

PLANNING PROPOSAL

Lot 6 DP 1128635
11 Westminster Place Razorback

Wollondilly Shire



Prepared by:

Precise Planning
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Attachment 5: Bushfire Assessment Report
Attachment 6: Bushfire Safety Authority

1 Introduction

1.1 BACKGROUND

This Report represents the formative phase in the development of a Planning Proposal geared toward amending either:

- The Original Holdings map; or
- Schedule 1 Additional Permitted Uses

Of the Wollondilly Local Environmental Plan 2011 ('WLEP'), in order to enable a five (5) lot subdivision of the **subject land**.

The subject land is known as 11 Westminster Place Razorback and is legally described as Lot 6 DP 1128635.

1.2 SCOPE OF REPORT

This Report has been prepared in accordance with the NSW Department of Planning's (DoP) documents A Guide to Preparing Local Environmental Plans and A Guide to Preparing Planning Proposals. The latter document requires the Planning Proposal to be provided in four (4) parts, being:

- Part 1** A statement of the objectives or intended outcomes of the proposed LEP;
- Part 2** An explanation of the provisions that are to be included in the proposed LEP;
- Part 3** The justification for those objectives, outcomes and provisions and the process for their implementation;
- Part 4** Details of the community consultation that is to be undertaken on the Planning Proposal.

1.3 REPORT STRUCTURE

This Report, in providing an outline PP, is structured in the following manner:

- Section 2 provides an overview of the site the subject of this PP and the development intent.
- Section 3 contains a statement of the objective and/or intended outcomes of the proposed LEP.
- Section 4 provides justification for the objectives, outcomes and provisions of the proposed LEP.
- Section 5 provides details of the community consultation that would be undertaken in respect of the PP
- Section 6 provides a conclusion.

1.4 HISTORY OF THIS PROPOSAL

This Planning Proposal is the result of a resolution of Council at its meeting held on 21 August 2017, the resolution being as follows:

1. That Council not prepare a planning proposal to permit the subdivision of the property known as 11 Westminster Place Razorback (Lot 6 DP 1128635) into five (5) lots.
2. That Council support the submission of an owner-initiated planning proposal to amend the Original Holdings Map or Schedule 1 of Wollondilly LEP 2011 to create the potential for a subdivision of the land into five (5) lots, subject to the proponent meeting all costs related to the LEP amendment. The planning proposal should outline how the amendment would avoid creating an undesirable precedent.

2 The Subject Land/Site

2.1 LAND DESCRIPTION

The site comprises a single allotment known as Lot 6 DP 1128635, 11 Westminster Place Razorback, located in the Wollondilly Local Government Area.

2.2 THE SITE

The site presents as an irregularly shaped allotment, that is topographically severed by a section of the southern escarpment of the Razorback range. The topographical severance results in a part of the subject land being located at the top of the escarpment (approximately 16ha – E4 Environmental Living zone) and the residue being located at the bottom of the escarpment (approximately 36ha – RU2 Rural Landscape zone). The site comprises approximately 52ha in total area. This planning proposal relates predominantly to the part of the site contained within the E4 Environmental Living zone, at the top of the escarpment.

Most of the E4 zoned area of the subject land has been cleared, although there are some remaining sections of vegetation, predominantly in the gully areas.

The site contains a dwelling, farm buildings and dams, although there is currently no significant agricultural production on the land.

The subject site has road frontage to Westminster Place at the top of the escarpment and Remembrance Driveway at the bottom of the escarpment.

There are 4 watercourses on the site which have been documented in Attachment 1: Watercourses Investigation.

2.3 CONTEXT

The subject land is located along the top of the Razorback range. The general development pattern in the area comprises traditionally large rural lots, which have been subdivided to create clusters of smaller (4ha) lots, leaving a large residue lot. Westminster Place was originally created by a subdivision along these lines and, if this planning proposal is supported, a subdivision along similar lines would be possible.

The Picton village centre is located approximately 3km south west of the site, along Remembrance Driveway.

2.4 TOPOGRAPHY/DRAINAGE REGIME

A section of the southern escarpment of the Razorback range traverses the site. The E4 zoned section of the site contains a drainage flowpath, which ultimately drains to the south. The drainage line contains several dams.

2.5 GEOLOGY

The subject land is underlain with Liverpool Sub-group of Wianamatta Shales (shales with some sandstone beds). The soil is deep and fertile with moderate drainage. The geology does not present a limiting constraint to development for rural residential purposes, subject to appropriate management inclusive of sedimentation and erosion controls.

2.6 ECOLOGY

An assessment of the site has determined that the site supports Modified Grassland and remnant patches of Forest Red Gum – Grey Box shrubby woodland. The effect of the proposed LEP amendment would be:

- The clearing of Modified Grassland; and
- The clearing and disturbance of around 1,500sqm of Forest Red Gum – Grey Box shrubby woodland in low

condition for the establishment of an Asset Protection zone

An assessment of significance for Moist Shale Woodland in the Sydney Bioregion concluded that the potential clearing would be unlikely to have a significant impact on the Endangered Ecological Community and would make a minor contribution to the cumulative loss of the EEC and a minor reduction in potential habitat for threatened species of fauna within the locality.

