

12.2 PLANNING PROPOSAL TO REZONE 'MISTFUL PARK' AND REDUCE THE MINIMUM LOT SIZE

Author: Bennett Kennedy, Senior Strategic Planner

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Attachments: 1. Mistful Park Planning Proposal [↓](#) 

Link to Community Strategic Plan:	Strategy EN4 'Maintain a balance between growth, development and environmental protection through sensible planning'
Cost to Council:	Nil
Use of Reserve Funds:	Nil

RECOMMENDATION

That

1. The report from the Senior Strategic Planner regarding the Planning Proposal to rezone Mistful Park (Lot 1 & 4 DP 1223269 and Lot 214 DP 1231260) be received.
2. The Planning Proposal to rezone the 'Mistful Park' property is supported in principle but deferred at this time pending the outcome of the Urban & Fringe Housing Strategy.
3. The Planning Proposal to rezone the 'Mistful Park' property be included on a list of properties to be considered in the Urban & Fringe Housing Strategy and the applicant be encourage to investigate the concerns raised by the State Government Departments.

ASSESSMENT OVERVIEW & DISCUSSION

The planning proposal aims to make changes to Goulburn Mulwaree LEP 2009 to allow the creation of approximately 150 additional lots adjacent to the existing Mistful Park subdivision. The area to be rezoned has constraints (such as native vegetation and steep land) that need to be carefully considered at any early stage to ensure the land can be developed in accordance with the wishes of the landowner, and an appropriate zone is selected.

These considerations are usually a part of the rezoning process. However in this case there are broader factors that must be considered before a rezoning is commenced, including:

- The RMS and NSW Office of Environment & Heritage (OEH) have significant concerns about the proposed zoning in its current form due to proximity to a classified road and the presence of protected native vegetation respectively.
- The presence of protected vegetation communities in other parts of the Marys Mount area are currently causing significant challenges for subdivision proposals. In order to avoid this on the subject site a strategic approach to selecting the type of rezoning process, the role of the land in relation to the future supply of housing in Goulburn and the appropriate zones and controls for the site is necessary.

This would need to be supported by policy provisions to deal with infrastructure servicing (sewer, water and stormwater) and vehicular access. The Urban and Fringe Housing Strategy might identify other less constrained sites that are more appropriate for traditional residential subdivisions. Preliminary work on the Strategy indicates that there is sufficient supply of urban

housing in Goulburn for the foreseeable future and there is no land use imperative to consider rezoning the land at this time.

That being said the Urban & Fringe Housing Strategy might identify a potential expansion in the relatively unconstrained area adjacent to the existing subdivision.

- Traffic generation and access from Marys Mount Road onto Crookwell Road is an issue that staff are dealing with in relation to current development applications for subdivisions along Marys Mount Road. It is important that the cumulative impacts of traffic from existing and proposed subdivisions are considered. For the subject land, access is a key issue given the general policy position of the RMS to not support direct vehicular access onto a classified road if another option is available. The design of the existing road network in the Mistful Park subdivision was not intended to service further subdivisions.
- The rezoning proposes to remove an environmental protection zone and replace it with residential zones. Without an appropriate strategic response surrounding future development of the land (discussed above) it will be very difficult to justify how the threatened native vegetation community present on the site will be better protected under the proposed changes. This will be necessary to satisfy state agencies and allow progression of the rezoning proposal.
- If the implications of removing native vegetation to facilitate a future subdivision (i.e. for roads, asset protection zones, building envelopes etc) are appropriately considered now by both the landowner and Council then unforeseen challenges at the development application stage can be avoided. This may not necessarily preclude the removal of some native vegetation. There is a special type of rezoning process which involves assessment of protection vegetation and communities so that further assessment is not required at the development application stage. Depending on the outcomes of the Urban and Fringe Housing Strategy there may be several areas which Council may want to consider rezoning together using this process. There are significant benefits in adopting this approach including increased certainty for developers however it will require a high level of detail and close co-ordination between landowners and Council.
- Only part of the land is strategically identified for residential expansion. Areas for residential expansion will be holistically considered in the Urban & Fringe Housing Strategy. Staff have previously recommended (and Council supported) rezoning proposals being deferred pending completion of broader strategic work (e.g. Goulburn Health Hub was deferred pending completion of the Employment Lands Strategy). This same approach is recommended in this report.
- To be clear, it is not the staff's position that some intensification of parts of the subject site could not be achieved. However in order to make the best use of current staff resources and make informed decisions about how that intensification could occur the constraints of the land must be considered in detail and in the context of the broader area and the future residential housing needs of Goulburn.

BACKGROUND

The subject site was previously identified in a study prepared by Parsons Brinkerhoff (PB) Pty Ltd that underpinned the Goulburn Mulwaree Strategy 2020 (2006). The PB study identified the area around Marys Mount, including part of the subject site as a potential location for future expansion of the Goulburn City urban area. Importantly the PB study also identified constraints to consider when rezoning the site for higher densities including: ridgelines; the presence of protected flora community (Yellow Box – Blakely's Red Gum Woodland – Endangered Ecological Community (EEC)); and infrastructure servicing.

The constraints identified in the PB report limit the residential development potential of the subject site. As a consequence, the identified constraints underpinned the zoning of the land to E4

Environmental Living with a Minimum Lot Size of 10 Ha under *Goulburn Mulwaree Local Environmental Plan* (GM LEP) 2009.

It was intended that the zoning and minimum lot size would play a primary role in protecting the identified EEC from development and mitigate the cumulative impact of development from the R2 Low Density Residential zoning of the broader Mary's Mount area.

Application of the E4 Environmental Living zone under the GM LEP 2009 was anticipated to encourage future land uses that would not adversely impact on the sensitivity or integrity of the EEC, impact on the scenic rural landscape or require further augmentation to the reticulated water supply to service the site.

It is important to note that Council is currently preparing to engage a consultant to prepare an Urban and Fringe Housing Strategy that will supersede the Parsons Brinkerhoff Study and the Goulburn Mulwaree Strategy 2020 (2006). The Urban and Fringe Housing Strategy (once adopted) will set the strategic framework for considering residential development and land release in Goulburn and Marulan.

Site and Proposal

The subject Planning Proposal was lodged by Urbanism Pty Ltd on 25 September 2017.

The subject site is irregular in shape and has a total area of 32.5 Hectares comprising:

- Lot 1 (11.1 Ha),
- Lot 3 (11.1 Ha) (now Lot 214 DP 1231260), and
- Lot 4 (10.1 Ha) of Deposited Plan 1223269

The site adjoins an approved subdivision at 'Mistful Park' (to the south) on Crookwell Road, adjacent to Chinamans Lane and Bigwood Place.

The site is currently zoned E4 Environmental Living and has a Minimum Lot Size of 10 Hectares under *GMC LEP 2009*. The map included in the attachment identifies the proposed amendments.

The current Planning Proposal seeks to:

- Rezone Lots 1 and 4 from predominantly E4 Environmental Living zone to R5 Large Lot Residential
- Rezone Lot 3 from predominantly E4 Environmental Living to R2 Low Density Residential zone; and
- Reduce the minimum lot size in the R5 Large Lot Residential zone and R2 Low Density Residential zone from 10 Hectares to 2,000 m² and 700 m² respectively under GMC LEP 2009.

The information submitted with the Planning Proposal considers that the total proposal would contribute approximately one hundred and fifty (150) lots to the existing supply of residential land.

The information submitted contends that there are management options available to protect the EEC in this development scenario however the options are not clear in identifying the benefit they will extend to the EEC. These management options are discussed later in this report.

REPORT

This report will address the following key issues: vegetation, access, water supply and steep lands (Ridgelines) from a strategic planning perspective and provide comments sourced from external agencies and internal referrals with regard to these issues.

Strategic Planning Framework

A response to the Planning Proposal with regard to the following Strategic Planning Framework documents has been included in the attachment:

- *Constraint, Zoning and Minimum Lot Size Maps*
- *Goulburn Mulwaree Strategy 2020,*
- *Goulburn Mulwaree Community Strategic Plan 2030,*
- *South East and Tablelands Regional Strategy 2036*
- *117 Ministerial Planning Direction's*
- *State Environmental Planning Policies*

The site was initially identified as having a far better role as undeveloped land in terms of the visual impact on the landscape, the presence of Critically Endangered Ecological Community and significant infrastructure works to service any residential properties with reticulated water.

Consequently, the site was zoned E4 Environmental Living under GM LEP 2009, and the protected Yellow Box – Blakely's Red Gum Woodland – Endangered Ecological Community (EEC) was mapped across the site using the best available data at that time. The purpose of these provisions was to identify the land as having a role and function within the landscape other than residential uses. The minimum lot size applied to the land supports this view because the current minimum lot size of 10 Ha only permits a dwelling on each of the existing lots. The priority in protecting areas with these characteristics by the state government is supported by the s.117 Local Planning Direction 2.1 Environmental Protection Zones making it difficult to remove existing environmental zones.

The subject Planning Proposal has been assessed as being inconsistent with the Planning Principles contained in the State Environmental Planning Policy (Rural Lands) 2008. Based on the information submitted and the comments received the proposed amendment is not supported.

The subject site is however, located in the identified fringe area that will be included in an upcoming Urban and Fringe Residential Housing Strategy.

Key Issues and Discussion

The 'Mistful Park' Planning Proposal identifies three (3) key constraints over the subject site that the proponent maintains *'largely comprise the reasons for the subject site originally being identified as E4 Environmental Living Zone and a minimum lot size of 10 Hectares'* and the focus of their Planning Proposal's response: vegetation (EEC); water supply limitations, and steep lands (Ridgelines).

It is this assessment's view that the above three reasons also support the sites notation in the Development Control Plan (Figure 8.3 p255) as having limited development potential and warranted further comments from state government agencies. The subject Planning Proposal cited new information that attempted to mitigate the impact of residential development.

The new information is a revised Flora and Fauna Study prepared by Woodlands Environmental Management Pty Ltd. However on balance, this report supported by comments from the Office of Environment and Heritage and the Department of Planning & Environment, does not conclusively support the Planning Proposal proceeding. The new information also suggests design solutions (not provided) including road layout, lot size and configuration and building footprint controls could ensure a good planning outcome. At this stage staff are not satisfied that these suggestions provide suitable measures for the appropriate management of the Blakeley's Yellow Box Critically Endangered Ecological Community.

