cw-CS3 Planning Proposal to Vary the Minimum Lot Size of Lot 391 DP737061, Farnborough Drive, Moss Vale and to Rezone Lot 201 DP 1095417, 41 Farnborough Drive, Moss Vale to B1 Neighbourbood Centre

Reference: **PN1756100, 5901/21**
Responsible Officer: **Coordinator Strategic Planning**

PURPOSE

The purpose of this report is to present a proposed amended subdivision layout consisting of 85 lots for the Planning Proposal applying to Lot 391 DP737061, Farnborough Drive, Moss Vale and to remove the rezoning of Lot 201 DP 1095417, 41 Farnborough Drive Moss Vale to B1 Neighbourhood Centre from the Planning Proposal.

This report recommends that the 85 lot proposed subdivision layout be placed on public exhibition and that the component of the Planning Proposal to rezone Lot 201 DP 1095417, 41 Farnborough, Drive Moss Vale to B1 Neighbourhood Centre be deleted from the Planning Proposal; and that Council seeks an amended Gateway Determination and Authorisations of Delegations from Department of Planning and Environment in accordance with Section 58(2) of the Environmental Planning and Assessment Act 1979 (EPA Act).

DESCRIPTION OF PROPOSAL

BACKGROUND

The original Planning Proposal was first presented to Council at its Ordinary Meeting of 24 October 2012, at which Council made the following resolution:

1. *THAT in accordance with Section 55 of the Environmental Planning and Assessment Act, 1979, Council resolve to prepare and lodge with NSW Department of Planning and Infrastructure a Planning Proposal to amend the minimum lot size of Lot 391 DP737061, Lot 391 Farnborough Drive, Moss Vale, to permit the range of lot sizes contained within the revised plan of subdivision, as illustrated in ATTACHMENT 1, and to amend the zoning of Lot 201 DP 1095417, 41 Farnborough Drive, Moss Vale, from R5 Large Lot Residential to B1 Neighbourhood Centre to permit development for the purposes of Neighbourhood Shops and Community Facilities.*

2. *THAT a new precinct be included in the Moss Vale Development Control Plan (DCP) titled Farnborough Estate which contains the revised draft plan of subdivision and such controls as are required to implement any approved subdivision based on that draft.*

3. *THAT the applicant be advised of Council's decision.*

4. *THAT offset plantings for any ESC species removed be included as part as the vegetation management restoration plan for the precinct as put forward by the applicant.*

In respect of the above resolution the Planning Proposal was forwarded to the, at the time, Department of Planning and Infrastructure (now known as Department of Planning and Environment) for a Gateway Determination which was subsequently issued on 5 June 2013.

The Planning Proposal originally issued with a Gateway Determination and publicly exhibited is shown in **Figures 1, 2** and **3**.

The Gateway determination required the Planning Proposal to be exhibited for a minimum period of 28 days and be exhibited in accordance with section 5.5.2 of *A Guide to Preparing LEPs (Department of Planning and Infrastructure 2013)*.

To comply with the public exhibition requirements of the Gateway Determination, on 23 July 2013 Council advised residents and interested parties that the subject Planning Proposal would be placed on exhibition for a period of 28 days between 24 July and 21 August 2013 with material being available at Council's Customer Service Centre in Moss Vale and at the Moss Vale and Bowral public libraries.

On 16 August 2013 Council wrote to residents and interested parties advising that the timeframe for submissions to be received had been extended to 18 September 2013.

On both occasions, 170 letters were sent to residents and affected residents and land owners. In response to a number of representations made by residents to Councillors, Council considered a Notice of Motion at its Ordinary Meeting on Wednesday 11 September 2013 and resolved as follows:

1. *THAT Council acknowledge the concerns raised by residents of Farnborough Drive, Moss Vale.*

2. *THAT Council invite residents to appoint a delegation to meet with the Mayor, interested Councillors and Planning Staff to:*

    a. *Discuss the proposal and processes for assessment*

    b. *To clarify concerns and consider any community request for a formal meeting on the proposal.*

3. *THAT the applicant also be offered the opportunity to be involved in this process.*

Subsequently, following consideration of a petition on 25 September 2013, Council resolved as follows:

> *THAT the petition regarding the objection relating to planning proposal to amend Wingecarribee Local Environmental Plan 2010, Lot 391 DP 737061 Farnborough Drive, Moss Vale and Lot 201 DP 1095417 Farnborough Drive, Moss Vale be received and noted AND THAT a public meeting be held on this proposal as soon as possible.*

A public meeting regarding the Planning Proposal was held on Thursday 17 October 2013 in Council's Theatrette, Moss Vale.

