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Land Adjoining Oakdale Sports Field

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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

| Site Description | Council Name | LGA |
|--|-------------------|-------------|
| The planning proposal (Attachment A) applies to land at 1455-1475 Burragorang Road (Lots 1-2 DP 734561) and 1838 Barkers Lodge Road (Lot 6 DP 734561) Oakdale | Wollondilly Shire | Wollondilly |

The site is south east of the Oakdale urban area and is located directly adjacent to Willis Park Sportsfield. The site has an area of 22.7ha and contains 3 separate dwellings, farm buildings and dams with the majority of the site consisting of cleared grassed areas with several patches of remnant vegetation (Figure 1).



Figure 1 Subject site

1.1.3 Purpose of plan

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

- rezone the site from RU1 Primary Production to part R2 Low Density Residential part E2 Environmental Conservation; and
- amend the Minimum Lot Size and Height of Buildings Maps to reflect the zoning change.

It is anticipated that the proposal would facilitate the development of 196 dwellings on the site. The table below outlines the current and proposed controls for the LEP.

Table 1 Current and proposed controls

| Control | Current | Proposed |
|---------|------------------------|---|
| Zone | RU1 Primary Production | Part R2 Low Density Residential Part E2 Environmental Conservation |

| Control | Current | Proposed |
|--------------------------------|---------|-------------------|
| Maximum height of the building | N/A | 9m |
| Minimum lot size | 16ha | 700m ² |
| Number of dwellings | 3 | 196 |
| Number of jobs | N/A | N/A |

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 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 15 May 2013 (**Attachment B**) determined that the proposal should proceed subject to conditions requiring:

- additional studies for bushfire hazard management, flora and fauna, flooding and stormwater, traffic and transport, on-site sewerage treatment, Indigenous heritage and rural land use conflict;
- address site contamination issues and section 9.1 Direction 5.2 Sydney Drinking Water Catchments; and
- The site be identified as an Urban Release Area.

There have been six alterations to the Gateway determination to extend the timeframe to complete the plan as follows:

- On 29 January 2015 to extend by 36 months;
- On 2 June 2016 to extend by 6 months;
- On 19 September 2016 to extend by 10 months;
- On 29 June 2016 to extend by 7 months; and
- On 7 May 2019 to extend by 27 months.

In accordance with the Gateway determination (as altered) the proposal was due to be finalised on 31 July 2020.

3 Public exhibition and post-exhibition changes

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

3.1 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with agencies listed below in Table 4 who have provided the following feedback.

Table 2 Advice from public authorities

| Agency | Advice raised |
|--|---|
| Office of Environment and Heritage – dated 28 September 2017 (Attachment E2) | <p>The proposal does not adequately avoid impacts on biodiversity as 11.6ha of Shale Sandstone Transitional Forest (SSTF) within proposed residential zone will be cleared.</p> <p>2.2ha of SSTF will be impacted with the proposed environmental zone.</p> |
| Rural Fire Service – dated 20 April 2016 | <p>The proposal should give further consideration to all bushfire threat on the site, management of adjoining land, access to ensure safety of residents and firefighters, separation distances for Special Fire Protection Purpose developments, management of asset protection zones, separation distances for construction standards</p> |
| Rural Fire Service 3 October 2017 15 December 2020 | <p>Before providing detailed advice on the subject proposal the RFS provided advice on 15 December 2020 that it is preferable that the council carries out its Shire wide Natural and Manmade Hazards a Emergency Management Study and that any proposal for the site would be required to assessed against the updated Bush Fire Protection 2019 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 the it held concerns that the cumulative impacts of 'spot rezoning's' such as this may exacerbate these adverse experiences.</p> |
| Sydney Water – dated 10 March 2016 and re-confirmed 23 October 2020 | <p>The trunk water system has adequate capacity to service the proposed development area.</p> <p>The trunk wastewater system has adequate capacity to service the proposed development area.</p> |
| Roads and Maritime Services – dated 9 March 2016 | <p>No objections subject to inclusion of Urban Release Area provision for future state infrastructure at development application phase</p> |
| Water NSW – 16 March 2016 | <p>The proposal should give further consideration to potential impacts to water quality as future development must have a neutral or beneficial effect on water quality.</p> |

| Agency | Advice raised |
|---|--|
| Department of Primary Industry – 11 March 2016 | The proposal should provide setbacks / landscaping buffers to the horse facility. Horse stables and training tracks can create some nuisance flies, dust and odour and should be well separated from dwellings. |
| Department of Education – 14 March 2016 | The proposal would generate demand for additional classrooms. The proposal should give further consideration to the enhancement of school facilities and opportunities for joint and shared use of the school for the community. |
| NSW Heritage Office – 11 March 2016 | The Heritage Division supports the recommendations of the Aboriginal Heritage Due Diligence Report for future Aboriginal heritage management within the site and recommends that field survey and test excavation be carried out in accordance with the OEH's Code of practice for archaeological investigation of Aboriginal objects in NSW |
| Department of Industry – Resources and Geoscience - dated 11 March 2016 | No resource issues to raise for the proposal |

3.2 Post-exhibition changes

The proposal has not proceeded to public exhibition and the Department is not aware of any other changes made to the planning proposal.