Ridgelines (Steep Lands)

The information submitted by the proponent cites that the ridgeline (steep land) should not be an absolute constraint. It also notes the correlation between the ridgeline mapped and the presence of the EEC on the site.



Figure 1: Residential development extending to the ridgeline.

Figure 1 shows the affect that existing development on another site in the Mary's Mount area extending to the ridgeline has in dominating the landscape.



Figure 2: Residential development is located below the ridgeline maintains a rural connection.

Figure 2 shows development on another site in the Mary's Mount area where the built form does not extend close to the ridgeline. Providing a suitable buffer distance from the ridgeline allows a suitable area to allow a critical mass of vegetation to remediate and rehabilitate the Yellow Box – Blakely's Red Gum Woodland – Endangered Ecological Community (EEC).

CONSULTATION

Comments from the following agencies and internal referrals were requested in response to the subject application.

- Roads and Maritime Services (RMS)
- Council's Development Engineer (Reticulated services and local traffic)
- Council's Vegetation Officer
- Office of Environment and Heritage
- Department of Planning and Environment

Roads and Maritime Services (RMS)

The RMS *does not support the application in its current form*. It considers that the planning proposal has not adequately considered traffic and safety implications of future development on the land.

The RMS considers that the Planning Proposal must:

- *Consider the likely lot yield*
- *Identify an appropriate road hierarchy and access strategy that minimises access to Crookwell Road. This must include consideration of the topography in the area and the ability to provide constructible links.*
- *Preserve land required for future road infrastructure upgrades, including internal links with the planning proposal to connect to the existing local road network.*
- *Identify necessary road upgrades on Crookwell Road (e.g. the intersection of Mary's Mount Road with Crookwell Road)*
- *Consider how the necessary road infrastructure will be funded and ensure there is an appropriate planning mechanism in place.*

In the absence of the above, the RMS is concerned development would compromise Crookwell Road, particularly development of lots with frontage to Crookwell Road with no alternate local road access.

Council's Development Engineer

The subject Planning Proposal was referred to Council's Development Engineer on 15 January 2018 with regard to reticulated services and impact on local traffic.

Reticulated water supply

With regard to reticulated services, Council's Development Engineer advised that the new Mary's Mount DSP was based on the current GMC LEP 2009 and has not included any contingency for rezoning which may result in an increased lot yield within this precinct. At a strategic level, a water and sewer modelling project to identify capacity issues with the Goulburn network was scheduled for completion in 2018 and will be complimentary to the Urban and Fringe Housing Strategy.

The current water service level would service Lot 3 however a site specific hydraulics study would be required to identify the nature and capacity of any upgrades including an additional reservoir. A hydraulics study would be an additional cost associated with lodging a follow up Planning Proposal that we do not wish the owner to have prepared unless there is greater certainty in a positive outcome.

Traffic

Council's Development Engineer generally concurs with the advice of the RMS and provided on 15 January 2018 with regard to the subject application the following qualifications:

- *Access to Crookwell Road:* Council's Development Engineer considers that this would be restricted to one access point from Crookwell Road and this would need to be located at the optimum position in terms of sight distances. The Engineer clarifies that the RMS would likely require an intersection design to its satisfaction (most likely with turn lanes in both directions)
- *'Preserve land required for future road infrastructure...':* This indicates that a lot (or more than one) would likely need to be set aside for road connection to Lot 4.

Council's Engineer notes that the current Mistful Park road system was not designed to receive additional traffic. Additional traffic through this road network would have negative amenity impacts.

- *'Identify necessary road upgrades...'*: The Development Engineer considers that a traffic study would be required which should include the Crookwell road Mary's Mount Road intersection where an upgrade has been designed and supported by the RMS.

This approved design includes turn lanes, however the study may reveal a different treatment, such as a roundabout is warranted. Work on the intersection may need to be deferred until this issue is resolved.

- *'Consider how the necessary road infrastructure...'*: The development Engineer concurs that an appropriate funding mechanism like a VPA or the like needs to be implementation detailing works/contributions required.
- Recommends that direct access for lots with frontage to Crookwell road be prohibited.

Council's Vegetation Officer

Council's Vegetation Officer's comments were in general agreement with the qualified ecologist who prepared the applicant's submission, that generally the current condition of the Yellow Box – Blakely's Red Gum Woodland (EEC) was highly disturbed and, under the current management regime of grazing, cultivation and private recreation use would likely become extinct in the foreseeable future. However, their advice is also consistent with the ecologists that the site could be remediated or rehabilitated under the following recommendations:

- Any future subdivision layout be designed to avoid the clearance and disturbance of remnant EEC, and
- Remnant patches of EEC should be included in as few lots as possible to facilitate future rehabilitation and conservation management, and
- Within any lot supporting remnant vegetation, a building envelope, Asset Protection zone and associated infrastructure should be located to avoid the clearance or disturbance of EEC, and
- A Vegetation Management Plan be prepared for each lot containing EEC to guide rehabilitation and conservation and to protect from potential direct, indirect and cumulative impacts during construction, establishment and occupational phases of development, and
- Generally, any subdivision be conditioned for inclusion of an 88B Instrument over each lot containing EEC to protect the EEC in accordance with the above Vegetation Management Plan (or a PVP Property Vegetation Plan be registered on the title - Officer).

This advice suggests that the presence of EEC does not prevent development of the site.

Office of Environment and Heritage (OEH)

Vegetation

The OEH advised on 6 February 2018 that they object to the proposed zonings in its current form.

Their position is based on the potential impacts on the biodiversity and aboriginal cultural heritage values of the site and recommends the following actions for Council and the proponent to complete, prior to lodging a gateway application:

1. *A full site assessment using the Biodiversity Assessment Method (BAM). This will allow Council to determine whether the clearing of Box Gum Woodland would result in a 'serious and irreversible impact' (SAIL).*

An SAI would mean that impacts could not be approved by Council and may impact on the economic viability of the development of the site.

2. *The data collected using the BAM, should be used to design a more appropriate zoning layout that avoids impacts on the best quality area of Box Gum Woodland.*
3. *Council or the proponent could also consider the biodiversity certification as a way of providing greater certainty to any future development of parts of the site.*
4. *At a minimum, if this planning proposal is submitted to DPE, it should identify this site as an urban release area which would require a site specific development control plan to be developed.*

The OEH recommends that any proposed zoning should protect the Box gum woodland and divert development to the fringes of the remnant vegetation as shown in **Figure 6** in the Attachment.

Aboriginal Cultural Heritage

The OEH also objects to the Planning Proposal based on the potential for impacts to Aboriginal Cultural Heritage. In this regard their comments are *A number of Aboriginal objects have been found within 1 km of the site. It also appears that the site might be identified as a place of Aboriginal significance on Figure 3-2 of the Goulburn Mulwaree DCP 2009.* The OEH conclude that if this is the case, an Aboriginal Cultural Heritage Assessment should be completed prior to submitting the planning proposal to identify any Aboriginal cultural heritage values and if these are present, apply an appropriate zoning that would allow for impacts to be avoided.

In support of their comments, the OEH provided additional information to clarify their position however in summary a plan identifying how a rezoning could be considered was also provided.

Department of Planning and Environment (DPE)

Comments from the Department of Planning and Environment make reference to the South East and Tablelands Regional Plan 2036 that an 'avoid, minimise and offset' hierarchy will be applied to areas for new or intensive development. In these circumstances, the Department's comments infer that a Biodiversity Assessment Methodology (BAM) may be applied in these circumstances.

The DPE notes the relevant Local Planning Directions particularly 2.1 Environment Protection Zones. In relation to Direction 2.1 Environmental Protection Zones, the DPE understands that the subject site supports remnant Yellow Box – Blakeley's Red Gum grassy woodland which is listed as a Critically Endangered Ecological Community (CEEC). The flora and fauna study that was undertaken by the applicant in support of the planning proposal states that the subject land is suitable for rezoning to R2 Low Density Residential and R5 Large Lot Residential with proposed minimum lot sizes of 700sqm and 2,000sqm respectively. Further this study recommends that the EEC could be managed by its retention in as few lots as possible and plans of management being required for these lots.

The DPE considers that it is unclear how the proposal, and particularly an R2 Zone and 700sqm minimum lot size will better protect identified EECs than the current E4 Zone and 10ha minimum lot size.

The Department advises that if the proposal was sent to the Department for a Gateway Determination, the following studies would be required to be completed prior to referral to the relevant agency (OEH) for comments:

1. Additional biodiversity survey work to be undertaken to identify and validate the location and condition of the EEC on the subject site in accordance with OEH validation criteria.
2. Where land containing EECs is proposed to be zoned for development, the preparation of a biodiversity offset strategy to be prepared by an accredited biodiversity assessor in consultation with the OEH.

The presence of EEC must therefore be clearly located and delineated prior to consideration of any subdivision application. Careful consideration must also therefore be given to the applicable instrument to regenerate or rehabilitate the site because there will be management issues in either of these mechanisms. The referral comments close off with a recommendation to discuss the preparation of a Biodiversity Offset Strategy with OEH for the broader area rather than a site by site basis.

There is currently no Terrestrial Biodiversity mapping on the subject site.

BUDGET IMPLICATIONS

Nil

RECOMMENDATIONS

The subject site is currently zoned (LZN) part E4 Environmental Living and Part R2 Low Density Residential with corresponding Minimum Lot Sizes (LSZ) of AB1 (10 Hectares) and part Q (700 square metres) under Goulburn Mulwaree Local Environmental Plan (GM LEP) 2009. The subject Planning Proposal sought to rezone the site to zone R5 Large Lot Residential and zone R2 Low Density Residential and apply Minimum Lot Sizes of 2,000 square metres (V) and 700 square metres (Q) under Goulburn Mulwaree LEP 2009.

Three (3) key characteristics of the site are identified in the Mary's Mount Precinct of Council's Development Control Plan that are required to be addressed for support to be given to any proposed amendment: Vegetation, Steep Lands (Ridgelines) and servicing by reticulated water.