72 residents from the existing Farnborough Estate attended. It was noted at the meeting that the petition lodged during the exhibition period, not supporting the Planning Proposal contained 118 signatures which represented 98% of current residents at that time.

On 9 October 2013, Council resolved a Notice of Motion, to further extend the period for submissions to 21 October 2013. In total Council received 76 submissions from 48 separately identified households.

Following the closure of the exhibition period, a report taking into consideration the submissions, public meeting and petition was tabled at Council's Ordinary Meeting of 11 December 2013, and Council resolved as follows:

> *THAT the matter be deferred to a briefing session AND THAT the Councillors and the applicant and the residents be part of that public meeting if necessary.*

In respect to the above resolution a Councillor Briefing Session was held on 5 February 2014 and was attended by two (2) representatives for the proponent (Australian Urban Projects Pty Ltd). The matters addressed in the report to Council of 11 December 2013 and the revised draft plan of subdivision which accompanied that report, were discussed.

A further Public Meeting was then held on 13 February 2014 in the Civic Centre Theatrette. The meeting was attended by ninety two (92) members of the public, two representatives for the proponent, Councillors and staff. The proponent was invited to address the meeting and take questions from the public.

At the conclusion of the public meeting, the proponent indicated that the concerns raised at the public meeting would be considered.

A report on the Councillor Briefing Session and Public Meeting was considered by Council at its Planning and Strategic Peak Committee of Whole Meeting on 12 March 2014, at which Council resolved as follows:

> *THAT Council support a planning proposal with a total of 85 lots, under the condition that the whole of the site is used and that no further land in the site is available for further subdivision.*

In respect of the above resolution and previous community consultation and feedback the proponent has prepared an amended Planning Proposal (**Attachment 1** – Letter and Plan), that is the subject of this report. Details of the amended proposal are discussed below.

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Figure 1 – Originally Proposed Subdivision Plan (Exhibited)

Figure 2 – Originally Proposed Amendment to Minimum Lot Size Map (Exhibited)

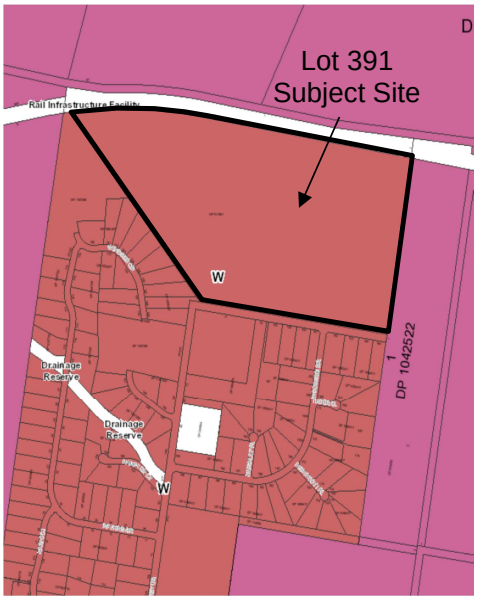
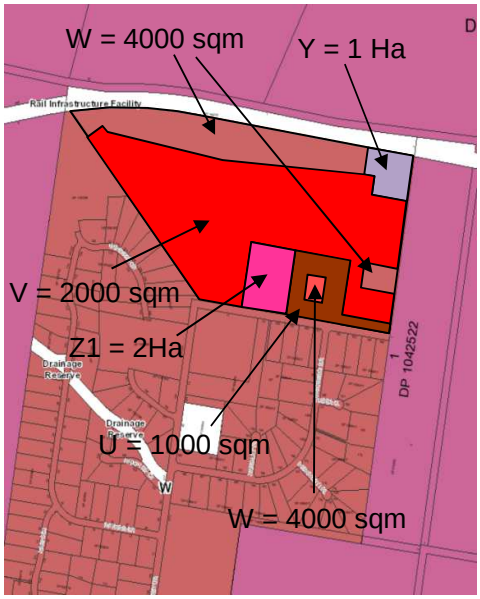
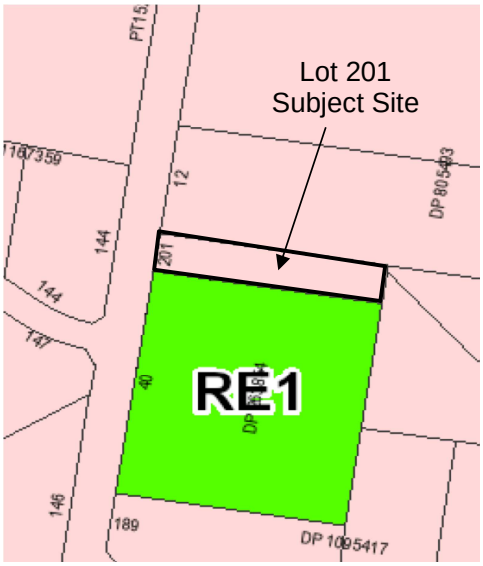
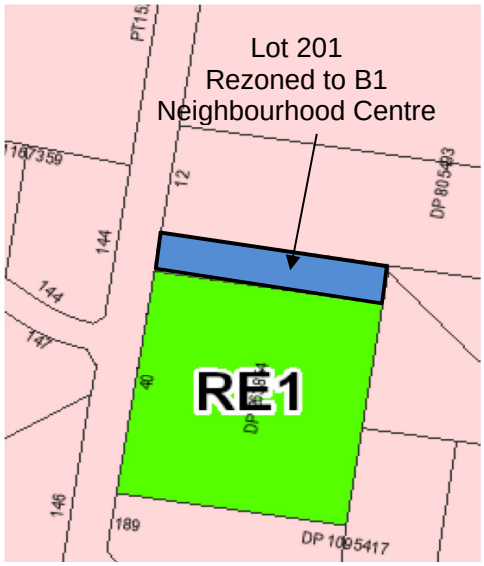
Site A: EXISTING MINIMUM LOT SIZE MAP (Extract)	Site A: PROPOSED MINIMUM LOT SIZE MAP (Draft Extract)
	