A detailed assessment has previously been undertaken as part of a development application on the subject site. This is provided as Attachment 2: Flora and Fauna Assessment.

2.7 EFFLUENT DISPOSAL

Sydney Water sewer is not available to the site. If development proceeds it will need to be on the basis of an individual onsite Aerated Water Treatment System. A wastewater site assessment has previously been prepared over the site for a 5 lot subdivision and is provided as Attachment 3: Wastewater Site Assessment.

2.8 STORMWATER MANAGEMENT

The subject land is outside the Sydney Water Catchment and accordingly is not subject to the Sydney Drinking Water Catchments SEPP.

Design and implementation of a simple stormwater management system, based upon principles of Water Sensitive Urban Design, will likely be further canvassed as the Gateway Process is advanced.

2.9 TRAFFIC/ACCESSIBILITY

The future subdivision would be accessed via a short extension to Westminster Place. It is considered that the proposal is unlikely to result in any traffic impacts that would warrant an assessment report if this Planning Proposal proceeds.

2.10 SITE CONTAMINATION

A preliminary investigation has concluded that the part of the subject land within the E4 zone is suitable for rural residential development. This assessment is provided as Attachment 4: Preliminary Contaminated Site Assessment.

2.11 BUSHFIRE HAZARD

The subject site, together with the locality generally, is identified as Bushfire Prone on Council's relevant Bushfire Prone Lands Map. A development application for a 5 lot subdivision was previously considered by the NSW Rural Fire Service who issued a Bushfire Safety Authority under Section 100B of the Rural Fires Act, 1997. A copy of the report submitted to the RFS with that application is attached as Attachment 5: Bushfire Site Assessment and a copy of the Bushfire Safety Authority is attached as Attachment 6: Bushfire Safety Authority.

2.12 HERITAGE

The locality has a long history of low scale European settlement, none of which has been highlighted in past local investigations/records as being of significance. Equally, the land is highly disturbed from past European occupation, as cited above and is not understood to have any particular indigenous significance. No heritage items of local, state or national significance are known to be listed for the site.

3 Intent and Provisions

3.1 OBJECTIVES OR INTENDED OUTCOMES (PART 1)

This Planning Proposal has the express purpose of facilitating a five (5) lot subdivision of the subject land (4 x 4ha lots plus a residue lot of approximately 36ha).

3.2 EXPLANATION OF PROVISIONS (PART 2)

In accordance with the resolution of Wollondilly Council at its meeting held on 21 August 2017, the Wollondilly Local Environmental Plan, 2011 will be amended in one of two ways; either:

- Amend the Original Holdings map to exclude the subject land; or
- Amend Schedule 1 Additional Permitted Uses to permit the subdivision

4 Justification (Part 3)

4.1 JUSTIFICATION OVERVIEW

4.1.1 INTRODUCTION

This overview establishes the case for the zoning change proposed in the LEP amendment.

In December 2016, Wollondilly Council refused Development Application No. 10.2015.775.1 for the 5 lot subdivision of the subject land. This development application was lodged on **16 October 2015** and was permissible at the time of lodgement.

Subsequent to the lodgement of this application Council exhibited a planning proposal which proposed to include the land as part of original holding under Clause 4.1B of the LEP. This planning proposal resulted in **Wollondilly LEP Amendment No. 21** which was **published on 27 May 2016**.

Despite DA 10.2015.775.1 having been lodged with Council for several weeks prior to the proposed LEP amendment being advertised, Council's strategic planners and also Dept Planning & Environment (**DPE**) were unaware of its existence and so the impact of the proposed LEP amendment on the subject land was not considered by either Council or DPE in the LEP amendment process.

Nevertheless, at the time Amendment 21 was made, it is reasonable to conclude that Council and DPE would have assumed, based on the case law available at the time, that Clause 1.8A of the LEP would provide a savings provision that would permit the council to approve any development application lodged but not determined at the time.

On **1 August 2016** the NSW Supreme Court of Appeal gave a judgement in *De Angelis v Wingecaribee* [2016] NSWCA 189 that was significant for the application of Clause 1.8A of the LEP to the subject application. The consequence was that the existing interpretation confirmed by Craig J of the Land and Environment Court which allowed Clause 1.8A of the LEP to apply to development applications was extinguished. As such the Council found itself in a unique position in that it did not have power to approve the DA for this site and Council subsequently refused the application on **8 December 2016**.

We understand that the subject land was the only site to have had a development application refused in this context. There were no other applications affected by this unusual combination of a plan amendment and an unexpected change in the caselaw affecting the application of savings provisions.