Based on the Information submitted with the Planning Proposal, the Office of Environment and Heritage and Department of Planning and Environment object to the Planning Proposal because it does not clearly demonstrated how the development of the site will benefit the remaining Yellow Box – Blakely's Red Gum Woodland – Endangered Ecological Community (EEC). It is considered that there is significant revision required of the proposed amendment for it to be favourably considered by the Office of Environment and Heritage.

The servicing of the site by reticulated water and traffic management do not prevent the proposed amendment from proceeding however additional work is required in these areas for the proposal to be supported by Council's Development Engineers.

The issue of Steep Lands can be addressed by the provision of suitable buffer distance that will limit the protrusion of the built form into the skyline of the natural landscape. A clearer site management plan is required in this regard.

Although these matters alone can be addressed there remain broader considerations around cumulative development impacts, land supply and strategic management of land with protected vegetation that should be addressed prior to Council commencing with a rezoning proposal on the subject land. Given there is sufficient supply of land for housing in Goulburn for the foreseeable future there is no land use planning imperative to commence this rezoning prior to the Urban and Fringe Housing Strategy being prepared and adopted.

Consequently it is recommended that the subject Planning Proposal be deferred until completion of Council's Urban and Fringe Housing Strategy. This would allow the broader strategic and policy matters surrounding urban expansion in Goulburn to be considered holistically and inform the best decision about the future use of the subject land. The planning proposal would be added to a list of properties that Council has previously identified for investigation for urban development that are to be considered in the Urban and Fringe Housing Strategy.

Attachment 1

Planning Proposal: Mistful Park, Goulburn – Separate Enclosure

Figure 1 - Area Subject to Planning Proposal shown by heavy blue line (and current subdivision applications shown dashed).

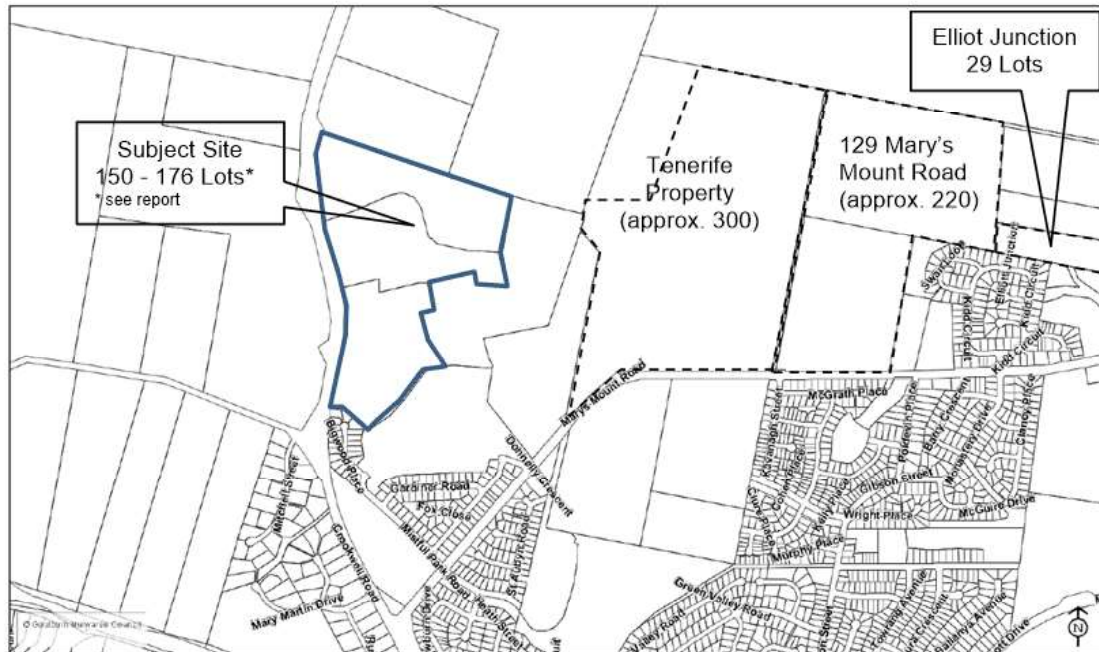
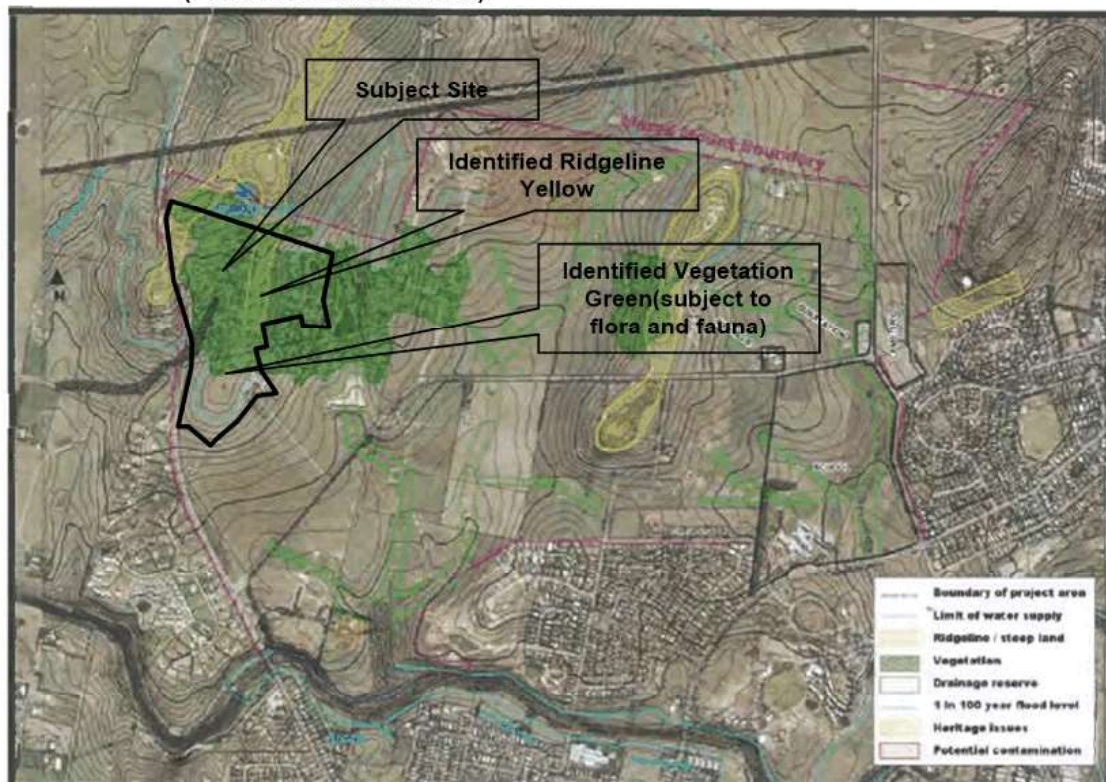


Figure 2 – Current Goulburn Mulwaree DCP 2009 Notation for the site (Constraints map) (Parsons Brinkerhoff 2006)



Attachment 1

Figure 2 – Goulburn Mulwaree LEP 2009 Current Zoning

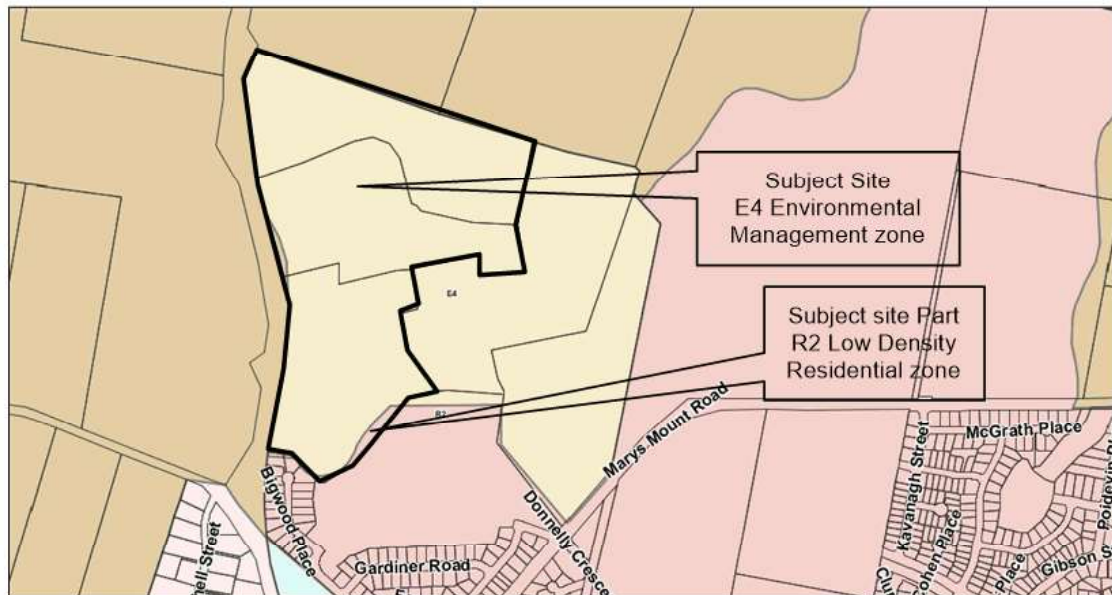
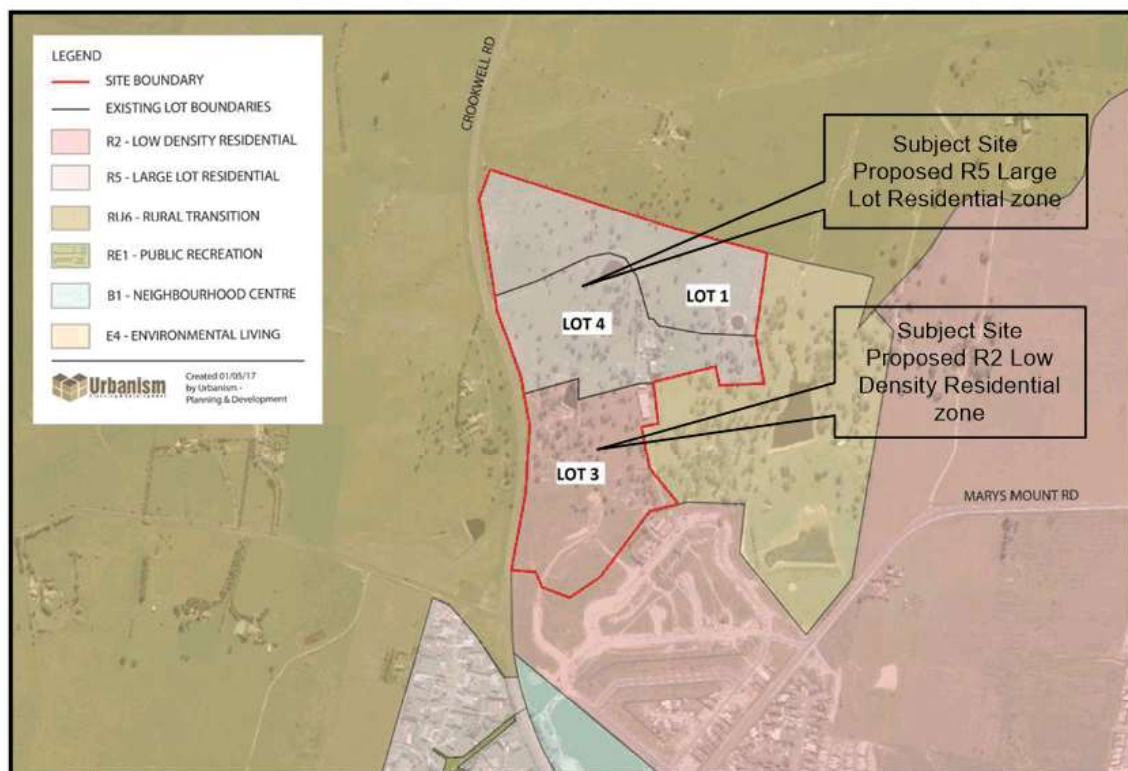


