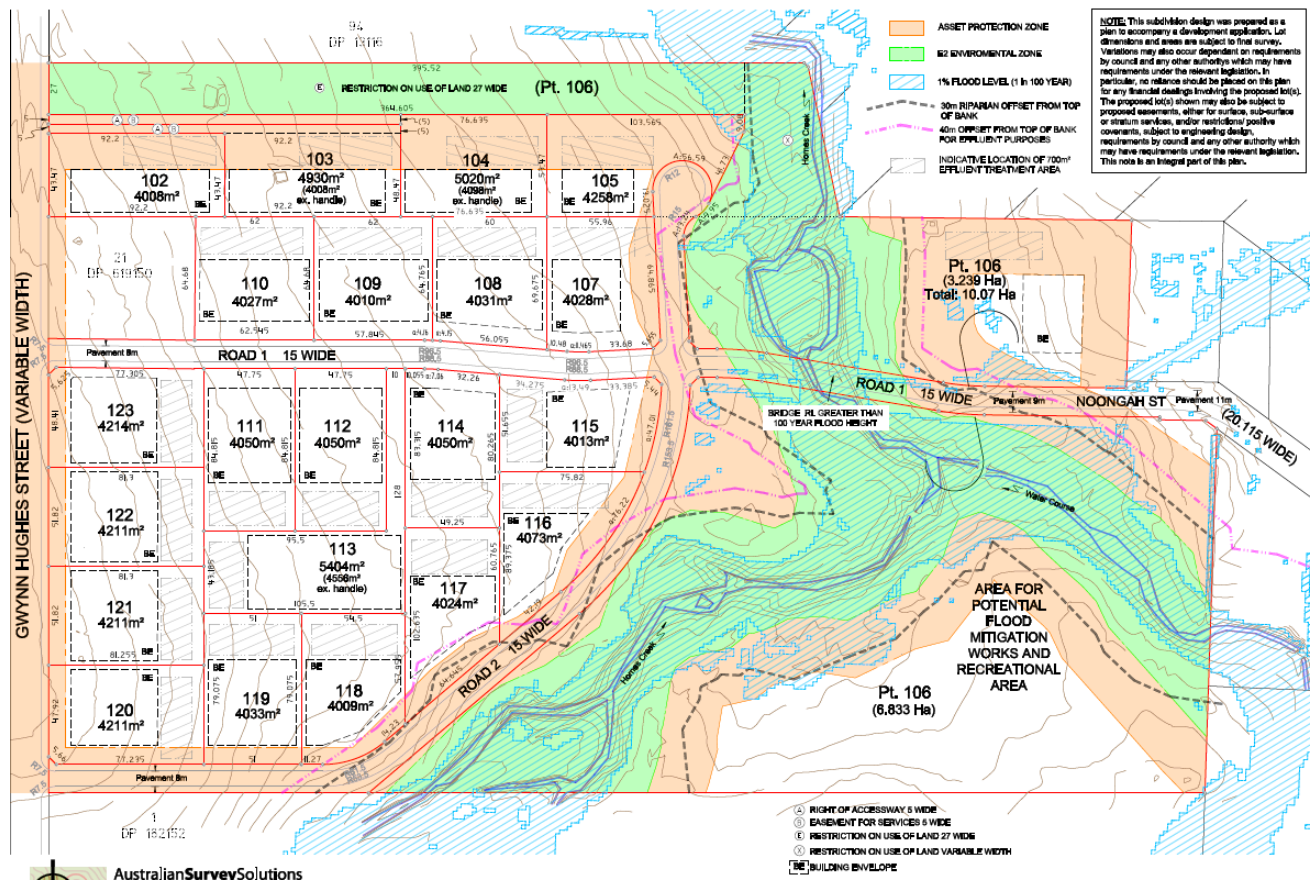


Figure 4: Proposed zoning and subdivision layout (Source: Proponent).

3. STATE ELECTORATE AND LOCAL MEMBER

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

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

To the regional team's knowledge, neither MP has made any written representations regarding the proposal. Representations were made in relation to mine subsidence in the Bargo area by Nathaniel Smith MP to the Minister for Planning and Public Spaces. This planning proposal was not discussed directly and there was no outcome related to this planning proposal.

NSW Government Lobbyist Code of Conduct: There have been no meetings or communications with registered lobbyists with respect to this proposal.

NSW Government reportable political donation: There are no donations or gifts to disclose and a political donation disclosure is not required.

4. GATEWAY DETERMINATION AND ALTERATIONS

The Gateway determination issued on 29 January 2015 (**Attachment B**) determined that the planning proposal should proceed subject to conditions. On 5 April 2017, a Gateway alteration was issued for the planning proposal providing a 13 month extension (**Attachment C**).