4.1.2 METROPOLITAN PLANNING

A Plan for Growing Sydney (2014) "sets a path to ensure Sydneysiders have greater access to the things they value – great outdoor spaces, greater housing choice, living closer to work, and world-class job opportunities."

In pursuit of this aspiration are a series of strategies grouped around four goals being:

1. A competitive economy with world-class services and transport
2. A city of housing choice, with homes that meet our needs and lifestyles
3. A great place to live with communities that are strong, healthy and well connected
4. A sustainable and resilient city that protects the natural environment and has a balanced approach to the use of land and resources

The delivery of a small number of 4ha lots in this location is consistent with goals 2, 3 and 4 and is not inconsistent with goal 1. The future development of the land would deliver an additional 4 dwellings, which represents a very modest contribution towards the 1,550 target identified for Wollondilly in the district plan as discussed below. This is also considered to be satisfactory in the light of the Plan for Growing Sydney.

4.1.3 SUB REGIONAL PLANNING

The Draft South West District Plan proposes a dwelling target of 1,550 within the next 5 years. The proposed 4 additional dwellings arising from this proposal is a very modest contributor to this total.

4.1.4 LOCAL PLANNING

Wollondilly Growth Management Strategy 2011

The relevant provisions of the GMS are considered in the table below:

Policy	Comment
General Policies	
<i>P1 All land use proposals need to be consistent with the Key Policy Directions and Assessment Criteria contained in this GMS in order to be supported by Council.</i>	This is considered below.
<i>P2 All land use proposals need to be compatible with the concept and vision of "Rural Living"</i>	The proposal is consistent with this vision in that it will create a cluster of development that is compatible with the rural environment, providing housing/land choice which is in great demand and will not create urban connections between any of the villages.
<i>P3 All Council decisions on land use proposals shall consider the outcomes of community engagement.</i>	We note that this will be part of the process for this proposal.
<i>P4 The personal financial circumstances of landowners are not relevant planning considerations for Council in making decisions on land use proposals.</i>	Noted. This proposal does not rely on the owner's financial circumstances.
<i>P5 Council is committed to the principle of appropriate growth for each of our towns and villages. Each of our settlements has differing characteristics and differing capacities to accommodate different levels and types of growth (due to locational attributes, infrastructure limitations, geophysical constraints, market forces etc.).</i>	This proposal is consistent with the existing predominant development pattern along the Razorback range and helps to satisfy a housing/land choice which is in high demand.
Housing Policies	
<i>P6 Council will plan for adequate housing to accommodate the Shire's natural growth forecast.</i>	The proposed housing will make only a marginal contribution to the targets for the Shire as described in our consideration of the District Plan.
<i>P7 A high growth or accelerated growth scenario is not being pursued. The extra dwellings needed for the Shire's growth therefore are not intended to accommodate the urban expansion of the Sydney Metropolitan Area.</i>	This proposal relies on the rural character of the area to deliver the right setting and a land supply to meet a lot size and location in high demand. It is inconsistent with a high growth or accelerated growth scenario for this part of the Shire.
<i>P8 Council will support the delivery of a mix of housing types to assist housing diversity and affordability so that Wollondilly can better accommodate the housing needs of its different community members and household types.</i>	The proposal will result in housing opportunities that will contribute to housing variety in the Shire.
<i>P9 Dwelling densities, where possible and environmentally acceptable, should be higher in proximity to centres and lower on the edges of towns (on the "rural fringe").</i>	The density overall on the site is around 1 dwelling per 4 hectares, which is consistent with a rural environment.
<i>P10 Council will focus on the majority of new housing being located within or immediately adjacent to its existing towns and villages.</i>	This development proposes to deliver a very modest increase in future housing. The majority of new housing will still be provided within the PTT, PTTAG, JR Stud, Bargo and Silverdale Precincts.
Integrating Growth with Infrastructure	
<i>P18 Council will encourage sustainable growth which supports our existing towns and villages, and makes the provision of services and infrastructure more efficient and viable – this means a greater emphasis</i>	The proposal is sustainable growth and the modest increase in population will support the existing town of Picton. The subdivision can be serviced to the

Policy	Comment
<i>on concentrating on new housing in and around our existing population centres</i>	same extent as the surrounding development, through a minor extension of the electricity supply.
<i>Dispersed population growth will be discouraged in favour of growth in, or adjacent to, existing population centres</i>	There are minimal opportunities for this type of development in adjacent to existing population centres. This is an ideal opportunity to provide a modest increase in a form of land which is in high demand, but which will not extend any further because of the existence of the escarpment.
Rural and Resource lands	
<i>P21 Council acknowledges and will seek to protect the special economic, environmental and cultural values of Shire's lands which comprise waterways, drinking water catchments, biodiversity, mineral resources, agricultural lands, aboriginal heritage and European rural landscapes.</i>	The future subdivision is able to avoid disturbance of sensitive areas.
<i>P22 Council does not support incremental growth involving increased dwelling entitlements and/or rural lands fragmentation in dispersed rural areas. Council is however committed to maintaining, where possible and practicable, existing dwelling and subdivision entitlements in rural areas.</i>	The unique circumstances of this proposal must be taken into account. At the time of lodgement of the original development application, the proposal did not seek to increase dwelling entitlements as such, because the subject land was not included on the Original Holdings map. This planning proposal is consistent with this policy direction, insofar as it will restore dwelling entitlements and subdivision entitlements which were taken away by Amendment 21 whilst the landowner was lawfully exercising those dwelling/subdivision entitlements.