3.2.1 Council resolution

At its meeting on 20 October 2020, Council resolved to refer the planning proposal to the Department for consideration and finalisation as it met the following criteria:

- Gateway determination more than 4 years old; and
- Unresolved State issues preventing determination by Council.

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.

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.

The Planning Proposal submitted to the Department for finalisation:

- Remains consistent with the regional and district plans relating to the site, as existed at the time of the Gateway determination. However, the proposal is inconsistent with the current regional and district plan that apply to the site;
- Is inconsistent with the Council's Local Strategic Planning Statement, noting that it was published post-gateway determination;
- Remains consistent with all relevant Section 9.1 Directions except Direction 2.1 Environmental Protection Zones and 5.2 Sydney Drinking Water; and
- Remains 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 3 Summary of strategic assessment

| | Consistent with Gateway determination report Assessment | |
|---|---|--|
| Regional Plan | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No, refer to section 4.1 |
| District Plan | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No, refer to section 4.1 |
| Local Strategic Planning Statement | Published post gateway determination. | |
| Local Planning Panel (LPP) recommendation | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No, refer to section 4.1 |
| Section 9.1 Ministerial Directions | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No, refer to section 4.1 |
| State Environmental Planning Policies (SEPPs) | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No, refer to section 4.1 |

Table 4 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 checked="" type="checkbox"/> Yes | <input type="checkbox"/> No, refer to section 4.1 |

4.1 Detailed Assessment

In November 2020 Council resolved to return all planning proposals which remained unresolved for more than four years since gateway determination to the Department for consideration. The Department has considered each proposal individually and 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 and conclusions.

4.1.1 Strategic Assessment

4.1.1.1 Strategies at gateway determination

Sydney Metropolitan Strategy and Draft South West Subregional Strategy

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

Wollondilly Growth Management Strategy

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

4.1.1.2 Current strategies and policies

Greater Sydney Regional Plan (A Metropolis of Three Cities)

The planning proposal received a Gateway determination before the release of the Greater Sydney Regional Plan (*A Metropolis of Three Cities*) (Regional plan). Planning proposals are to be consistent with plan. The Regional plan nominates the site as being part of the Metropolitan Rural Area (MRA). The MRA is identified as having environmental, social and economic values that contribute to the region, and of importance for its capacity to produce agricultural products.

Strategy 24.3 identifies the need to protect and support agricultural production by preventing inappropriately dispersed urban activities in rural areas. Limited urban investigation areas are identified within the MRA to enable long term growth.

The site is not identified with the regional plan within an urban investigation area and as such the proposal for urban residential development is inconsistent with the Regional Plan.

Western City District Plan

The planning proposal received a Gateway determination before the release of the *Western City District Plan* (the District Plan). The District Plan supports the aims of the Regional Plan with Action 29, identifying the need to limit urban development, except to those areas identified for urban investigation. The planning proposal is inconsistent with the following District Plan planning priorities: W14 Protecting and enhancing bushland and biodiversity;

- W17 Better Managing Rural Areas; and
- W20 Adapting to the impacts of urban and natural hazards and climate change.

The basis for this is that:

- Biodiversity protection, particularly the identification of corridors and habitat for endangered ecological communities, need to be addressed in a more holistic way;
- the site is located within the Metropolitan Rural Area and is not designated as a growth area. Housing targets at a regional and district level are not expected to be met through additional housing in the Metropolitan Rural Area, but rather through the new development in growth areas such as the Wilton and Greater Macarthur Growth Areas; and
- the cumulative impacts of bushfire on the Shire are unresolved. Concerns continue to exist about the ability to defend against major bushfire events, as well as ensure safe evacuation.

Local Strategic Planning Statement

Since issuing the original Gateway determination, the Wollondilly Local Strategic Planning Statement (LSPS) provides the framework for local planning for future housing, jobs, infrastructure and environment for the LGA. The LSPS sets out a 20-year vision for growth that takes into account the principles of the Metropolitan Rural Areas established by the Western City District Plan, the local housing strategy and wastewater capacity limits.