Council requested an extension of 13 months to enable Council to prepare the required supporting studies and resolve issues relating to vegetation on the site (**Attachment D**). The proposal was due for finalisation by 28 February 2018.

The Department has provided no further extension of time to finalise the planning proposal due to the uncertainty of the timeframe to progress the proposal beyond the pre-exhibition stage (**Attachment E**). The Department advised Council to withdraw the proposal if it could not provide evidence of its progress. The proposal has not made significant progress since the Gateway determination issued on January 2015.

5. PUBLIC EXHIBITION

The planning proposal was not exhibited in accordance with the Gateway determination.

Council undertook pre-Gateway exhibition in accordance with their notification policy between 29 April 2013 and 27 May 2013. Council received seven community submissions, with six objecting and one supporting the planning proposal.

Following the first pre-Gateway exhibition, the proposal was amended and re-exhibited between 28 May 2014 and 25 June 2014. During the second exhibition period Council received a total of eight community submissions including four objections, one in support and three neutral. The main issues raised by the community submissions were:

- loss of agricultural and rural land;
- potential traffic impacts;
- Aboriginal significance of the land;
- environmental impact and degradation of Hornes Creek; and
- stormwater management and drainage infrastructure issues.

One submission from Tahmoor Coal advised that it held a mining lease across the site and proposed to undertake underground long wall operations within the area. The submission noted that at the time, the Tahmoor South Project was being assessed by the Department.

6. ADVICE FROM PUBLIC AUTHORITIES

The Department and Wollondilly Council consulted specific public authorities as part of (and after) the public exhibition period. Submissions were received from eight public authorities including the Environment, Energy and Science (EES) Group, NSW State Emergency Services (SES), Division of Resources and Geoscience (DRG), Subsidence Advisory NSW (SA NSW), NSW Rural Fire Service (RFS), Sydney Water, NSW Water, and Endeavour Energy.

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

6.1 Biodiversity Issues

The revised Flora and Fauna Assessment (January 2019) (**Attachment F1**) identified the following vegetation types on the site (Figure 5):

- 4.22ha of Upper Georges River Sandstone Woodland;
- 2.94ha of Shale Sandstone Transition Forest (SSTF);
- 2.74ha of Alluvial Woodland; and
- 10.60ha of exotic planting and exotic pasture.

The assessment also identified six hollow bearing trees across the southern portion of the site (refer to green dots on Figure 5, below). Riparian corridor, 10m buffers to threatened species and hollow bearing trees were identified as 'high' ecological constraint. Disturbed SSTF and Alluvial Woodland is identified as a 'moderate' constraint.