Assessment Criteria	Comment
General Assessment Criteria	
<i>Local and Regional Plans and Ministerial Directions</i>	Considered elsewhere in this proposal.
<i>Key Policy Directions</i>	Considered above
<i>Precinct Planning</i>	In order to achieve the specific purpose of this planning proposal, it is unnecessary to include any additional existing lots
Wollondilly Community Strategic Plan	
<ul style="list-style-type: none"> Looking After the Community 	The proposal will provide additional choice for consumers and help meet a high demand for large lots.
<ul style="list-style-type: none"> Accountable and Transparent Governance 	This theme is not relevant to this proposal.
<ul style="list-style-type: none"> Caring for the Environment 	The proposal can be undertaken with minimal environmental impact.
<ul style="list-style-type: none"> Management and Provision of Infrastructure 	The development of the land will result in developer contributions.
<ul style="list-style-type: none"> Building a Strong Local Economy 	The proposal will result in a modest increase in population, which will result in additional demand and custom for local businesses.
<i>Project Objectives and Justification</i>	Considered elsewhere in this proposal.
<i>Rural Landscape Character</i>	Westminster Place is a short culdesac road, running off Mount View Close. The entirety of Westminster Place, on both sides of the road, is characterized by 4ha lots. The only larger lot fronting Westminster Place is the subject lot, which extends down the

Assessment Criteria	Comment
General Assessment Criteria	
	escarpment to Remembrance Driveway. The rural landscape character of the area is largely characterized by clusters of 4ha lots and then a large residue. This characterization would remain if the proposed subdivision were to proceed. The proposed subdivision simply utilizes part of the flat land at the top of the escarpment, whilst still retaining a large residue extending to Remembrance Driveway. Given the significant number of 4ha lots in the immediate vicinity and along the Razorback ridgeline, it is submitted that an additional four (4) x 4ha lots would be completely consistent with the rural landscape character of the area and would have no unreasonable impact on the rural landscape character.
<i>Rural and Resource Lands</i>	The section of the subject site that would obtain the potential to subdivide if this planning proposal is supported is too small and/or too close to existing rural residential lots to support any large-scale agricultural undertaking.
<i>Environmental Protection and Conservation</i>	The proposal can be achieved with minimal impact on the environment
<i>Water Quality and Quantity</i>	We note the suitability of the site in this regard has already been demonstrated as part of an earlier development application on the land.
<i>Flood Hazard</i>	We are not aware of any particular flood hazard on this site.
<i>Geotechnical/Resources/Subsidence</i>	We note the suitability of the site in this regard has already been demonstrated as part of an earlier development application on the land
<i>Buffers and Spatial Separation</i>	The proposal will provide acceptable buffers
<i>Bushfire Hazard</i>	We note the suitability of the site in this regard has already been demonstrated as part of an earlier development application on the land
<i>Heritage</i>	The locality has a long history of low scale European settlement, none of which has been highlighted in past local investigations/records as being of significance. Equally, the land is highly disturbed from past European occupation, as cited above and is not understood to have any particular indigenous significance. No heritage items of local, stage or national significance are known to be listed for the site.
<i>Resource Sustainability</i>	The opportunities for energy efficiency, water recycling and re-use and waste minimisation are more likely at the time of dwelling construction
<i>Efficient Use and Provision of Infrastructure</i>	Most of the required infrastructure will be provided on site. The only significant external infrastructure will be a short road extension and electricity extension.
<i>Transport, Roads and Access</i>	As above
<i>Open Space</i>	No open space opportunities are warranted or provided with this type of development.
<i>Residential lands</i>	The subject site is not specifically identified in the GMS for future development. However, at the time the GMS was prepared, the land had the potential to

Assessment Criteria	Comment
General Assessment Criteria	
	subdivide in the manner that is currently sought. Any investigation into existing dwelling potential for the region should have noted the existence of existing unutilised potential in this location. We note that there are no provisions in the GMS noting the reduction in dwelling potential from Wollondilly LEP Amendment No. 21 . Rather, it appears that the resulting reduction in dwelling yield was done apart from the intention of the GMS. It is arguable that this proposal is more consistent with the GMS than the Amendment 21 in that it reinstates dwelling yield that was removed without the sanction of the GMS.