Figure 3 – Originally Proposed Rezoning of Lot 201 DP 1095417 (Exhibited)

EXISTING ZONING MAP (Extract)	PROPOSED ZONING MAP (Extract)
	

DETAILS OF AMENDED PROPOSAL

The amended Planning Proposal subdivision Plan is shown in **Figure 4** and a larger version included as **Attachment 1** (circulated separately). The amendment addresses the Council's and Communities concerns as follows:

- The rezoning of Lot 201 DP 1095417, 41 Farnborough Drive, Moss Vale to B1 Neighbourhood Centre has been removed from the Planning Proposal
- The subdivision plan contains a maximum of 85 lots
- The number of lots > 2000m^2 and < 4000m^2 is 44 lots (25.6% of site area)
- The number of lots > 4000m^2 is 41 lots (64.33% of site area)
- 4 Lots with a minimum Lot size of 8000m^2 to protect EEC vegetation
- Roads form 10.07% of site area
- The minimum lot size ranges are grouped together to meeting the LEP Minimum Lot Size map requirements, i.e. three minimum lot sizes areas that can be appropriately delineated on the WLEP 2010 Minimum Lot Size Maps, as shown in **Figure 5** and a higher detailed in **Figure 6.**

Figure 5 is an indicative Draft of how the Minimum Lot Size Map would be amended to accommodate the latest subdivision proposal (Figure 4), as provided by the applicant.

It is recommended that the Planning Proposal Report be amended to incorporate the latest subdivision amendment, including the removal of Lot 201 DP 1095417, 41 Farnborough Drive, Moss Vale to B1 Neighbourhood Centre and be re-exhibited for 28 days.