A key action (Action 18.12) of the LSPS is to prepare a study in partnership with emergency service agencies to evaluate the threats and risk level from both natural and manmade hazards and establish appropriate management. The study will inform Council's decisions on local growth and planning proposals. A site-specific strategic bushfire study prepared in accordance with *Planning for Bushfire Protection 2019* is required to demonstrate consistency with the hazard's management

approach being implemented under the LSPS. The planning proposal does not include such a study.

The site is located within the Metropolitan Rural Area, which is outside the nominated growth areas of Wilton and Greater Macarthur. Instead the LSPS identifies seeks to contain all additional housing in the short term to be met on land already rezoned for towns and villages.

The LSPS includes council's commitment to undertake a range of local studies that relate to some of the unresolved matters relating to the proposal, such as bushfire evacuation and safety, and a rural lands study. Once completed and endorsed by council these studies will help further define the direction for use and rezoning of land in the LGA.

At this time however, the planning proposal does not give effect to LSPS as it does not provide effective planning to reduce the exposure of new urban development to urban hazards, permits incompatible urban development in a rural area and is not adequately supported by local infrastructure.

Ministerial Directions

Direction - 2.1 Environmental Protection Zones

The objective of this Direction is to protect and conserve environmentally sensitive areas.

The proposed size and location of the E2 zoned land is insufficient and does not align with existing vegetation and biodiversity mapping. The inconsistency with Direction 2.1 Environmental Protection Zones is unresolved as the proposal does not facilitate the protection and conservation of environmentally sensitive areas.

Direction 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.

4.1.2 Environmental Impacts

Biodiversity

The large area (13.95ha) of wooded vegetation on the site is identified as Shale Sandstone Transition Forest (SSTF) which is identified as a Critically Endangered Ecological Community (CEEC) under the *Threatened Species Conservation Act 1995* (TSC Act) and the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999* (Figure 3, overleaf).

An E2 Environmental Conservation Zone is proposed to be applied to the most heavily vegetated part of the site with remaining vegetated areas proposed to be cleared.

In its submission the former Office of Environment and Heritage (OEH) notes the absence of proposed biodiversity offsets and disputes the vegetation survey methodology utilised in the biodiversity assessment supporting the planning proposal. OEH considers the presence of Cumberland Plain Woodland (CPW) – a CEEC under the TSC - is likely on the site.

OEH considers the proposal does not adequately avoid impacts on biodiversity as 11.6ha of Shale SSTF within the proposed residential zone will be cleared and 2.2ha of SSTF will be impacted with the proposed environmental zone.

The Department has received detailed advice from OEH and recognises the importance of conserving significant vegetation areas and habitat on the site.

Without adequate measures to mitigate and offset impacts on threatened species, including SSTF and potentially CPW (both CEECs) and potential squirrel glider habitat, the Department is not satisfied that there is an appropriate regulatory framework in place to offset biodiversity impacts and to ensure biodiversity offsets are achieved through the development application process and, where appropriate, measures taken to mitigate impact.

In its current form, the proposal is inconsistent with Direction 2.1 Environmental Zones as it does not include provisions that adequately facilitate the protection and conservation of environmentally sensitive areas. The Department recommends the proposal should not proceed.



Figure 2 Subject site with existing vegetation overlaid over future development (Source: Planning proposal documentation).

Bushfire

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

In this instance it is recommended that the council's comprehensive Shire wide *Natural and Manmade Hazards a Emergency Management Study* be carried to demonstrate the site's suitability for further land uses depending the level of exposure to the threat of bush fire whether this development can be adequately evacuated in the event of these events.

This work will also help to address cumulative evacuation and traffic management issues associated with the recent bush fire season in the Wollondilly area and may also help address RFS's concerns that the cumulative impacts of 'spot rezoning's' like the subject proposal may "unnecessarily exacerbate these adverse experiences".

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 remain unresolved and therefore the proposal fails to demonstrate that the site is suitable for the proposed development that would be expected to result from the land being rezoned in accordance with the subject planning proposal. Added to this 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:

- potential impacts on Shale Sandstone Transition Forest [a Critically Endangered Ecological Community has not been addressed;
- the proposal is inconsistent with regional, district and local strategic planning frameworks now in place for Wollondilly LGA; and
- the proposal is inconsistent with Section 9.1 Directions 2.1 Environmental Protection Zones and 4.4 Planning for Bushfire Protection hence all related issues remain unresolved.



18/12/2020

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Attachments

Attachment A – Planning Proposal

Attachment B – Gateway Determination

Attachment C – Gateway Determination Report