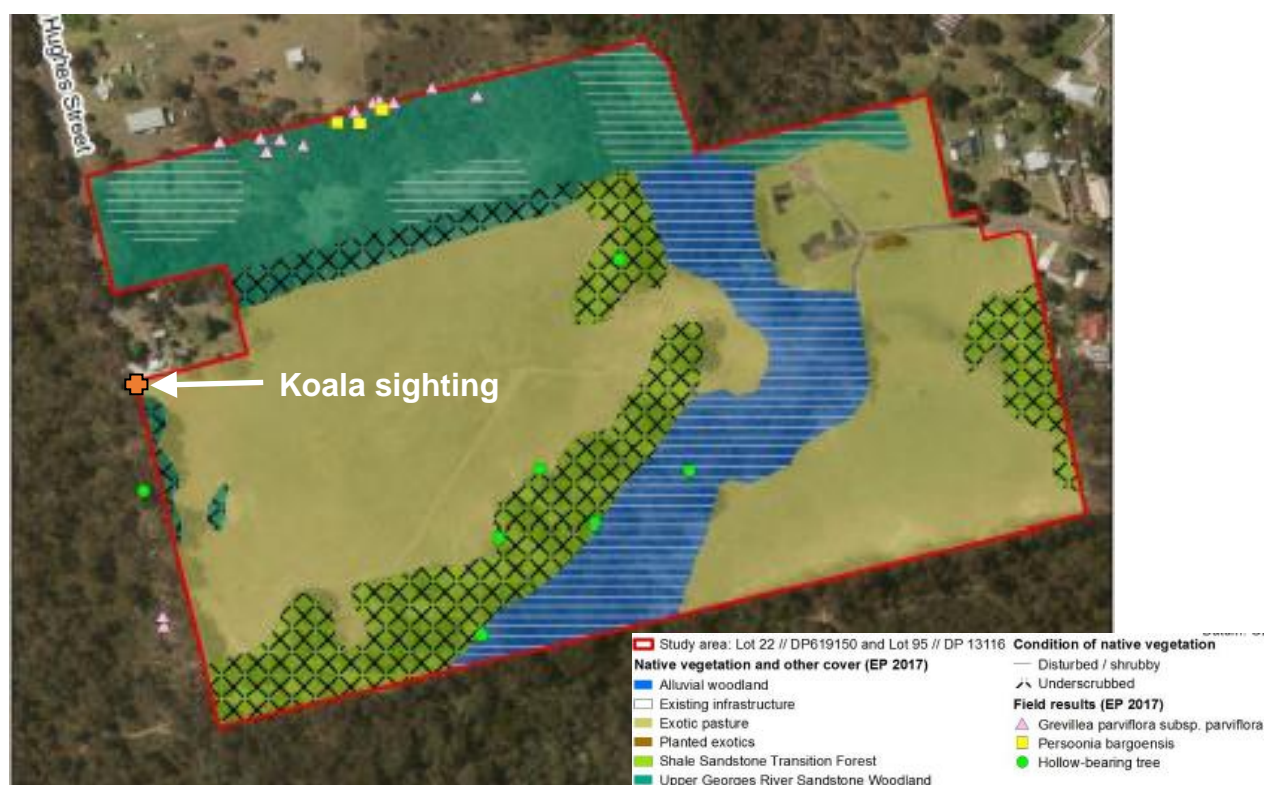


Figure 5: Existing vegetation types found on site.

The site contains potential koala habitat, with a koala observed at the end of Gwynn Hughes Street on the 26 August 2016 (OEH 2017). The site is identified on the Koala

Development Application map under State Environmental Planning Policy – (Koala Habitat Protection) 2019.

Figure 6 overlays biodiversity constraints with the future development including effluent disposal fields, asset protection zones and building envelopes.



Figure 6: Biodiversity constraints overlaid with future development.

EES (**Attachments G1a-e**) raised the following biodiversity concerns with the proposal:

- impacts to native vegetation on the site, particularly high and moderate ecological constraint identified vegetation (Figure 5) should be avoided first by using prevention and mitigation measures, particularly as Shale Sandstone Transition Forest (SSTF) is a Critically Endangered Ecological Community (CEEC) and a large portion of the existing vegetation on the site is mapped as potential koala habitat;
- future subdivision will locate effluent disposal fields immediately adjacent to the threatened *Grevillea parviflora* subsp. *parviflora* (Small-flower Grevillea) and *Persoonia bargoensis* flora species;
- high ecological constraint vegetation along Hornes Creek and the northern boundary should be zoned E2 Environmental Conservation zone, rather than E3 Environmental Management or R5 Large Lot Residential;
- consideration should be given to ensuring high ecological constraint land is retained in a single parcel of land and managed in perpetuity under a biobanking agreement or via a community title scheme;
- Asset Protection Zones encroach and impact on vegetation identified as moderate ecological constraint;

- the proposed subdivision plan shows that the perimeter road and APZ are located within the riparian extent of Hornes Creek and does not appear to have been offset; and
- any biodiversity layer proposed to be applied to the site must include all high and moderate constraint areas.

Council's Environmental Team raised similar issues to EES (**Attachment H1**).

NSW Water (**Attachment G2**) advised that the riparian corridors should be managed in accordance with the Controlled Activity Guidelines for riparian corridors on waterfront land. Public ownership is recommended to ensure the ongoing and effective management of the riparian corridors within the site.

Proponent response:

The proponent's response and revised ecological assessment (**Attachment J2**) indicates support for E2 Environmental Conservation being contained within a single lot (lot 106), with any impacts to biodiversity values to be offset through the offsetting scheme under the *Biodiversity Conservation Act 2016*.

EES (**Attachment G1f**) reviewed the revised proposal and support the introduction of the E2 zone. EES advises potential impacts of clearing and indirect impacts (such as such as hydrological impacts, nutrient runoff and weed invasion) of effluent disposal fields to high/moderate ecological constraint vegetation, including SSTF, threatened flora species *Grevillea parviflora* subsp. *parviflora* (Small-flower Grevillea) and *Persoonia bargoensis*, and potential koala habitat, remain unaddressed.

Department comment:

The rezoning will permit effluent disposal fields, asset protection zones and building envelopes in areas considered to be of high biodiversity value.

There are several matters which have not been addressed. Without adequate measures to mitigate and offset impacts on threatened species, including SSTF (a CEEC) and potential koala habitat, the Department recommends the proposal should not proceed.

6.2 Flooding Issues

The site contains flood prone land with the 1 in 100 year flood (1% Annual Exceedance Probability (AEP)) contained predominately within the riparian area and the Probable Maximum Flood (PMF) level would include the proposed R5 zone. Figure 7 illustrates the flood extent.