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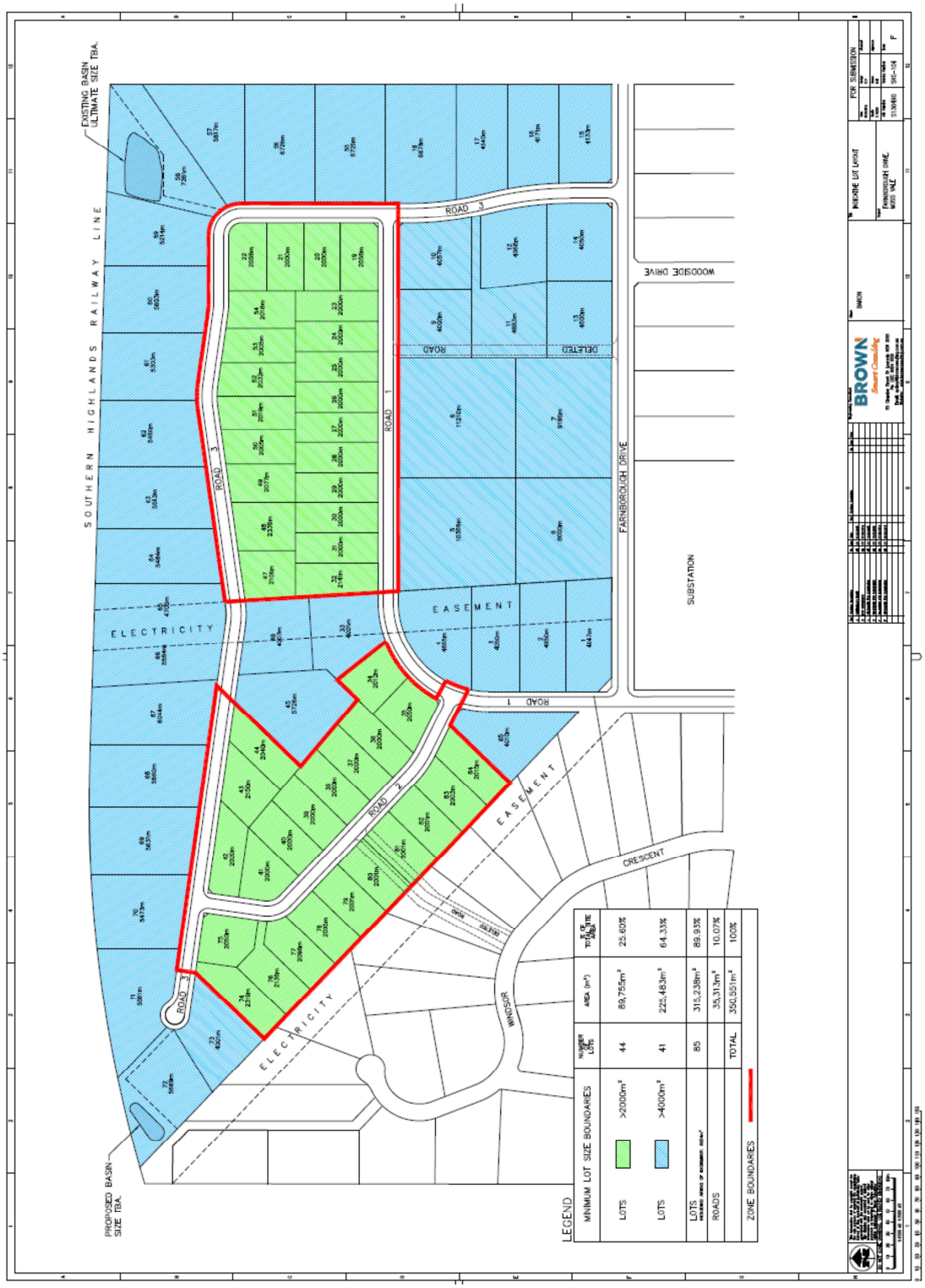


Figure 4 – Amended Subdivision Layout (to be exhibited)

Figure 5 – Draft Minimum Lot Size Map for Amended Subdivision Layout (to be exhibited). (Larger Version Circulated Separately)