4.2 NEED FOR THE PLANNING PROPOSAL (SECTION A)

4.2.1 IS THE PLANNING PROPOSAL THE RESULT OF ANY STRATEGIC STUDY OR REPORT?

No. The planning proposal is a result of a resolution of Council at its meeting held on 21 August 2017. This resolution followed a peculiar set of circumstances that lead to the refusal of a development application as prohibited development that was permissible on the date it was lodged.

4.2.2 IS THE PLANNING PROPOSAL THE BEST MEANS OF ACHIEVING THE OBJECTIVES OR INTENDED OUTCOMES, OR IS THERE A BETTER WAY?

Given the effect of Amendment 21 to WLEP 2011, together with the NSW Supreme Court of Appeal judgement in *De Angelis v Wingecarribee Council* [2016] NSWCA 189, this planning proposal represents the most logical way of achieving the intended objective and outcomes, with there being no readily available and better alternative under the prevailing legislation.

It is noted from the aforementioned Council resolution that Council will consider one of two options to amend the WLEP, being to either exclude the subject land from the Original Holdings map, or amend Schedule 1 to enable the subdivision to occur.

4.2.3 IS THERE A NET COMMUNITY BENEFIT?

The following table addresses the evaluation criteria for conducting a "net community benefit test" within the Draft Centres Policy (2009), as required by the guidelines for preparing a planning proposal.

Evaluation Criteria	Y/N	Comment
<i>Will the LEP be compatible with agreed State and regional strategic direction for development in the area (e.g. land release, strategic corridors, development within 800m of a transit node)?</i>	Y	The proposed rezoning is compatible with the Metropolitan Plan, the Draft South West Subregional Strategy.
<i>Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/subregional strategy?</i>	N	The subject site is not identified within a key strategic centre or corridor but there is no such corridor identified for Tourism in Wollondilly Shire.

Evaluation Criteria	Y/N	Comment
<i>Is the LEP likely to create a precedent or create or change the expectations of the landowner or other landholders</i>	N	The development application lodged with Council on 19 October 2015 (DA 10.2015.775.1) was compliant with the controls in force at the time. However, the subsequent making of Amendment 21 to WLEP 2011 ultimately prevented Council from approving the application. The process of assessing Amendment 21 did not take into account the existence of the undetermined DA 10.2015.775.1. The effect of the judgment in the <i>De Angelis</i> case meant that DA 10.2015.775.1 was not preserved by the savings provision. DA 10.2015.775.1 was the only development application relating to proposed subdivision that was lodged but not determined at the time of the making of Amendment 21, which had the subdivision permissibility removed by the Amendment 21. Due to this unique circumstance, this planning proposal will not create a precedent or create or change the expectations of other landowners.
<i>Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?</i>	Y	There will be no cumulative effect because this planning proposal will not give rise to a useful precedent. Other landowners cannot rely on this planning proposal as a precedent because this proposal follows a DA that was refused as being prohibited because of the combined effect of a plan amendment and subsequent case law. The application was permissible on the day it was lodged and the amendment that ultimately prohibited the development had not been exhibited at that time. This combination of circumstances is exceedingly rare and is unlikely to be repeated.
<i>Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?</i>	N	This proposal is not for a permanent employment generating activity. It will not result in the loss of employment lands.
<i>Will the LEP impact upon the supply of residential land and therefore housing supply and affordability?</i>	Y	The proposal will have a positive impact on the residential land supply by adding to the amount of available residential land. The proposal will increase the housing choice and type of housing and contribute to meeting local residential targets.
<i>Is the existing public infrastructure (roads, rail, utilities) capable of servicing the proposed site? Is there good pedestrian and cycling access? Is public transport currently available or is there infrastructure capacity to support future transport?</i>	Y	The existing public infrastructure is adequate to meet the needs of the proposal.
<i>Will the proposal result in changes to the car distances travelled by customers, employees and suppliers? If so, what are the likely impacts in terms of greenhouse gas emissions, operating costs and road safety?</i>	N	
<i>Are there significant Government investments in infrastructure or services in the area where patronage will be affected by the proposal? If so, what is the expected impact?</i>	N	No, the proposal does not require significant further investment in public infrastructure. The developer will extend and upgrade Infrastructure to service the development at no cost to government.
<i>Will the proposal impact on land that the Government has identified a need to protect (e.g. and with high biodiversity values) or have other environmental impacts? Is the land constrained by environmental factors such as flooding?</i>	N	No, the future subdivision can be designed to avoid impacts on sensitive land. The land is not mapped as flood prone.