Figure 3 – Goulburn Mulwaree LEP 2009 Proposed Zoning (Extract from Planning Proposal)



Attachment 1

Figure 4 – Goulburn Mulwaree LEP 2009 Current Minimum Lot Size

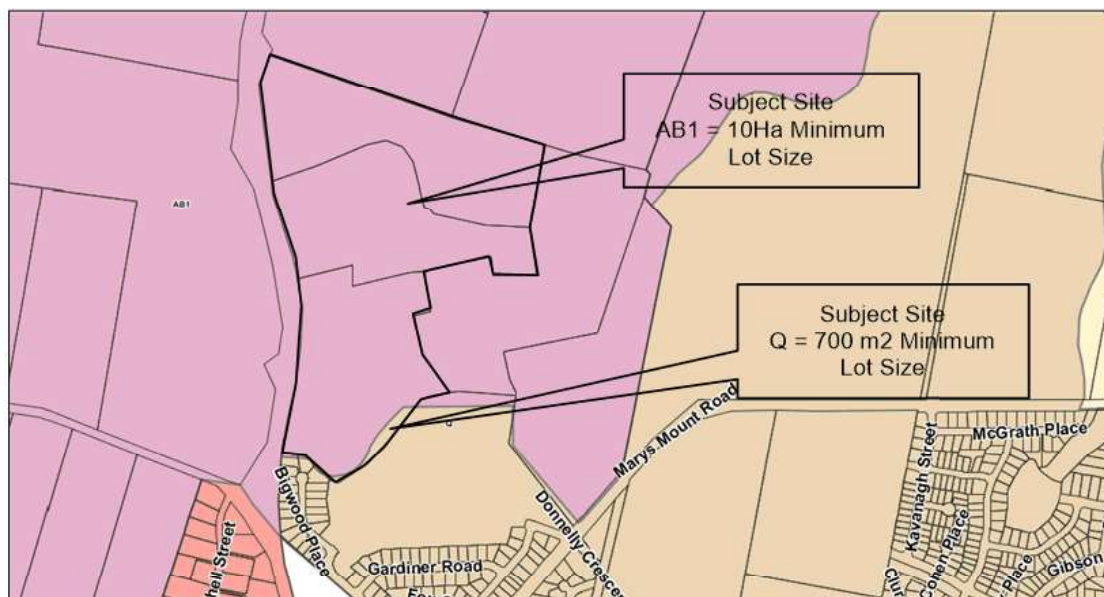
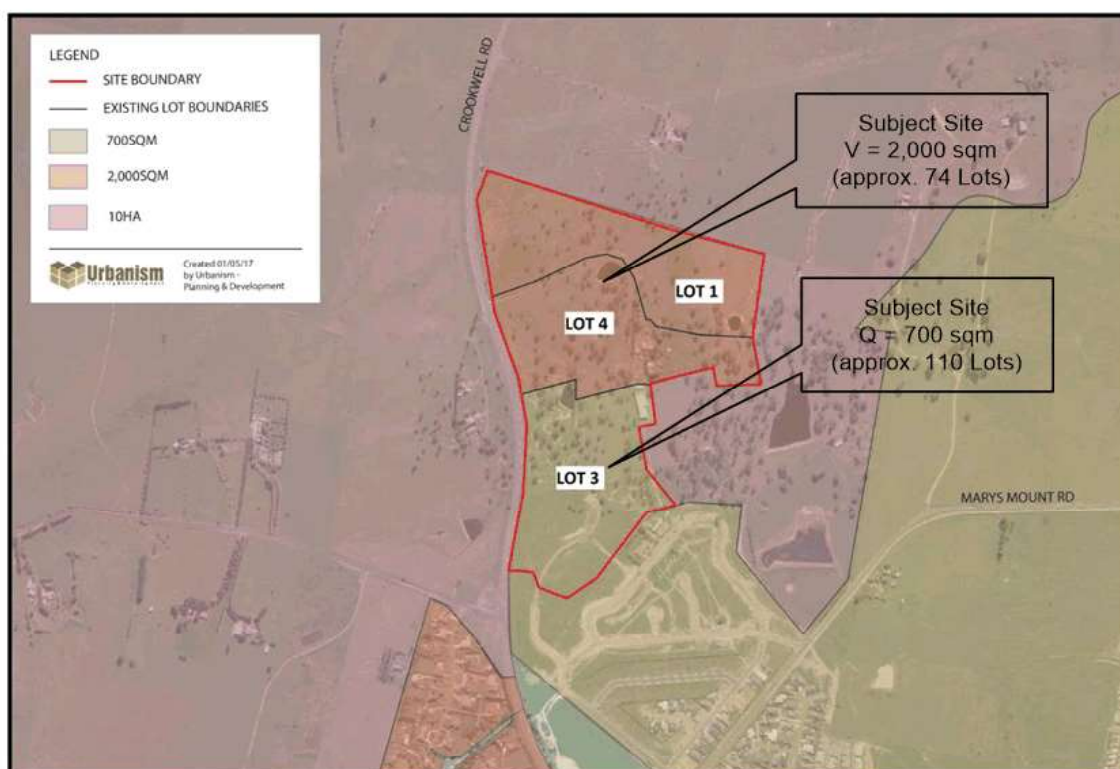


Figure 5 Goulburn Mulwaree LEP 2009 Proposed Minimum Lot Size (Extract from Planning Proposal)



In the following pages, the proposal is assessed against the strategic planning framework.

Attachment 1**Local*****Goulburn Mulwaree Strategy 2020***

On balance, the proposal is inconsistent with the following approaches to accommodating sustainable growth (page 7):

- 'Conserving the landscape character and scenic quality of Goulburn Mulwaree by sensitively accommodating (or avoiding) development on ridgelines',
- 'Facilitating urban development in the areas that allow urban infrastructure services to be provided in a cost-efficient manner'
- 'Locating urban development away from areas affected by hazards, including risk of flood, fire, erosion, slip or subsidence'.

This proposal is consistent with the following approaches to accommodating sustainable growth:

- 'Accommodating rural residential living opportunities on less productive rural lands and in locations which would not detract from the cost-effective provision of services and utilities',

Goulburn Mulwaree Community Strategic Plan 2030**Our Environment****Strategy EN1**

Protect and enhance existing the natural environment, including fauna and flora native to the region.

The planning proposal is inconsistent with this goal.

Strategy EN4

Maintain a balance between growth, development and environmental protection through sensible planning.

The planning proposal is inconsistent with this goal.

Our Infrastructure**Strategy IN5**

Ensure high quality water supply options for the towns and region.

The subject planning proposal has capacity in this regard.

Our Civic Leadership**Strategy CL2**

Encourage and facilitate open and respectful communication between the community, the private sector, council and other government agencies.

The subject planning proposal is consistent with this goal.

Regional Plans***South East and Tablelands Regional Plan (SETRP) 2036***

In view of the uncertainty regarding the capacity of water and sewer infrastructure and the ability of the existing Yellow Box – Blakely's Red Gum grassy woodland (Endangered Ecological Community – EEC) to survive under the current property management practices or regenerate under proposed land uses (Residential) support for the Planning Proposal to be consistent with the Directions and Actions of the South East and Tablelands Regional Plan 2036 is not forthcoming.

The proponent has made an effort to consider the proximity of the site to the ridgeline at the edge of the visual catchment and the impact of any development on the sightlines from the urban area however these are not provided with sufficient clarity to ensure the proposed measures will mitigate the impact. This is particularly where the opportunity to integrate the protection of the identified EEC with the protection of sightlines and the visual impact has not been taken.

There is however a current program of actions and consultations being commenced to prepare an Urban and Fringe Housing Strategy specifically to determine if the community's approach to land development in these locations.

Attachment 1**State****Section 117 Ministerial Directions**

When preparing LEP amendments, Councils are required to consider the proposal against Section 117 Ministerial Planning Directions. The following directions are relevant to the proposal.

1.5 Rural Lands

The responses provided in the submission to the Rural Planning Principles all convey that the subject site was endorsed by under the Goulburn Mulwaree Strategy 2020 and the Development Control Plan 2009. This statement is not accurate in that page 22 of the Goulburn Mulwaree Strategy 2020 identifies those areas for R2 Low Density Residential zoning and only part of the subject site is identified. There was therefore no certainty given in the Goulburn Mulwaree Strategy 2020 that the subject land would be rezoned for residential purposes.