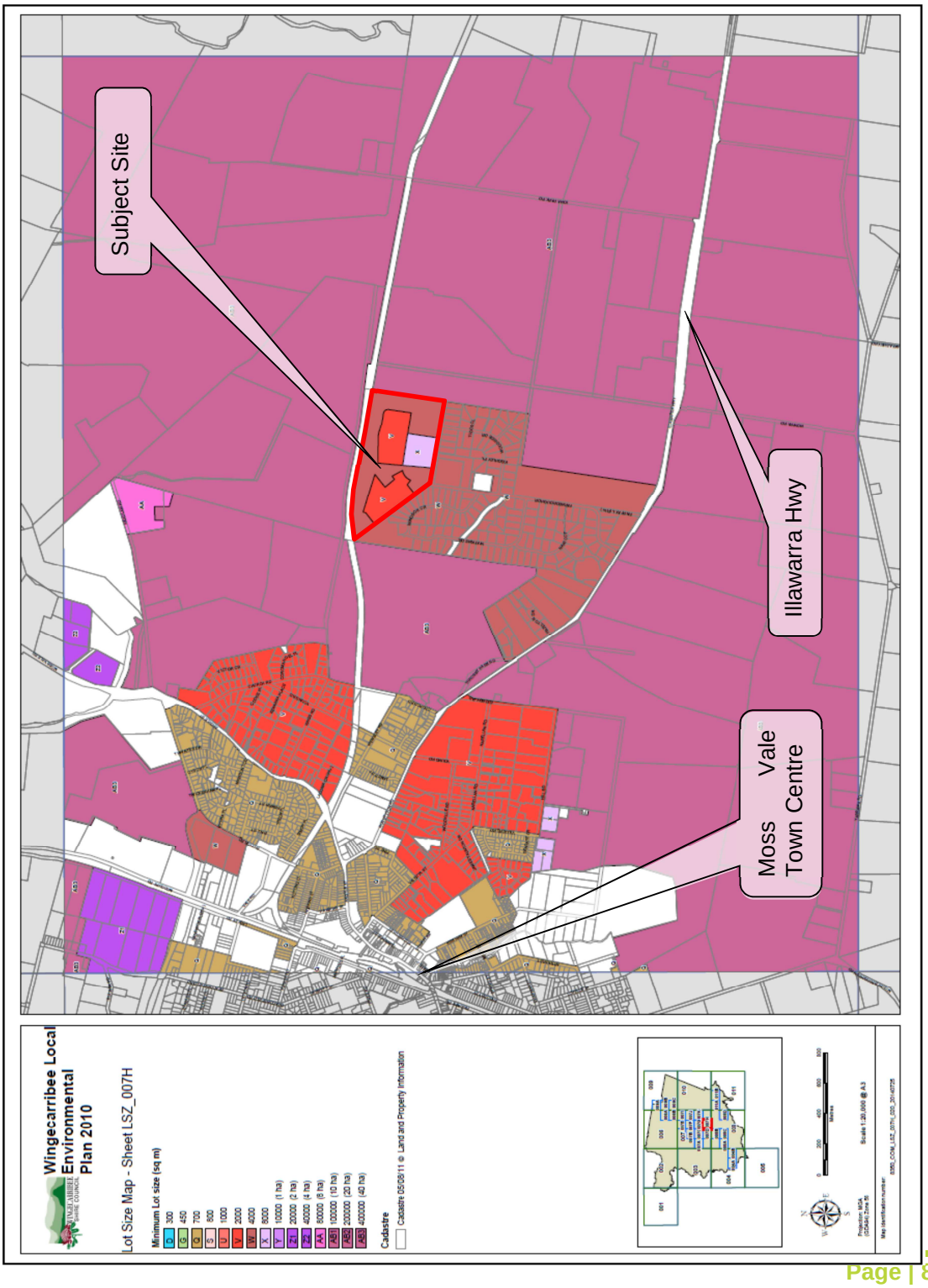
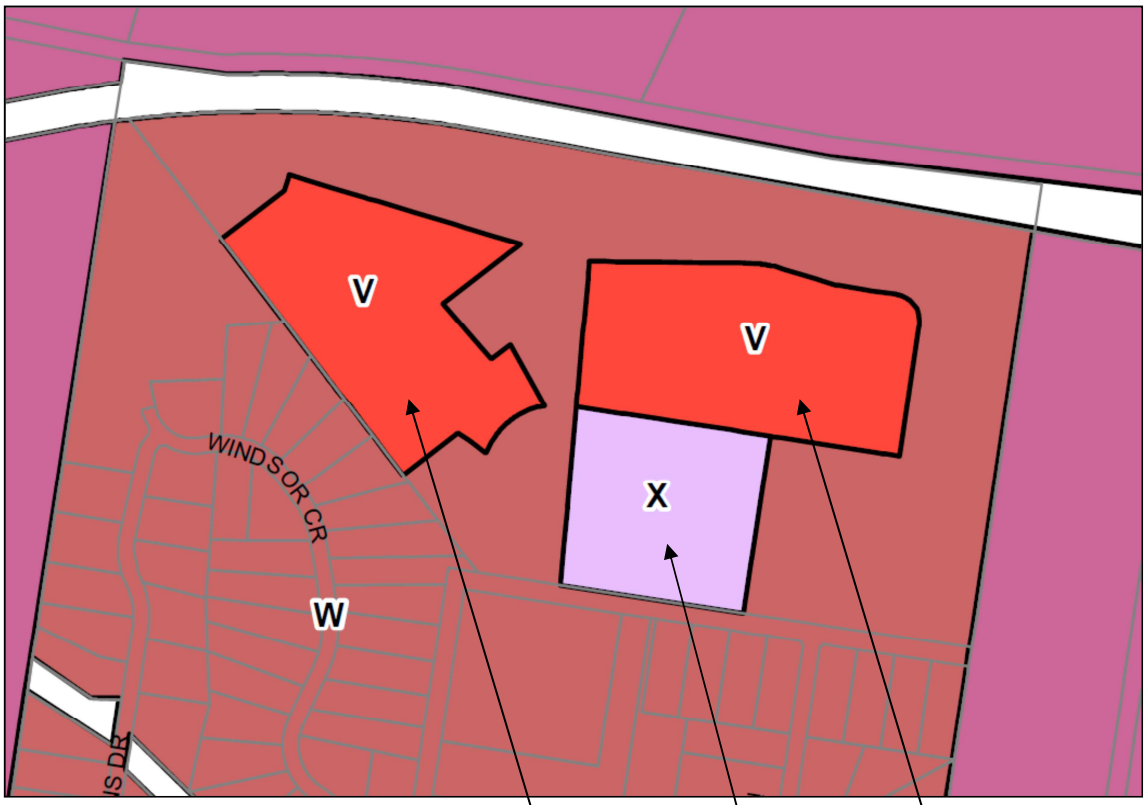