Evaluation Criteria	Y/N	Comment
<i>Will the LEP be compatible/complementary with surrounding adjoining land uses? What is the impact on the amenity in the location and wider community? Will the public domain improve?</i>	Y	The proposal is compatible with adjoining rural residential uses. The proposal will have a positive amenity impact by providing a high quality tourist rural residential environment.
<i>Will the proposal increase choice and competition by increasing the number of retail and commercial premises operating in the area?</i>	N	No, the proposal is not for a retail or commercial use.
<i>If a stand-alone proposal and not a centre, does the proposal have the potential to develop into a centre in the future?</i>	N	The proposal is not of sufficient scale to develop into a centre.
<i>What are the public interest reasons for preparing the draft plan? What are the implications of not proceeding at that time?</i>		<p>The proposal would result in housing variety;</p> <p>The proposal would leverage off existing infrastructure;</p> <p>The proposal would increase demand, albeit modestly, for local goods and services, which in turn assists with their economic viability;</p> <p>The proposal will achieve this without giving rise to an undesirable precedent because of its unique circumstances</p> <p>Implications of not proceeding are that the large rural residential lots will not be delivered. This will result in a decrease in housing choice and demand may reveal itself in other locations where potential environmental impacts and infrastructure demands may be more significant.</p>
<i>Will the public domain improve?</i>	Y	The development will contribute to developer contributions under Section 94. Council's contributions plans includes a number of public domain items.

Overall, the proposal will provide a net community benefit by delivering a modest supply of a highly sought after land commodity that will meet a market and provide for housing choice in region.

4.3 RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK (SECTION B)

4.3.1 IS THE PLANNING PROPOSAL CONSISTENT WITH THE OBJECTIVES AND ACTIONS CONTAINED WITHIN THE APPLICABLE REGIONAL OR SUB-REGIONAL STRATEGY (INCLUDING THE SYDNEY METROPOLITAN STRATEGY AND EXHIBITED DRAFT STRATEGIES)?

The Metropolitan and sub-regional planning context have been briefly detailed at 4.1.2 and 4.1.3 above.

4.3.2 IS THE PLANNING PROPOSAL CONSISTENT WITH THE LOCAL COUNCIL'S COMMUNITY STRATEGIC PLAN OR OTHER LOCAL STRATEGIC PLAN?

The local strategic planning context is summarised at 4.2.1 above.

4.3.3 IS THE PLANNING PROPOSAL CONSISTENT WITH APPLICABLE STATE ENVIRONMENTAL PLANNING POLICIES?

The precinct is subject to the provisions of a raft of State Environmental Planning Policies. The subject policies are noted below and importantly do not prohibit and/or significantly constrain the Planning Proposal.

SEPP	Comment
SEPP 1 – Development Standards	N/A (as referenced in WLEP 2011, cl.4.6 of the WLEP makes provision for variations to development standards)
SEPP 19 – Bushland in Urban Areas	N/A (Wollondilly Shire is not included in the land applicable schedule)
SEPP 21 – Caravan Parks	N/A
SEPP 26 – Littoral Rainforests	N/A
SEPP 30 – Intensive Agriculture	N/A
SEPP 33 – Hazardous and Offensive Development	N/A
SEPP 36 – Manufactured Home Estates	N/A (Wollondilly Shire is in the Sydney Region which is excluded from the Policy's application)
SEPP 44 – Koala Habitat Protection	Applicable An investigation may be required post Gateway Determination
SEPP 50 – Canal Estate Development	N/A
SEPP 52 – Farm Dams and Other Works in Land and Water Management Plan areas	N/A
SEPP 55 – Remediation of Land	Applicable An investigation may be required post Gateway Determination
SEPP 60 – Exempt and Complying Development	Limited application
SEPP 62 – Sustainable Agriculture	N/A
SEPP 64 – Advertising and Signage	N/A
SEPP 65 – Design Quality of Residential Flat Development	N/A (prohibited in the zone)
SEPP 70 – Affordable Housing (revised schemes)	N/A
SEPP 71 – Coastal Protection	N/A
SEPP (Affordable Rental Housing) 2009	N/A
SEPP (Building Sustainability Index: BASIX) 2004	Not inconsistent The relevant principles will inform subdivision design and subsequent development
SEPP (Exempt and Complying Codes) 2008	Not inconsistent
SEPP (Housing for Seniors or People with a Disability) 2004	N/A
SEPP (Infrastructure) 2007	N/A
SEPP (Major Developments) 2005	N/A
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	N/A
SEPP (Rural Lands) 2008	N/A (Wollondilly Shire is not included in the land applicable schedule)
SEPP (Sydney Region Growth Centres) 2006	N/A
SEPP (State and Regional Development) 2011	N/A
SEPP (Temporary Structures) 2007	N/A
SEPP (Western Sydney Employment Area) 2009	N/A
SEPP (Western Sydney Parklands) 2009	N/A

SEPP	Comment
<i>Sydney REP 20 – Hawkesbury Nepean River</i>	Not inconsistent
<i>Sydney REP 9 – Extractive Industries</i>	Not inconsistent

4.3.4 Is THE PLANNING PROPOSAL CONSISTENT WITH APPLICABLE MINISTERIAL DIRECTIONS (SECTION 117 DIRECTIONS)?

Section 117 Directions detail matters to be addressed in LEPs so as to achieve particular principles, aims and objectives or policies.