EES (**Attachments G1a-e**) raised several flood management concerns as summarised below:

- the north-east side (along Noongah Street and proposed road 3) becomes isolated in the 1% AEP flood event which indicates no safe route is available;
- the south-east side along proposed road 3 has its access through Noongah Street cut off at 5% AEP which indicates that residents in the south-east area must evacuate in every flood event equal or larger than 5% AEP;
- the PMF scenario map shows the south-east area fully inundated in the PMF and EES supports Council's recommendation not to support the rezoning of the south-east area along Road 3;
- the flood immunity of the existing Kader Street Bridge (300m north of site) and the proposed river crossing at the end of Noongah Street has not been assessed; and

- the 1% AEP appears to encroach on proposed lots and new development should be above the 1% AEP plus 0.5m freeboard – this should be mapped, and level adhered to as minimum floor levels for any future development.

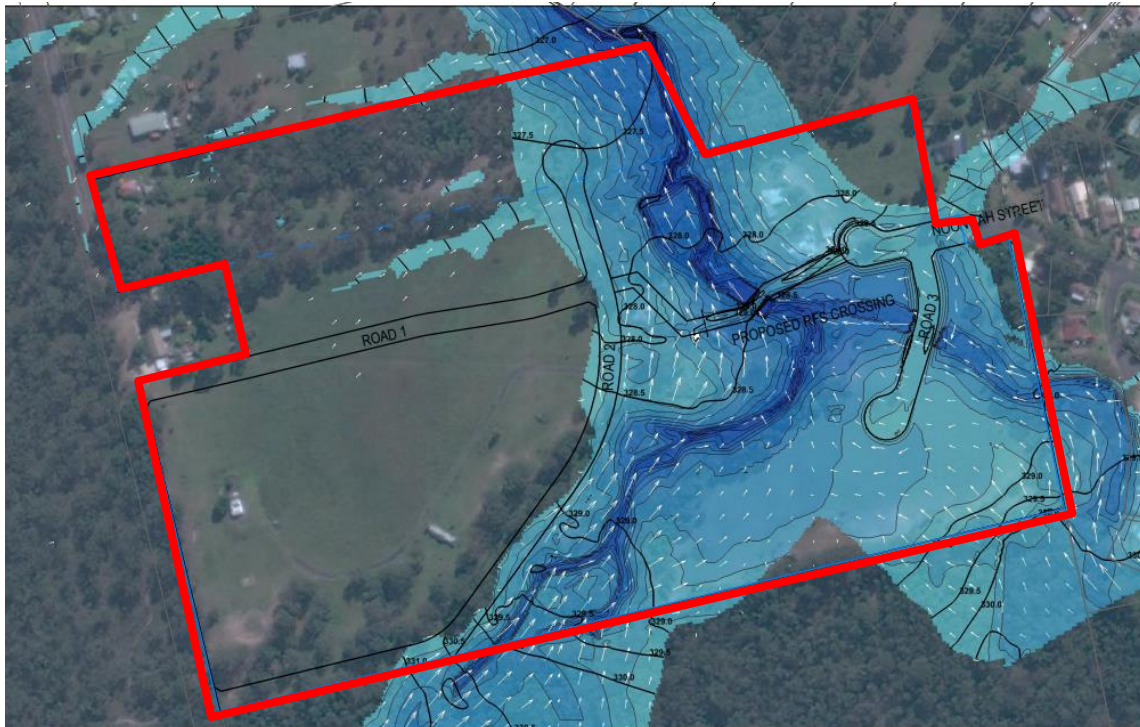


Figure 7: High (dark) and low (light) flood hazard levels affecting the site.

The Wollondilly Council Report (**Attachment H1**) notes that Council's Design Engineer raised similar flooding issues with the proposal.

- the 1% AEP flood modelling identifies impacts on existing residential areas upstream on the eastern stream and any road access across the creek would necessitate filling and potentially increasing the upstream flood levels – as such the rezoning of the central/south eastern portion of the site should not proceed;
- the north-east portion of the site may be suitable for rezoning but EES' concerns about this part of the site must be addressed;
- access to the remaining two portions of residential development would be separated by the riparian corridor (a shared path link across with low flood immunity would be acceptable) with vehicle access from either side – so the flood immunity of the existing Kader St Bridge needs to be assessed and upgrading considered if appropriate;
- a road connection is required from the western portion of the site over the creek to connect with Noongah Street in response to feedback from the NSW RFS:
 - a low-level crossing (for example a causeway) could be provided over the creek but upgrades would be required to the bridge on the alternative evacuation route;
 - alternatively, a bridge could be provided over the creek, but this may have flow on impacts on the flooding behaviour in the area. Further investigations would be required to establish the impacts on flooding and whether these impacts can be addressed; and
 - if a low-level crossing is provided over the creek then the bridge at Kader Street would need to be upgraded to provide a higher level of flood immunity (i.e. potentially demolished and rebuilt);

- existing overland flow path from Noongah Street towards the creek, may exacerbate the risk of property/dwelling inundation in the area.