Figure 6 – Extract from Draft Minimum Lot Size Map (to be exhibited)



Minimum Lot size (sq m)

D	300
G	450
Q	700
S	800
U	1000
V	2000
W	4000
X	8000
Y	10000 (1 ha)
Z1	20000 (2 ha)
Z2	40000 (4 ha)
AA	80000 (8 ha)
AB1	100000 (10 ha)
AB2	200000 (20 ha)
AB3	400000 (40 ha)

Proposed Additional Minimum Lot sizes "V" = 2000m^2; "X" = 8000m^2. Current minimum lot size "W" = 4000m^2.

PLANNING CONSIDERATIONS

The original Gateway Determination issued on 5 June 2013 contained a *'Written Authorisation to Exercise Delegation'* form, which allows Council to act on Minister's behalf under Section 59 of the EPA Act, which is the "making of local environmental plans", once Council has decided to proceed with a Planning Proposal following community consultation.

The following is an extract of the Delegation form:

> *Wingecarribee Shire Council is authorised to exercise the functions of the Minister for Planning and Infrastructure under Section 59 of the Environmental Planning and Assessment Act 1979 that are delegated to it be instrument of delegation dated 14 October 2012 in relation to the following planning proposal:*

Number	***Name***
PP_2013_WINGE_005_00	*Planning proposal to rezone Lot 201 DP 1095417 at Farnborough Drive, Moss Vale from R5 Large Lot Residential to B1 Neighbourhood Centre and apply a range of minimum lot sizes for Lot 391 DP737061 at Farnborough Drive, Moss Vale.*

The above delegation now requires amendment, as the rezoning of Lot 201 DP737061 at Farnborough Drive, Moss Vale is no longer sought by the proponent. Further, Section 58 of the EPA Act states:

1) *The relevant planning authority may, at any time, vary its proposals as a consequence of its consideration of any submission or report during community consultation or for any other reason.*
2) *If it does so, the relevant planning authority is to forward a revised planning proposal to the Minister.*

Therefore in order to ensure procedural correctness under Section 58 of the EPA Act, Council is required to seek an amendment to the *Gateway Determination* and *Written Authorisation to Exercise Delegation* because of the revisions to the Planning Proposal.

The revisions sought by Council will be as follows:

- Delete reference to rezoning of Lot 201 DP 1095417, 41 Farnborough Drive, Moss Vale to B1 Neighbourhood Centre; and
- Remove reference to '*a range of lot sizes*' in the description of the Planning Proposal and replace with wording similar to '*addition of 2000m^2 and 8000m^2 Minimum Lot Sizes*', i.e. the Description would read similar too:

  "Planning Proposal to apply additional areas of 2000m^2 and 8000m^2 Minimum Lot Sizes to Lot 391 DP 737061 at Farnborough Drive, Moss Vale."