All relevant Directions can be adequately accommodated or departures justified in the preparation of an LEP amendment of the nature foreshadowed in this Planning Proposal.

The relevant considerations in respect of the Section 117 Directions highlighted to be of relevance are summarised below.

1. Employment and Resources

Direction	Applicable	Consistent
1.1 Business and Industrial zones	No	N/A
1.2 Rural zones	4(b) only	No. The proposal does not seek to rezone the land; The proposal will increase the permissible density
1.3 Mining, Petroleum and Extractive Industries	No	N/A
1.4 Oyster Aquaculture	No	N/A
1.5 Rural Lands	Yes	No. The proposal does not seek to rezone the land; The proposal will increase the permissible density

Justification

Direction 1.2 applies to planning proposals which affect land within an existing or proposed rural zone and states that a Planning Proposal must not rezone land from a rural zone to a residential zone ((4)(a)) or contain provisions that will increase the permissible density of land within a rural zone ((4)(b)). The latter is applicable to this planning proposal.

The inconsistency is justified in this instance as the proposed LEP is of minor significance ((5)(d)). At most, the planning proposal could give rise to an additional four (4) lots, which is a relatively minor loss of the rural land.

Direction 1.5 applies to planning proposals which affect land within an existing or proposed rural or environmental protection zone ((3)(a)) or where a change to the minimum lot size in a rural or environmental protection zone is proposed ((3)(b)). The former is applicable to this planning proposal.

The inconsistency is justified in this instance as the proposed LEP is of minor significance. At most, the planning proposal could give rise to an additional four (4) lots, which is a relatively minor loss of the rural land ((6)(b)).

2. Environmental and Heritage

Direction	Applicable	Consistent
2.1 Environmental Protection Zones	No	N/A
2.2 Coastal Protection	No	N/A

2.3 Heritage Conservation	Yes	N/A
2.4 Recreation Vehicle Areas	Yes	N/A

Justification

None of these directions relate to the proposal.

3. Housing, Infrastructure and Urban Development

Direction	Applicable	Consistent
3.1 Residential Zones	No	N/A
3.2 Caravan Parks and Manufactured Home Estates	Yes	N/A
3.3 Home Occupations	Yes	Yes
3.4 Integrating Land Use and Transport	No	N/A
3.5 Development near Licensed Aerodromes	No	N/A
3.6 Shooting Ranges	No	N/A

Justification

None of these directions relate to the proposal, except 3.3 Home Occupations. The proposal is consistent with this direction.

4. Hazard and Risk

Direction	Applicable	Consistent
4.1 Acid Sulphate Soils	No	N/A
4.2 Mine Subsidence and Unstable Land	Yes	Subsidence Advisory NSW will be consulted
4.3 Flood Prone Land	No	N/A
4.4 Planning for Bushfire Protection	Yes	RFS will be consulted following receipt of a Gateway Determination

Justification

The subject land is not defined as flood prone land and is unlikely to be flood affected given its relevant setting in the local creek catchment.

The land is contained within a proclaimed Mine Subsidence District. The proposal will be referred to Subsidence Advisory NSW as it is progressed.

The subject land and surrounding land is identified as bushfire prone land on Council's relevant mapping. A development application for a 5 lot subdivision of the subject land was previously considered by the NSW Rural Fire Service who issued a Bushfire Safety Authority under Section 100B of the Rural Fires Act, 1997. A copy of the report submitted to the RFS with that application is attached as Attachment 5: Bushfire Site Assessment and a copy of the Bushfire Safety Authority is attached as Attachment 6: Bushfire Safety Authority.

5. Regional Planning

Direction	Applicable	Consistent
5.1 Implementation of Regional Strategies	No	N/A
5.2 Sydney Drinking Water Catchments	Yes	N/A
5.3 Farmland of State and Regional Significance on NSW Far North Coast	No	N/A
5.4 Commercial and Retail Development along Pacific Hwy North Coast	No	N/A
5.5 Development in the vicinity of Ellalong, Paxton and Millfield	No	N/A
5.6 Sydney to Canberra Corridor	No	N/A
5.7 Central Coast	No	N/A
5.8 Second Sydney Airport: Badgerys Creek	Yes	Yes
5.9 North West Rail Link Corridor Strategy	No	N/A
5.10 Implementation of Regional Plans	No	N/A

Justification

The land is also sufficiently free of any operational constraint should a second Sydney Airport ever be developed at Badgerys Creek.

6. Local Plan Making

Direction	Applicable	Consistent
6.1 Approval and Referral Requirements	Yes	Yes
6.2 Reserving Land for Public Purposes	Yes	Yes
6.3 Site Specific Purposes	Yes	Yes

Justification

Pursuant to Direction No. 6.1, the LEP provisions encourage the efficient and appropriate assessment of development as proposed and do not extend beyond those adopted in the Wollondilly LEP, 2011.