2.1 Environmental Protection Zones

The proposed amendment states that the site is suitable for the reduced minimum lot size by managing the Endangered Ecological community (EEC) on a small number of individual lots with plans of management also required for these lots. It is not made clear how reducing the minimum lot size will improve the Critically EEC's ability to regenerate or rehabilitate. Consistency with the Rural Planning Principles under 1.5(5) is inconclusive. It is also considered that the erosion of EEC integrity and increasing the urban density on the site will also increase the pressure on maintenance of the visual amenity and sightlines from the existing urban area and connectivity with the surrounding urban lands.

3.1 Residential Zones

The planning proposal is considered inconsistent with this direction. 4(a) It is arguable whether the Planning Proposal will broaden the type and location of dwellings on the market. 4(b) There is also insufficient clarity in whether the subject site can be adequately serviced by the existing water and sewer infrastructure. This is somewhat addressed by responses received from referrals identifying that there are current studies being undertaken to ascertain the capacity of existing water and sewer infrastructure. 4(c) The proposed amendment does not reduce the consumption of land for housing or associated development on the urban fringe.

The inconsistency is not considered minor and warrants deferral of the Planning Proposal until completion of both the Asset Study and Urban and Fringe Housing Strategy.

3.4 Integrating Land Use and Transport

It is considered that the subject Planning Proposal is not consistent with this Ministerial Planning Direction in that the subject land is at the urban fringe, is not currently serviced by public transport and there is no identified solution to this issue (particularly given there are currently other subdivision applications being considered that may provide a critical mass for public transport routes). It is considered that the subject Planning Proposal is currently inconsistent with this Ministerial Planning Direction.

4.4 Planning for Bushfire Protection

The proposed amendment is not bushfire affected under the current Bushfire Threat maps however Draft Bushfire Threat maps include grasslands as bushfire prone lands. This is a new category introduced following the Canberra bushfires. The subject site will now be identified as bushfire affected under the newly mapped categories.

5.1 Implementation of Regional Strategies

The proposed amendment was submitted under the *Sydney-Canberra Corridor Regional Strategy 2006-2031*. This Strategy has been superseded by the South and East Tablelands Regional Plan 2036. It is considered that the new set of Goals, Directions and Actions do not support the proposed amendment.

5.2 Sydney Drinking Water Catchment

No pre-consideration comments have been sought from Water NSW on the basis that the provision of reticulated water and sewer would be a prerequisite to any support for residential development within the drinking water catchment to keep the risk parameter to low. Future consideration of the proposal would be requesting these comments for consideration.

Attachment 1***State Environmental Planning Policies***SEPP 55 – Remediation of Land

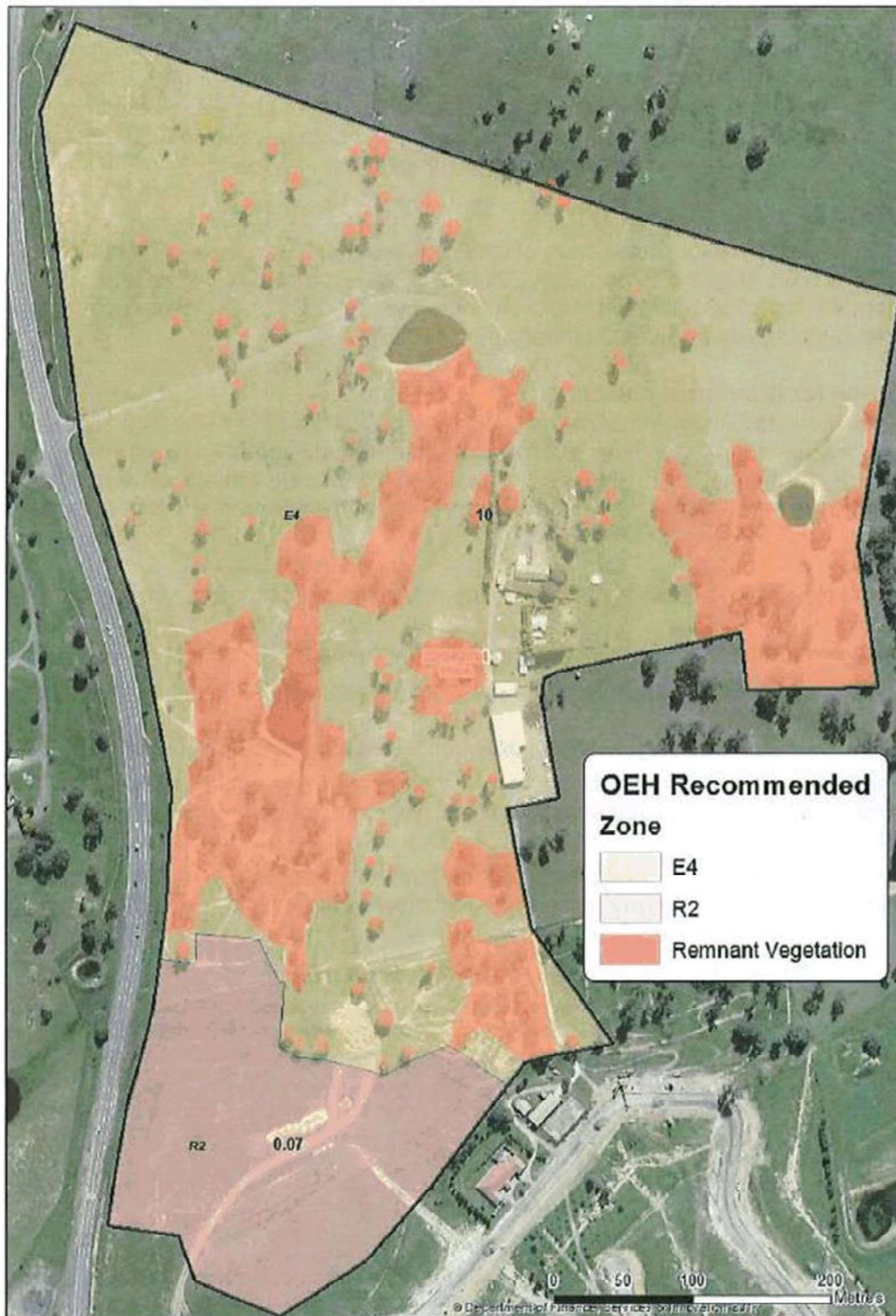
When rezoning land, Council needs to be satisfied that the land is suitable for the use proposed or can be remediated. The proponent advises that the land and adjoining land is not known to have been used for potentially contaminating uses however there has been some agricultural use of the site previously. A site inspection by the proponent revealed no obvious evidence to indicate site contamination.

SEPP (Sydney Drinking Water Catchment) 2011

The SEPP requires that development consent cannot be granted unless there is a neutral or beneficial effect on water quality. Notwithstanding, further consultation with Water NSW will occur should the planning proposal proceed. Any future development applications for dwellings will be subject to the SEPP.

Attachment 1

Figure 6 Office of Environment and Heritage recommended zoning configuration.



12.2 PLANNING PROPOSAL TO REZONE 'MISTFUL PARK' AND REDUCE THE MINIMUM LOT SIZE

Cr Andrew Banfield & Cr Carol James declared an interest in this item and took no part in the discussion or voting on the matter.

Cr Andrew Banfield & Cr Carol James left the meeting at 6.19pm.

RESOLUTION 2018/62

Moved: Cr Peter Walker

Seconded: Cr Alfie Walker

RECOMMENDATION

That

- 1. The report from the Senior Strategic Planner regarding the Planning Proposal to rezone Mistful Park (Lot 1 & 4 DP 1223269 and Lot 214 DP 1231260) be received.**
- 2. The Planning Proposal to rezone the 'Mistful Park' property is supported in principle but deferred at this time pending the outcome of the Urban & Fringe Housing Strategy.**
- 3. The Planning Proposal to rezone the 'Mistful Park' property be included on a list of properties to be considered in the Urban & Fringe Housing Strategy and the applicant be encourage to investigate the concerns raised by the State Government Departments.**

CARRIED

Cr Andrew Banfield & Cr Carol James returned to the meeting at 6.24pm

12.3 DEDICATION OF PRIVATE LANE NO.88 AS PUBLIC ROAD, ROAD CLOSURE AND TRANSFER OF OWNERSHIP**RESOLUTION 2018/63**

Moved: Cr Andrew Banfield

Seconded: Cr Leah Ferrara

That:

- 1. The report by the Manager Land & Property Services on dedication of Private Lane No.88 as public road, road closure and transfer of ownership be received.**
- 2. An Agreement be entered into between Council and the property owner / applicant to include reference to all survey and legal costs associated with declaration of Private Lane No.88 as public road and the subsequent closure of this road and transfer of its ownership be met by the owner / applicant.**
- 3. A Notice of Intention to Dedicate Land as Public Road be advertised**
- 4. The General Manager be authorised to sign all documentation associated with this Agreement, the Transfer and any other documentation necessary to finalise this matter.**

CARRIED

15.2 PLANNING PROPOSAL TO REZONE 'MISTFUL PARK' TO RESIDENTIAL**Author:** Kate Wooll, Business Manager Strategic Planning**Authoriser:** Warwick Bennett, General Manager

Attachments:

1. REZ_0001_1718_Council Meeting Agenda 6 March 2018 (separately enclosed) 
2. Planning Proposal - Mistful Park E4 Living Land (Aug 2020) (separately enclosed) 

Link to Community Strategic Plan:	Strategy EN4 'Maintain a balance between growth, development and environmental protection through sensible planning'
Cost to Council:	The Planning Proposal is proponent funded, however, it is noted that Local Infrastructure Contributions and Developer Servicing Plans for Water, Sewer and Drainage require updating to include the subject area.
Use of Reserve Funds:	Nil

RECOMMENDATION

That

1. The report from the Business Manager Strategic Planning regarding the Planning Proposal to rezone Mistful Park (Lot 1 & 4 DP 1223269 and Lot 214 DP 1231260) be received.
2. Council resolve to prepare a Planning Proposal to amend *Goulburn Mulwaree Local Environmental Plan (GMLEP) 2009* which will:
 - (a) Rezone land being Lot 1 & 4 DP 1223269 and Lot 214 DP 1231260 from E4 Environmental Living to R2 Low Density Residential under GM LEP 2009, and
 - (b) Amend the minimum lot size map on the subject lands to 700m².
3. When the Planning Proposal is prepared, a request for a Gateway Determination be forwarded to the Department of Planning, Industry and Environment.
4. The proposed R2 Low Density Residential Zoning and 700m² minimum allotment size are to be further assessed following the outcome of site specific investigations/studies identified in this report following a Gateway Determination, which in this case, may significantly impact development yields. The Planning Proposal is to be updated prior to public exhibition following the outcome of various site specific assessments, in particular the Biodiversity Assessment Method and Biodiversity Assessment Report.
5. The Department of Planning, Industry and Environment be requested to issue delegations so that Council is the Relevant Planning Authority to process the subject Planning Proposal.
6. The Council fees for the processing of this planning proposal be applied at the rates applicable when the planning proposal was originally submitted in the 17/18 financial year.