Note the Department of Planning and Environment may reword the Planning Proposal description as they see fit, when providing an amended *Gateway Determination* and *Written Authorisation to Exercise Delegation.*

By seeking such amendments Council will be able to maintain its delegations for the Planning Proposal in respect to Section 59 of the Environmental Planning and Assessment Act 1979, and will confirm that Lot 201 DP 1095417, 41 Farnborough Drive, Moss Vale is no longer part of the Planning Proposal.

STATUTORY PROVISIONS

WINGECARRIBEE LEP2010 (WLEP 2010)

The site is currently zoned R5 Large Lot Residential under WLEP 2010 with a minimum Lot Size of 4000m^2. The Planning Proposal, in its latest form, does not require any amendment to the zoning of the subject site. In its simplest form the Planning Proposal, now only requests an amendment to the Minimum Lot Size Map as shown in **Figure 5** and **Figure 6**, being the addition of 2000m^2 and 8000m^2 Minimum Lot Sizes to meet the 85 lot request from Council and preserve larger lots to protect the EEC vegetation.

DEVELOPMENT CONTROL PLANS (DCPS)

As the Planning Proposal has been significantly altered from the original version considered by Council at its meeting of the 24 October 2012, the previous resolution in respect to amending the DCP is no longer relevant. Should the current amendment be accepted by the public and Council following consultation, it would be appropriate at that stage to request that a new precinct be included in the Moss Vale Development Control Plan (DCP) titled *Farnborough Estate*, which will contain the revised draft plan of subdivision and such controls, as are required to implement any approved subdivision based on that accepted minimum lot size map.

STATE ENVIRONMENTAL PLANNING POLICIES (SEPPS)

State Environmental Planning Policies (SEPPs) are a set of Environmental Planning Instruments with which Council must comply, where relevant, when considering amendments to WLEP 2010.

The SEPPs have previously been addressed in the Planning Proposal report and will be reviewed in light of the amended Planning Proposal prior to being placed on public exhibition.

SECTION 117 DIRECTIONS

The Minister for Planning, under section 117(2) of the Environmental Planning and Assessment Act 1979 (EP&A Act) issues Directions that Council must follow when preparing Planning Proposals. The Directions cover the following broad categories:

1. employment and resources
2. environment and heritage
3. housing, infrastructure and urban development
4. hazard and risk
5. regional planning
6. local plan making.

The s117 Directions have previously been addressed in the Planning Proposal report and will be reviewed in light of the amended Planning Proposal prior to being placed on public exhibition.

CONSULTATION

The Background section of this report details the level of consultation already undertaken to arrive at the amended Planning Proposal, as outlined in the body of this report. Nevertheless, further consultation is required to publicly exhibit the revised Planning Proposal, which will be undertaken as follows:

EXTERNAL REFERRALS

Other public authority comments will not be required, unless the revised Gateway Determination specifically requests such comment, i.e. current comments from Sydney Catchment Authority, NSW RFS and Office of Environment and Heritage still stand.

INTERNAL REFERRALS

Internal referrals will be sought from Council's Environmental Sustainability Branch and Assets Branch in relation to the proposed amendments.

COMMUNITY CONSULTATION

Community consultation will occur as set out in the Gateway Determination, which includes letters being sent to current residents and property owners in Farnborough Estate and any other interested party that previously made submissions on the proposal. A minimum period of 28 days will be required for the re-exhibition of the revised Planning Proposal.

SUSTAINABILITY ASSESSMENT

- **Environment**

Potential environmental impacts of the subdivision of the subject property would be assessed under the provisions of Section 79C of the EPA Act as part of the development application process. The subject site was considered suitable for residential development at the time of the 1982 subdivision approval. More recent changes to legislation require Council to place greater emphasis on the protection of EEC than was the case in 1982. This legal obligation and the opportunity provided by a revised draft subdivision form the initial basis for this Planning Proposal.

The most recent revision provided in Figure 4, resulting in 8000$m^{2.}$ and greater residential lots provides an increased chance of the EEC remaining in place and being enhanced, unlike the approved 1982 plan of subdivision, which would likely result in the EEC being removed altogether.

- **Social**

The revised subdivision plan (Figure 4) offers a range of housing options more in keeping with current Farnborough resident expectations, and provides protection to the EEC. Social benefits are derived though a community acceptance of the proposed subdivision and the preservation of Ecological Endangered Communities for future generations.

- **Broader Economic Implications**

Once the proposed subdivision is approved by Council, the creation and sale of lots for the provision of housing will have economic benefits for local trades, building suppliers and further investment in the Shire through controlled housing growth.