The SES (**Attachment G3**) advises the proposal may increase the burden on costs to the emergency services including the SES, resulting in a substantially increased requirement for government spending on flood services. The proposal would increase residential lots in an area with impacts to access by floods ranging from the 5% AEP, and up to and including the PMF. Much of the site will be directly impacted by floodwater and the remainder of the site will be isolated by floodwater. This would increase the flood risk in the Bargo area and flow on impacts to the level of service required to be provided by the SES and other emergency services to ensure future residents' safety during a flood.

Proponent response:

The proponent responded to the flooding concerns raised by EES, Council and SES, by removing the residential lots on the eastern portion of the site and proposed emergency egress access to Noongah Street (**Attachment J1**). The proponent considers the northeast of the site is not flood affected and could be used for a childcare facility.

The proponent also advised that flood mitigation works could be undertaken in this area to alleviate and improve downstream flooding impacts and ameliorate the backwater effects and impacts of the proposed creek crossing on upslope properties.

EES (**Attachment G1f**) reviewed the changes and supports the removal of the proposed lots and the preparation of an amended flood assessment to assess the proposed works and impacts on the flood planning level. EES do not support a childcare facility in the northeast corner of the site unless management measures are set in place to ensure access to this area.

The Department's Floodplain Management Team has reviewed the proponent's response and comments as follows (**Attachment G3c**):

- the development only provides for evacuation offsite up to the 1% AEP and has not considered off site evacuation up to the PMF;
- the proposed shelter-in-place for flood events exceeding the 1% AEP should not be supported due to the risk to life posed by those sheltering in place trapped by high hazard flood waters;
- absence of modelling to demonstrate the impact of the bridge structure on the 1% AEP flood behaviour or events larger than the 1% AEP – the bridge structure may impact proposed lots located near the creek/proposed road; and
- the response does not outline the rate of rise of the creek, provide any information on time to evacuate, or how long the persons to the west of the creek are likely to be trapped.

Council's report (**Attachment H1**) advised that the western portion of the site is flood free, however, the future development of only this portion of the site would result in a fragmented development which does not present a structured or logical pattern of development. Given that the eastern portion of the watercourse is unable to be developed due to flood constraints, it is Council's view that the watercourse presents a clearly defined and logical boundary for residential development to the west of the Bargo village.

Council's engineers also note that the construction of an egress road/bridge through the riparian corridor and over Hornes Creek would result in Kader Street bridge being more susceptible to flood downstream, which is not an acceptable solution.

The proposal has not satisfactorily addressed impacts on the flooding behaviour in the area and the potential risk to life presented by the proposed flood evacuation over Hornes Creek. The Department recommends the proposal should not proceed.

Most of the site is identified as bushfire prone land (Category 1 and Buffer) (Figure 8).



The RFS comments from 2018 advised that prior to progression of the proposal Council should be satisfied that the linking road:

- can be constructed to the standards of a public road in accordance with *Planning for Bushfire Protection 2006* (PBP);
- can be ungated to allow unimpeded egress for future residents evacuating in the event of a bushfire emergency; and
- construction of the road includes suitable flood immunity.

Council (**Attachment I**) noted that the proposed gated fire trail raises potential access issues in the case of emergency. Further, the cumulative flood and bushfire impacts, particularly in cases of emergency make the proposal undesirable.