Section 375A of the *Local Government Act 1993* requires General Managers to record which Councillors vote for and against each planning decision of the Council, and to make this information publicly available.

BACKGROUND

The subject site was originally identified in a study prepared by Parsons Brinkerhoff Pty Ltd that underpinned the *Goulburn Mulwaree Strategy 2020* (2006). The study identified the area around Marys Mount, including part of the subject site as a potential location for future expansion of the Goulburn City urban area.

Importantly the study also identified constraints to consider when rezoning the site for higher densities including: ridgelines; the presence of protected flora community (Yellow Box – Blakely's Red Gum Woodland – Threatened Ecological Community); and infrastructure servicing. These constraints underpinned the zoning of the land to E4 Environmental Living with a minimum lot size of 10ha under *Goulburn Mulwaree Local Environmental Plan* (GM LEP) 2009.

On 6 March 2018 Council considered a report on a planning proposal application to rezone a section of Mistful Park currently zoned part E4 Environmental Living to part R2 Residential and part R5 Residential (**Attachment 1**). The planning proposal also sought to reduce the minimum allotment size of the section of the site currently zoned R5 residential and R2 Low Density Residential zone from 10 Hectares to 2,000 m² and 700 m² respectively under GMC LEP 2009.

The report identified a number of site constraints including biodiversity, access, infrastructure servicing (water, sewer and drainage), and slope.

The planning proposal as presented in 2018 aimed to make changes to Goulburn Mulwaree LEP 2009 to allow the creation of approximately 150 additional lots adjacent to the existing Mistful Park subdivision.

Only part of the land was strategically identified for residential expansion. Therefore, Council deferred the Planning Proposal pending the completion of the Urban and Fringe Housing Strategy. The intention being that areas identified for residential expansion would be holistically considered in the *Urban and Fringe Housing Strategy*. Council resolved on 6 March 2018 that:

1. *The report from the Senior Strategic Planner regarding the Planning Proposal to rezone Mistful Park (Lot 1 & 4 DP 1223269 and Lot 214 DP 1231260) be received.*
2. *The Planning Proposal to rezone the 'Mistful Park' property is supported in principle but deferred at this time pending the outcome of the Urban & Fringe Housing Strategy.*
3. *The Planning Proposal to rezone the 'Mistful Park' property be included on a list of properties to be considered in the Urban & Fringe Housing Strategy and the applicant be encourage to investigate the concerns raised by the State Government Departments.*

Council has subsequently adopted the *Urban and Fringe Housing Strategy* on 21 July 2020. The Strategy identifies the subject site as an opportunity area for urban residential development but identifies site constraints such as biodiversity.

Site and Proposal

The original Planning Proposal was lodged by Urbanism Pty Ltd on 25 September 2017, and following adoption of the *Urban and Fringe Housing Strategy* a revised Planning Proposal was resubmitted by Urbanism on 18 August 2020 (**Attachment 2**).

The subject site is irregular in shape and has a total area of approximately 32 hectares (ha) comprising:

- Lot 1 DP 1223269 (11 ha),
- Lot 4 DP 1223269 (10 ha), and
- Lot 214 DP 1231260 (11 ha) as detailed in *Figure 1* below.

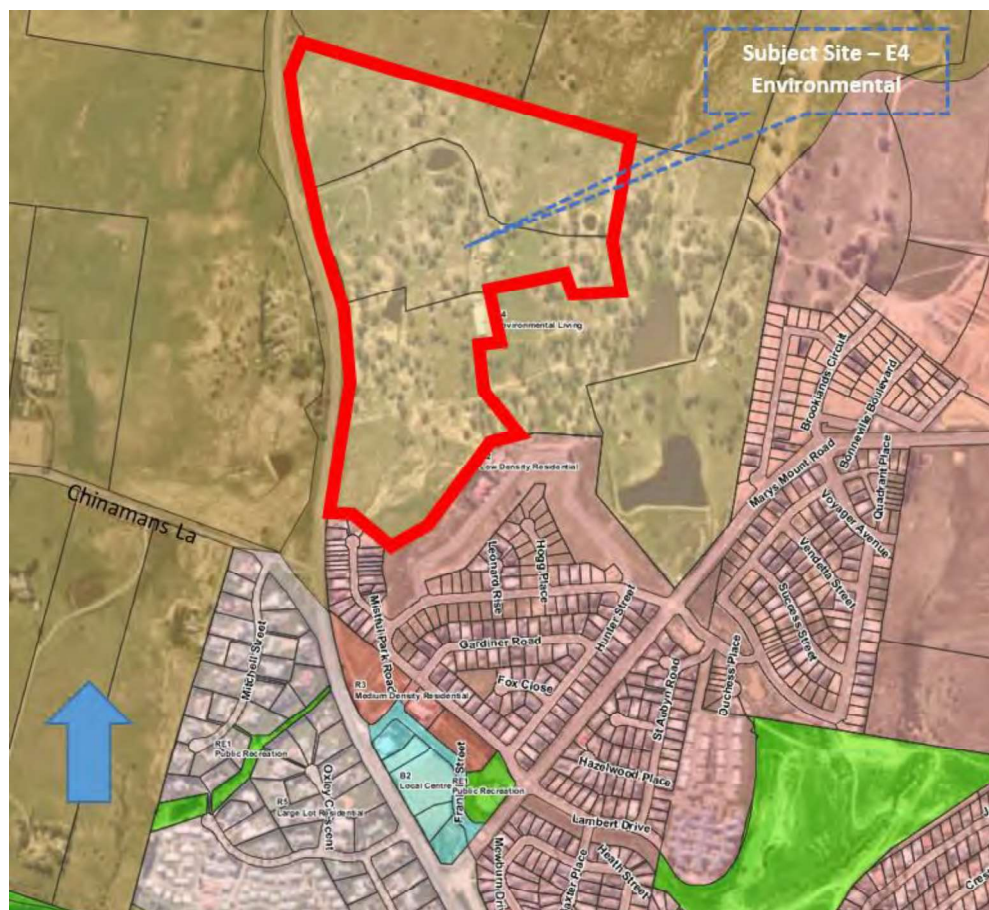


Figure 1 – Subject Site

The subject site adjoins an approved subdivision at 'Mistful Park' (to the south) on Crookwell Road, adjacent to Chinamans Lane and Bigwood Place. The site is currently zoned E4 Environmental Living and has a minimum lot size of 10ha under *GMC LEP 2009*. The map included in the attachment identifies the proposed amendments.

The current Planning Proposal seeks to:

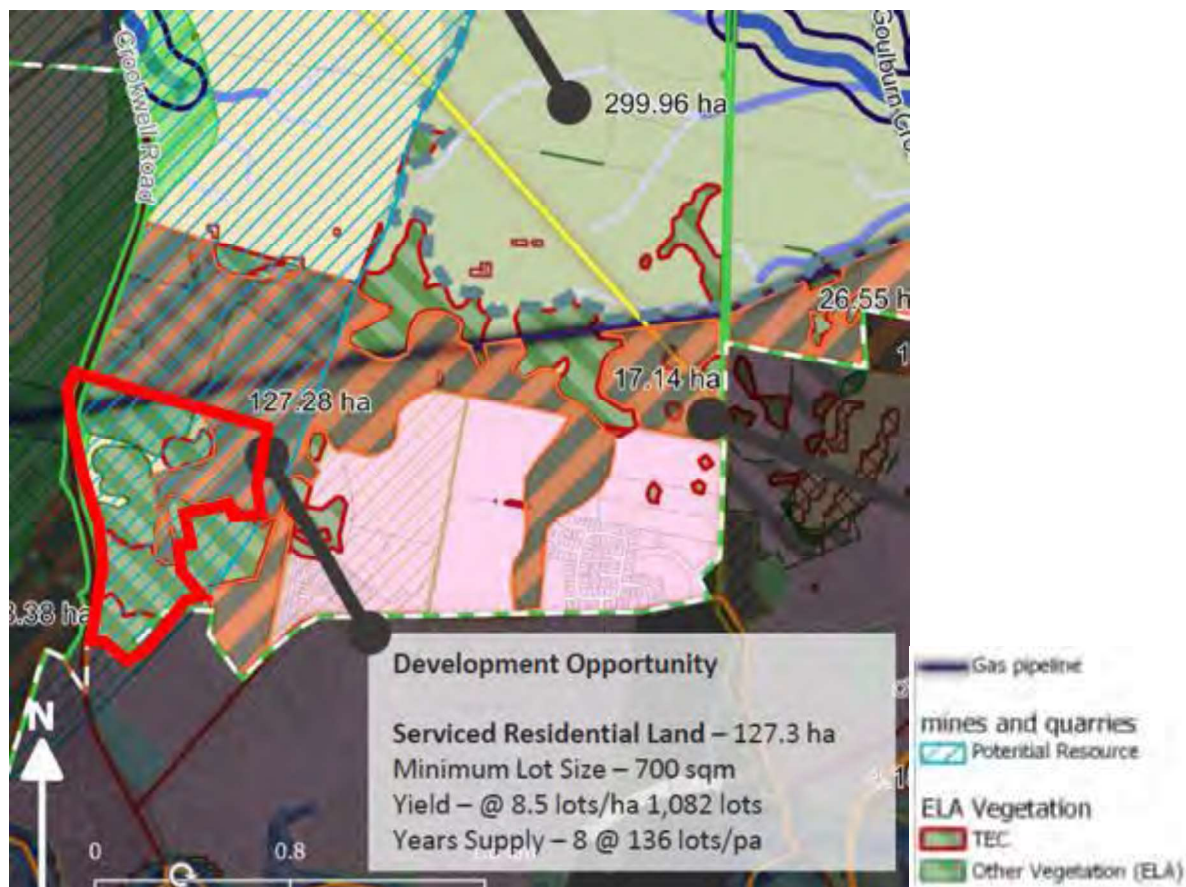
- Rezone Lots 1, 4 and 214 from E4 Environmental Living zone to R2 Low Density Residential zone; and
- Reduce the minimum allotment size from 10ha to 700m² under *GM LEP 2009*.