- **Culture**

The Office of Environment and Heritage has previously commented on the proposal and recommended that the following be undertaken:

- *an archaeological assessment – involving the identification and assessment of Aboriginal objects (often referred to as 'sites') and their management based on archaeological criteria and*
- *a cultural heritage assessment – involving consultation with Aboriginal stakeholders (groups and individuals) and can include historical and oral assessment and broader values assessment (eg. Landscape and spiritual values)*

It is recommended that the above studies be undertaken for the development application for consideration under the provisions of Section 79C of the EPA Act.

- **Governance**

To ensure due process is undertaken in respect of the Planning Proposal, it is recommended that an amendment to the *Gateway Determination* and *Written Authorisation to Exercise Delegation* be requested from the Department of Planning and Environment; and that the revised Plan of Subdivision and Planning Proposal be placed on public exhibition for 28 days.

RELATIONSHIP TO CORPORATE PLANS

The 2031+ Community Strategic Plan identifies goals and strategies for 'Places', specifically that future development respects the character of the area in which it is to be located and reinforces that character with appropriately sited and designed new development (3.3.2), retains the distinctive rural landscape between the towns and villages (Goal 3.4) and recognises Wingecarribee as a place of significant heritage conservation. The 2031+ Community Strategic Plan also identifies goals and strategies for the 'Environment' where Wingecarribee's distinctive and diverse natural environment is protected and enhanced and communities live sustainably by choice.

BUDGET IMPLICATIONS

The proponent has paid the relevant Planning Proposal fees and charges.

RELATED COUNCIL POLICY

There are no other Council Polices related to this matter other than those already addressed in the body of this report.

OPTIONS

There are two (2) options available to Council with respect to the Planning Proposal.

Option 1
Request an amended *Gateway Determination* and *Written Authorisation to Exercise Delegation* from the Department of Planning and Environment to remove the rezoning from R5 Large Residential to B1 Neighbourhood Centre of Lot 201 DP 1095417, 41 Farnborough Drive Moss Vale from the Planning Proposal; and place the revised Planning Proposal as shown in **Figures 4 to 6** on public exhibition.

Option 2
Resolve not to proceed with the Planning Proposal, wherein the subject property remains R5 Large Lot residential with a minimum Lot size of 4000m^2.

Option 1 is preferred as it will enable Council to seek community feedback on the revised Planning Proposal; and ensure due process is undertaken by applying for an amended amended *Gateway Determination* and *Written Authorisation to Exercise Delegation* from the Department of Planning and Environment. Option 2, would result in the proponent having no other option but to develop the site as per the 1982 approved subdivision, which may result in the demise of the Endangered Ecological Community (EEC).

ATTACHMENTS

There are three (3) attachments to this report, ***which have been circulated to Councillors under separate cover***:

1. Submission from Applicant in respect of amended Planning Proposal including revised plan of subdivision.
2. Large Scale Version of Amended Subdivision Layout, as contained in report as **Figure 4.**
3. Large Scale Version of Draft Minimum Lot Size Map, as contained in report as **Figure 5**.

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RECOMMENDATION

1. <u>THAT</u> the revised Planning Proposal be changed to:

(a) Delete reference to the rezoning from R5 Large Residential to B1 Neighbourhood Centre of Lot 201 DP 1095417, 41 Farnborough Drive, Moss Vale.

(b) Delete reference to rezoning of Lot 391 DP 737061 at Farnborough Drive, Moss Vale.

(c) Reference be made to *"… Minimum Lot Size maps be amended by including additional areas of 2000m^2 and 8000m^2…"* in respect to Lot 391 DP 737061, Farnborough Drive, Moss Vale.

<u>AND THAT</u> the revised Planning Proposal is forwarded to the NSW Department of Planning and Environment requesting an amended Gateway Determination and Written Authorisation to Exercise Delegation under section 58(2) of the Environmental Planning & Assessment Act 1979.

2. <u>THAT</u> the revised Planning Proposal to amend Wingecarribee Local Environmental Plan 2010 by amending the Minimum Lot Size map to include additional areas of 2000m^2 and 8000m^2 Minimum Lot Sizes to Lot 391 DP 737061 at Farnborough Drive, Moss Vale be publicly exhibited in accordance with the revised Gateway Determination, as requested by Item 1.

3. <u>THAT</u> the applicant be informed of Council's decision.

(Voting on the Motion)