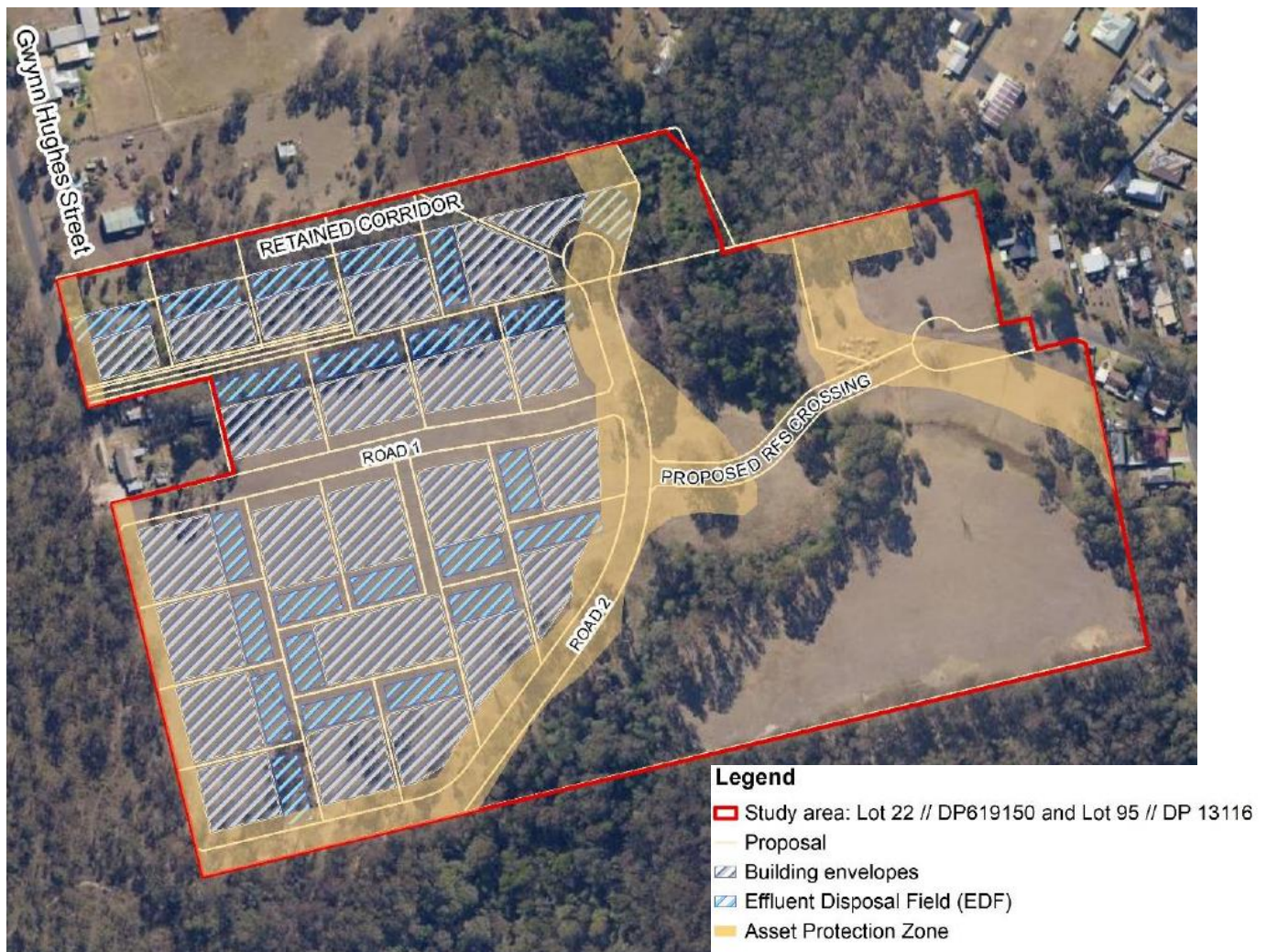


Figure 9: Proposed RFS Egress Crossing

Proponent response:

The proponent noted that the RFS did not object to the proposal and advised that the updated proposal includes an egress road from Gwynn Hughes Street to Noongah Street which is designed to public road standards (i.e. unimpeded) and increased the APZ widths to comply with PBP.

Department comment:

The Department notes that *Planning for Bush Fire Protection 2019* is the relevant current standard for the proposal to meet.

As noted above, there are flooding impacts associated with the construction of an egress road/bridge over Hornes Creek therefore it may not be achievable to address bushfire evacuation.

The proposal has not addressed the potential risk to life and impacts on flooding behaviour in the area by the proposed bushfire evacuation over Hornes Creek and in its current form, the Department recommends the proposal should not proceed.

6.4 Mining Issues

The site is located in the Bargo Mine Subsidence District. The site is also located within the Consolidated Coal Lease (CCL) 747 held by Bargo Collieries Pty Ltd (a subsidiary of Tahmoor Coal) and is within the immediate vicinity of proposed longwall panels scheduled

by the Tahmoor South State Significant Mining Project. Therefore, the site may be subject to subsidence impacts from longwall extraction of coal.

The DRG (**Attachment G5**) advised that with recent changes to Mine Subsidence legislation, the subsequent cost of property repairs potentially represents a significant financial disincentive to mining companies seeking to operate in areas that will be subject to further intensification of urban development. Accordingly, DRG raised concern about the location of the rezoning and objected to the proposal because it considered the proposal to be inconsistent with Section 9.1 Direction 1.3 Mining, Petroleum and Extractive Industries due to the potential to restrict the development of coal resources.

The proponent lodged a subdivision application with SA NSW. As part of the assessment process, Tahmoor Coal was consulted about the proposal who advised it does not object to approval of the proposed development given the proposed development is for a subdivision on existing lots. However, it recommended that any approval be conditioned so that the proposed development be designed in accordance with Subsidence advisory NSW - Surface Development Guideline 4 – Active mining areas – High predicted subsidence impact (Guideline 4) (**Attachment G8**).

On 7 April 2020, SA NSW granted a conditional approval under section 22 of the Coal Mine Subsidence Compensation Act 2017 for a proposed 22 lot subdivision on the site (**Attachment G9**).

The DRG (**Attachment G11**) has since advised it has considered the recent advice from SA NSW and Tahmoor Coal and no longer objects to the planning proposal.