Consistent with Direction No. 6.2, the Planning Proposal does not create, alter or reduce existing zonings or reservations of land for public purposes.

The Planning Proposal does not impose unnecessarily restrictive site specific planning controls and therefore is consistent with Direction No. 6.3.

7. Metropolitan Planning

Direction	Applicable	Consistent
7.1 Implementation of the Sydney Metropolitan Plan, 2036	Yes	Yes

Justification

The Planning Proposal is not inconsistent with the general direction of the Metropolitan Plan, 2036. Further, the Planning Proposal has addressed the S.117 Directions prescribed by the Minister contained within the Environmental Planning and Assessment Act 1979.

4.4 ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACT (SECTION C)

4.4.1 IS THERE ANY LIKELIHOOD THAT CRITICAL HABITATS OR THREATENED SPECIES, POPULATIONS, ECOLOGICAL COMMUNITIES OR THEIR HABITANTS, WILL BE ADVERSELY AFFECTED AS A RESULT OF THE PROPOSAL?

The site is likely to have elements of an endangered ecological community (vegetation) and is within a bio subregion with known threatened fauna species. A detailed assessment has previously been undertaken as part of a development application on the subject site. This is provided as Attachment 2: Flora and Fauna Assessment.

4.4.2 ARE THERE ANY OTHER LIKELY ENVIRONMENT EFFECTS AS A RESULT OF THE PLANNING PROPOSAL AND HOW ARE THEY PROPOSED TO BE MANAGED?

No other adverse environmental impacts are likely to be occasioned this Planning Proposal.

4.4.3 HOW HAS THE PLANNING PROPOSAL ADEQUATELY ADDRESSED ANY SOCIAL AND ECONOMIC EFFECTS?

The Proposal is likely to have significant positive social and economic impacts. The proposal will help meet a strong demand for large rural residential lots and result in a high quality development. The proposal will result in a modest increase in population which will result in additional demand for local goods and services.

4.5 STATE AND COMMONWEALTH INTERESTS (SECTION D)

4.5.1 INTRODUCTION

The Gateway determination will identify any consultation required with State or Commonwealth Public Authorities. This will include:

- consultation required under section 34A of the EP&A Act where the Responsible Planning Authority (RPA) is of the opinion that critical habitat or threatened species populations, ecological communities or their habitats will or may be adversely affected by the planning proposal;
- consultation required in accordance with a Ministerial Direction under section 117 of the EP&A Act; and
- consultation that is required because in the opinion of the Minister (or delegate), a State or Commonwealth public authority will or may be adversely affected by the proposed LEP.

4.5.2 IS THERE ADEQUATE PUBLIC INFRASTRUCTURE FOR THE PLANNING PROPOSAL?

The only public infrastructure will be required to be augmented to support this Planning Proposal will be a minor road extension and extension of existing overhead electrical line.

The proponent is committed to the delivery of this proposal at no additional cost to government.

4.5.3 WHAT ARE THE VIEWS OF STATE AND COMMONWEALTH PUBLIC AUTHORITIES CONSULTED IN ACCORDANCE WITH THE GATEWAY DETERMINATION, AND HAVE THEY RESULTED IN ANY VARIATIONS TO THE PLANNING PROPOSAL?

The relevant State and Commonwealth public authorities would be consulted following the outcome of the Gateway determination. Council would be responsible for carrying out this consultation in accordance with Section 57 of the EP&A Act.

5 Community Consultation (Part 4)

Community consultation remains an important element of the Plan making process. The companion document “A Guide to Preparing Local Environmental Plans” outlines community consultation parameters.

The subject provisions in respect of notification and the exhibition materials to support the consultation will be observed. It is considered that the Planning Proposal is “low impact”¹ and should be exhibited for a minimum period of 14 days.

Before proceeding to public exhibition, the Director General of Planning (or delegate) must approve the form of the Planning Proposal as being consistent with the “Gateway” determination (EP&A Act 57(2)). Notification is able to be conducted by way of direct correspondence to the surrounding owners, publication within the local press and information on Wollondilly Shire Council’s website.

Any submissions received in response to the community consultation would need to be fully considered, in accordance with the prevailing statutory provisions.

¹ Means a planning proposal that, in the opinion of the person making the gateway determination, is consistent with the pattern of surrounding land use zones and/or land uses, is consistent with the strategic planning framework, presents no issues with regard to infrastructure servicing, is not a principal LEP and does not reclassify public land.

6 Conclusion

The subject Planning Proposal has documented a case for the amending either the Original Holdings map or Schedule 1 of WLEP 2011.

Council, as the Responsible Planning Authority, is requested to support this Proposal, in accordance with its resolution at its meeting held on 21 August 2017 and then forward it to the Department of Planning and Environment for progressing through the "Gateway" in an expedient manner.