Department comment:

The Department notes the approval from SA NSW for a proposed subdivision of the site, the consultation with Tahmoor Coal and the updated advice from the DRG. The potential for the proposal to restrict the development of coal resources and the potential impact of subsidence from mining on homes and infrastructure is resolved.

6.5 Water Servicing Issues

Sydney Water (**Attachment G6**) advised that the site is serviced by the existing 100mm water main in Kader Street and Noongah Street, and its preliminary investigations indicate that the existing water supply network will need to be amplified in order to service the proposed development of the site. The proposal is also outside the Bargo scheme area and therefore there is no connection available for 3 Kader Street nor has the potential flow been included in the design of the system.

To minimise potential risks to surface and groundwater quality the NSW Water (**Attachment G2**) is only supportive of the management of wastewater via a centralised wastewater treatment system.

Department comment:

The planning proposal has not adequately resolved water servicing issues to address risks to water quality in order to support future residential development on the site. In the absence of an agreed servicing solution to address waste water impacts on constrained biodiversity areas, the rezoning is not supported.

7. COUNCILS REQUEST TO NOT PROCEED

Following the consideration of the issues raised by the public authorities and Council officers (section 6 of this report), Council resolved on 19 November 2018 to not proceed with the proposal (**Attachment H2**).

The report to Council (page 83 of **Attachment H1**) concludes that the site is significantly constrained regarding ecological value and the cumulative impacts of bushfire and flooding threats. Hornes Creek significantly impacts on the evacuation ability of future residents in a bushfire or flood event, with the proposed egress across the floodway considered to be an inappropriate solution. Further flood studies show the south-east portion on the subject site becomes wholly inundated in the probable maximum flood event. The nature of Hornes Creek divides the subject site into what can be considered two (2) separate entities. This potentially creates fragmented development, with the western portion of the site having restricted access to the Bargo town centre. The proposal would also result in an isolated rural lot.

Council has submitted a request to the Department that the planning proposal not proceed (**Attachment I**). Council notes that there are several unresolved concerns from EES, RFS and DRG as discussed in section 6 of this report. In addition, the proposal is inconsistent with the Action 88 of the Western City District Plan and section 9.1 Directions 1.3 Mining, Petroleum Production and Extractive Industries, 4.3 Flood Prone Land and 4.4 Bushfire Prone Land as discussed in section 9 of this report.

8. PROPONENT RESPONSE TO COUNCIL REQUEST

On 25 January 2019, the proponent wrote to the Department (**Attachment J1**) advising that Council provided insufficient opportunities to fully address the issues that arose during the course of the review of specialist studies and which formed the justification for its subsequent resolution that the planning proposal not proceed.

Revised Proposal

To address the issues raised in additional EES and SES submissions, the proponent submitted a revised proposal (**Attachment J2**) comprising:

- Removal of development from the southeast portion of the site;
- Extension of Noongah Street and provision of a bridge to provide safe access to the site for all events up to and including the 1% AEP flood;
- Filling in the northeast portion of the site above the PMF level to permit future development; and
- Introduction of 27m wide E2 zone to the site's north-west boundary.

The proponent has requested an altered Gateway determination to allow the designated conservation area to be rezoned E2 Environmental Conservation, and R5 Large Lot Residential with a 4,000m² minimum lot size. The proponent considers the issues raised can be adequately addressed through further consultation to enable the planning proposal and LEP amendment to be finalised.

Department comment:

The efforts of the proponent in preparing documents and studies for the revised proposal is acknowledged.

Advice from EES and the Department's Floodplain Management team on the proponent's revised proposal is discussed above in section 6 along with the proponent's responses for biodiversity, flooding, bushfire and mining.

The Department has considered and reviewed submissions and information presented by Council, agencies and the proponent. Due to the unresolved nature of agency submissions, it is not appropriate to make a further alteration to the Gateway determination and it is recommended that the proposal not proceed for the reasons provided in section 10.

9. ASSESSMENT

9.1 Section 9.1 Directions

Direction 1.2 Rural Zones

At the time of the determination, the delegate of the Secretary agreed that the planning proposal's inconsistency with section 9.1 Direction 1.2 Rural Zones is justified in accordance with the terms of the Direction. Therefore, no further approval is required in relation to this Direction.

Direction 1.3 Mining, Petroleum Production and Extractive Industries

The objective of this Direction is to ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development. This Direction applies to the proposal as the site is in the Bargo Mine Subsidence District and within the Tahmoor South Coal Project.

The proposal is inconsistent with this Direction as it has the potential to restrict the development of coal resources as it lies within the immediate vicinity of the proposed longwall panels scheduled by the Tahmoor South Coal Project. Accordingly, DRG **(Attachment G5)** objected to the proposal and also advised that the proposed development on the site may be subject to subsidence impacts from longwall extraction of coal.

On 7 April 2020, SA NSW granted a conditional approval under section 22 of the Coal Mine Subsidence Compensation Act 2017 for a proposed 22 lot subdivision on the site **(Attachment G9)**.

The DRG **(Attachment G11)** has since advised it has considered the recent advice from SA NSW and Tahmoor Coal and no longer objects to the planning proposal.

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

Direction 2.1 Environmental Protection Zones

This Direction aims to protect and conserve environmentally sensitive areas. The site contains existing vegetation that is identified as high and moderate constraint (Figure 5 on page 5 of this report) therefore this Direction applies to the proposal.

The proposal seeks to remove areas of high and moderate constraint vegetation across the site to enable the development of the site for residential purposes. This is inconsistent with the requirement of the Direction to facilitate the protection and conservation of environmentally sensitive areas.

There are several issues raised by EES that remain unresolved in relation to the removal of high-quality vegetation across the site, and zoning the high ecological constraint vegetation along the northern boundary as E2 Environmental Conservation.

The inconsistency with Direction 2.1 Environmental Protection Zones is unresolved.

Direction 3.1 Residential Zones

The objectives of this direction are to encourage a variety and choice of housing types to provide for existing and future housing needs, to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and to minimise the impact of residential development on the environment and resource lands. This Direction applies to the proposal as it seeks to rezone part of the site to R5 Large Lot Residential.

The proposal is inconsistent with this Direction as it lacks an agreed water servicing solution to address wastewater impacts. Sydney Water **(Attachment G6)** requires

amplification of the existing water infrastructure to service the proposed residents of the site.

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.

The Department notes the conditional approval under section 22 of the *Coal Mine Subsidence Compensation Act 2017* for a proposed 22 lot subdivision on the site (**Attachment G9**) granted by SA NSW. SA NSW has raised no objections to the proposal (**Attachment G10**).

The proposal is consistent with the Direction.

Direction 4.3 Flood Prone Land

The objectives of this Direction are to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the *Floodplain Development Manual 2005*, and to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.

The proposal is inconsistent with this Direction as the proposal will rezone rural land to R5 Large Lot Residential. It is also inconsistent with the requirements of this Direction as it will result in a significant increase in the development of that land that is identified as flood prone and create flood impacts to other properties as advised by Council (**Attachment H1**). The SES (**Attachment G3**) also advised that the proposal may result in additional cost and burden to emergency services, thereby resulting in a substantially increased requirement for government spending on flood services.

Therefore, the inconsistency of the proposal with Direction 4.3 Flood Prone Land is not justified or resolved.

Direction 4.4 Planning for Bushfire Protection

This Direction aims to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and to encourage sound management of bush fire prone areas. Most of the site is identified as bushfire prone land (Category 1 and Buffer) therefore this Direction applies to the proposal.

The proposal is inconsistent with this Direction as it does not avoid placing inappropriate development in hazardous areas as required by this Direction. For this reason, the inconsistency with this Direction is unresolved as the proposed bushfire egress over flood prone areas has risk to life implications.

9.2 State environmental planning policies

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

9.3 State, regional and district plans

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

At the time of issuing the original Gateway determination the planning proposal was consistent with these strategies as it promoted opportunities for housing adjacent to existing urban areas.

Western City District Plan

This planning proposal received a Gateway determination before the release of the Western City District Plan. The Department notes that should the planning proposal be re-submitted for assessment it would be inconsistent with Planning Priority W17 'Better managing rural areas' and W20 'Adapting to the impacts of urban and natural hazards and climate change'.

The land is within the Metropolitan Rural Area and seeks to rezone it from a rural to urban zone despite not being in an urban release area identified by The Greater Sydney Region Plan: A Metropolis of 3 Cities.

The proposal will increase the risk of life to both flooding and bushfire impacts on future residents within the site as raised by EES, SES and Council.

The planning proposal does not give effect to the District Plan in accordance with section 3.8 of the Act as it does not provide effective planning to reduce the exposure to natural hazards and enables incompatible urban development in a rural area.

10. RECOMMENDATION

The Department acknowledges the extensive work undertaken by the proponent and Council to prepare this planning proposal.

However, the planning proposal should not proceed to finalisation as there are unresolved issues in relation to biodiversity, bushfire, flooding, and water servicing.

It is recommended that the Minister's delegate as the local plan-making authority determine to not proceed with the planning proposal under section 3.34(7) of the Act due to:

- unacceptable impacts on threatened species, including SSTF (a CEEC) and potential koala habitat;
- the absence of an agreed water servicing solution to address waste water impacts;
- the potential risk to life arising from the proposed measures for flood and bushfire evacuation over Hornes Creek; and
- the inconsistency of the proposal with Directions 2.1 Environmental Protection Zones, 3.1 Residential Zones, Direction 4.2 Mine Subsidence and Unstable Land, 4.3 Flood Prone Land and Direction 4.4 Planning for Bushfire Protection remain unresolved.



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