Residential development yields from the Planning Proposal have not been provided as it is considered that the yields cannot be determined until a Biodiversity Assessment Method and Biodiversity Assessment Report are prepared in accordance with the *NSW Biodiversity Conservation Act 2016* (to be discussed further in this report).

REPORT

Urban and Fringe Housing Strategy

The site is located within Precinct 5 – Middle Arm West, within the Strategy. The precinct is generally identified as being constrained by biodiversity (Yellow Box – Blakely's Red Gum Woodland Threatened Ecological Community (TEC)), with the subject site specifically identified as having biodiversity constraints except within the north eastern corner. The subject site is also identified as being constrained by the high pressure gas pipeline within an area of extractive resource potential (limestone). The following is an extract of the opportunities and constraints map from the Strategy for this precinct.



Broader constraints identified for this precinct included:

- Not currently serviced by water and sewer infrastructure.
- Water infrastructure is available with areas constrained due to water pressure.
- A designated service reservoir and delivery main would be required to service this precinct.
- Sewer is available with likely requirement for a localised pumping station and some enlargement of downstream collection network is likely to be necessary (subject to network modelling).
- The area is constrained by the gas pipeline which significantly impacts development immediately adjacent.
- A high voltage transmission line also runs north south through the area.
- Area to the North West is zoned E3 Environmental Management and drains to Sooley Dam

The Strategy recommendations for this precinct included the rezoning of land immediately adjoining the urban fringe in the short to medium term to urban residential, to include urban release area provisions and have a detailed master plan and comprehensive Aboriginal cultural heritage assessment.

The landowner has made submissions to the two exhibitions of the Strategy. These submissions were particularly focused on the identification of biodiversity land on the subject site in relation to the site specific Flora and Fauna Assessment prepared for the landowner in support of the original planning proposal. The Consultation Report comments on the submissions recognised the opportunity for proponent led planning proposals and identified that this site would require a Biodiversity Assessment Report to be prepared to determine the impact of development on biodiversity.

On 29 March 2019, Council also received specific advice from the former Office of Environment and Heritage in relation to the inclusion of a number of landowner nominated sites in the Strategy. This submission did not address the Mistful Park site (known as Site 26). Verbal advice from the Office of Environment and Heritage was that it referred back to the site specific advice provided to Council in preliminary consultation in relation to the Planning Proposal dated 6 February 2018 for this site. This advice was:

1. *A full site assessment using the Biodiversity Assessment Method (BAM). This will allow Council to determine whether the clearing of Box Gum Woodland would result in a 'serious and irreversible impact' (SAIL).*

An SAIL would mean that impacts could not be approved by Council and may impact on the economic viability of the development of the site.

2. *The data collected using the BAM, should be used to design a more appropriate zoning layout that avoids impacts on the best quality area of Box Gum Woodland.*
3. *Council or the proponent could also consider the biodiversity certification as a way of providing greater certainty to any future development of parts of the site.*
4. *At a minimum, if this planning proposal is submitted to DPE, it should identify this site as an urban release area which would require a site specific development control plan to be developed.*

Key Issues and Discussion

Biodiversity

Biodiversity is the most significant issue in relation to the future planning for this site. As pointed out by the Office of Environment and Heritage in February 2018, the site capability and yields will largely be determined by the requirement to undertake a Biodiversity Assessment Method (BAM) investigation and Biodiversity Assessment Report (BDAR).

It is noted that the Planning Proposal as resubmitted is seeking a R2 Low Density Residential zone with 700m² minimum allotment size across the whole site. The initial Flora and Fauna Report does identify the presence of White Box - Yellow Box – Blakely's Red Gum Woodland Threatened Ecological Community (TEC) (refer Figure 2).



Source: SIX Maps

A – Yellow Box - Blakely's Red Gum grassy woodland
B – Highly modified and disturbed vegetation

Figure 2 - Biodiversity

The report's author and Council's Vegetation Officer agreed that the Threatened Ecological Community was highly disturbed, furthermore, under the current management regime of grazing, cultivation and private recreation use it would likely become extinct in the foreseeable future. However, the site could be remediated or rehabilitated under the following recommendations:

- Any future subdivision layout be designed to avoid the clearance and disturbance of remnant EEC, and
- Remnant patches of EEC should be included in as few lots as possible to facilitate future rehabilitation and conservation management, and
- Within any lot supporting remnant vegetation, a building envelope, Asset Protection zone and associated infrastructure should be located to avoid the clearance or disturbance of EEC, and
- A Vegetation Management Plan be prepared for each lot containing EEC to guide rehabilitation and conservation and to protect from potential direct, indirect and cumulative impacts during construction, establishment and occupational phases of development, and
- Generally, any subdivision be conditioned for inclusion of an 88B Instrument over each lot containing EEC to protect the EEC in accordance with the above Vegetation Management Plan (or a PVP Property Vegetation Plan be registered on the title - Officer).

This advice suggests that the presence of a Threatened Ecological Community (TEC) does not prevent development of the site. However, the intention of the *NSW Biodiversity Conservation Act, 2016* is to legislate the principles of avoidance, mitigation and offsetting (in priority order) in relation to the development of biodiversity significant areas. The planning proposal is the main opportunity to identify areas of biodiversity significance so that these areas can be avoided through zoning, minimum allotment size, etc.

The planning proposal as proposed does not address avoidance, based on the identification of the whole site as being of residential development potential. Notwithstanding this, it is considered that the most appropriate approach for a Biodiversity Assessment Method (BAM) and Biodiversity Assessment Report (BDAR) assessment would be to undertake a whole of site assessment in accordance with the new assessment method to determine capability. It is considered that this is an essential first step before other steps in the assessment process can be undertaken for other matters.

The proponent has been aware of the advice concerning the need for a Biodiversity Assessment Method (BAM) and Biodiversity Assessment Report (BDAR) since the previous report to Council in 2018 and from further constraint identification in the *Urban and Fringe Housing Strategy*. The preferred approach being the identification of environmental capacity, sensitive areas etc prior to establishing zone boundaries and minimum allotment sizes, as expressed in all feedback provided to date by State agencies and Council.

The Planning Proposal as submitted does state (p.8) that a Biodiversity Assessment Method (BAM) investigation is to be undertaken following a Gateway Determination. It is noted that the BAM could be undertaken prior to the Gateway Determination, however, the proponent has indicated a preference for specific input from the Department of Planning, Industry and Environment (Environment) prior to undertaking the Biodiversity Assessment Method process.

The proponent has undertaken a Flora and Fauna Assessment but this was prepared under the former legislation. Given that the proponent had already undertaken a report, the request to support the Planning Proposal proceeding is supported on the understanding that it will be informed and refined based on the outcome of a Biodiversity Assessment Method (BAM) and Biodiversity Assessment Report (BDAR).

High Pressure Gas Pipeline

The High Pressure Gas Pipeline (Licences 15 and 16) is located to the north of the subject area (Figure 3) and a significant portion of the site is within the 675m buffer area, which will necessitate a safety management study to be prepared with certain land uses to be excluded from this area including: child care centres, detention facilities, education facilities, function centres, health care services, hospitals, tourist and visitor accommodation, places of public worship, residential care facilities, aged care facilities, service stations, retail premises, supermarkets and theatres.

Low density residential as proposed may be located within the 675m buffer but a safety management study will still be required. This matter is flagged in the resubmitted Planning Proposal (p.21), however, the safety management study should ideally be prepared prior to the zone boundaries and minimum allotment size being finalised and will need to be prepared as a part of the master planning and DCP preparation for the site. The risk assessment is largely based around density and yields, which again needs to be determined following the biodiversity assessments.

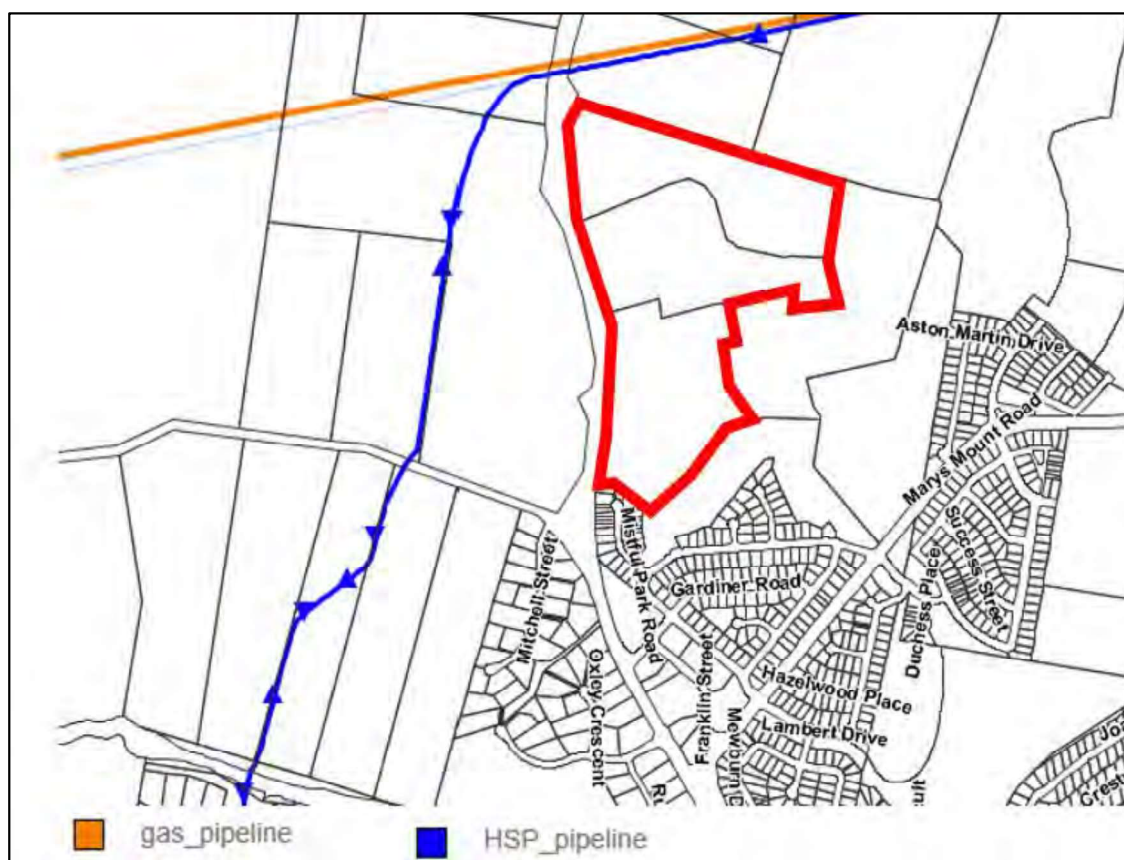


Figure 3 – Gas Pipeline and Highland Source Pipeline in Relation to Subject Site

Bushfire Prone Land

The updated GMC bushfire prone land mapping and *Planning for Bushfire Protection Guidelines 2019* have come into effect since the last report to Council was prepared, with the site identified as bushfire prone land. The Ministerial Direction 4.4 – *Planning for Bushfire Protection*, requires that a Planning Proposal must:

- (a) have regard to Planning for Bushfire Protection 2006, **[Council notes that this is out of date and *Planning for Bushfire Protection 2019* now applies – DPIE needs to update this direction]**
- (b) introduce controls that avoid placing inappropriate developments in hazardous areas, and
- (c) ensure that bushfire hazard reduction is not prohibited within the Asset Protection Zone.

If a planning proposal involves bushfire prone land and seeks to increase potential for residential development or other sensitive development types e.g. education facilities, child care centres, function centres then a Strategic Bush Fire Study will be required as per the new Guideline. Future development must be able to comply with the requirements of the NSW Rural Fire Services' *Planning for Bushfire Protection 2019*. This document provides specific guidance on strategic planning, planning proposals, development control plans and master plans.

The resubmitted Planning Proposal does identify the need to consult with the NSW RFS, but does not indicate whether a specific Strategic Bushfire Study will be required. Council would require such a study to be undertaken in order to address the requirements of the Ministerial Direction. Such a study should be undertaken following or ideally in conjunction with the biodiversity assessment.

Water Quality

Council is required to consult with Water NSW prior to the Gateway under Ministerial Direction 5.2 – specifically 5(d) and (e), which requires that the means through which the planning proposal gives effect to water quality protection measures must be set out and consultation occur with Water NSW prior to the Gateway being issued. It is assumed that some changes to the proposal are likely to occur following the biodiversity findings/recommendations in relation to zoning or minimum allotment sizes for areas of higher vegetation value (as identified in the Woodlands Environmental Management report) which may influence water quality management.

The site is identified as having a non-perennial natural watercourse which feeds eventually into the Wollondilly River as indicated in the map below (Figure 4). This would appear to coincide with an area of Threatened Ecological Community as identified in the Flora and Fauna Study.

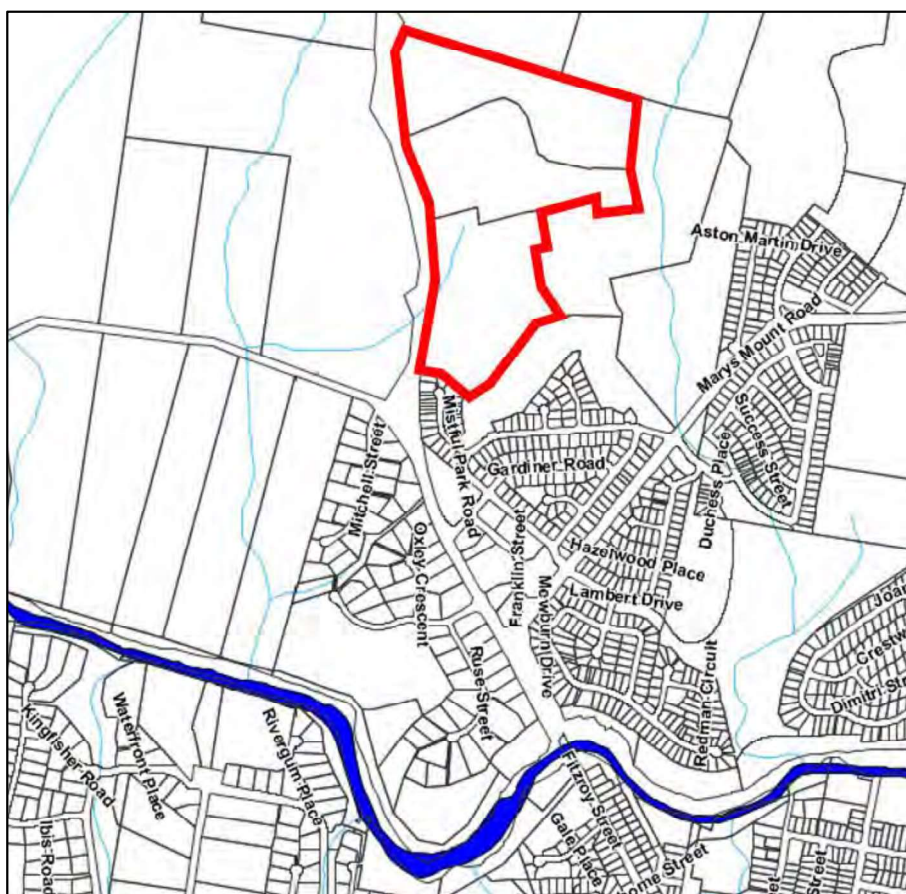


Figure 4 – Natural Watercourses.

It is considered that future refinement of the planning proposal may need to include areas of environmental zoning around this water course which would also potentially protect a significant biodiversity area.

Contaminated Land

In order to address Ministerial Direction 2.6 – *Remediation of Contaminated Land*, a Phase 1(PSI) report is likely to be required to comply with the assessment of this direction. The planning proposal as drafted does provide some background history but given the proposed residential zoning, it does not demonstrate a complete knowledge/history of the land use of the site (i.e. previous ownership, site assessment identification of potential hot spots such as farm fuel tanks etc). Urban residential is a sensitive land use so ideally a Phase 1(PSI) report should occur at the planning proposal stage (which may negate the need to do so at DA stage). On this basis a Phase 1(PSI) report is recommended.

Ridgelines (Steep Lands)/Visual Impact

There is some correlation between slope and the location of the remnant vegetation on site as indicated by the contour map below with aerial overlay (Figure 5).

The *Urban and Fringe Housing Strategy* is a relatively high level strategy and did not assess matters such as visual impact. The Strategy does identify that land to the north of this site is also identified for future urban development. A visual impact assessment is recommended as impacts of urban density along key approaches to Goulburn such as along Crookwell Road should be planned and mitigated. Visual impacts can be managed via potentially larger lots on the periphery of the site or through dedicated strips of land for landscape buffers.

A visual impact assessment with recommendations around zoning and landscaping, particularly linking to biodiversity recommendations should be undertaken with this Planning Proposal to inform the preparation of the Planning Proposal, master plan and site specific Development Control Plan provisions.

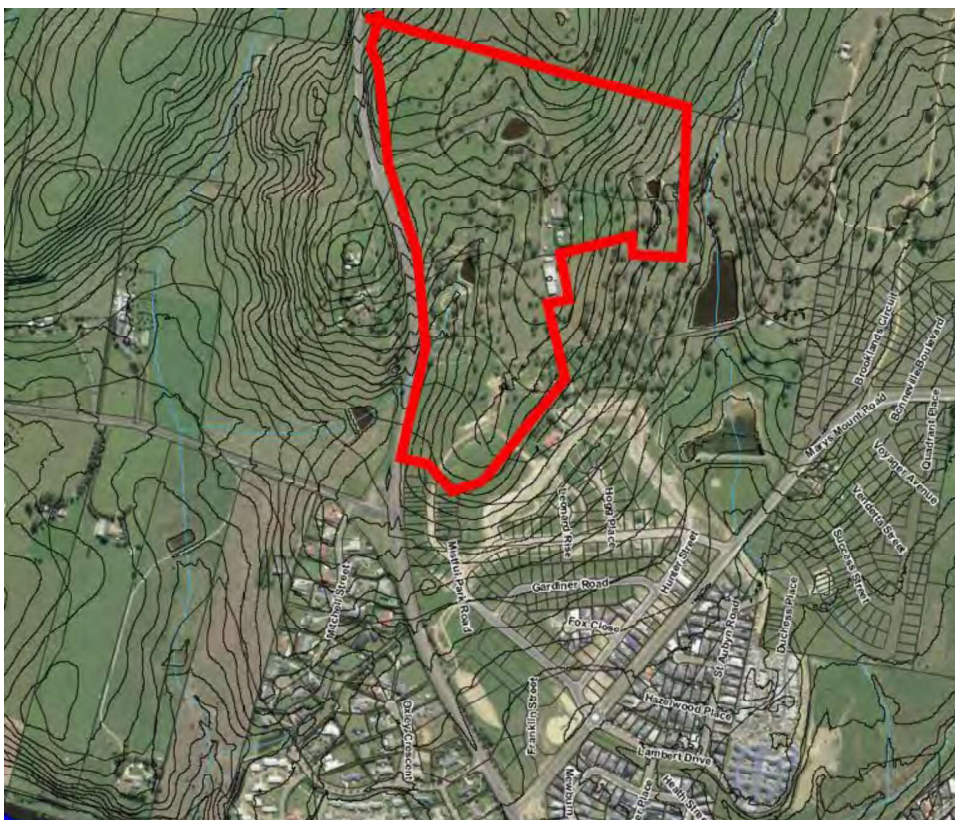


Figure 5 - Contours (2m) and Vegetation

Vehicular Access

As reported in 2018, the former Roads and Maritime Services (now Transport for NSW) did not support the application in its current form. It considered that the planning proposal had not adequately considered traffic and safety implications of future development on the land. The preliminary RMS advice was that the Planning Proposal must:

- *Consider the likely lot yield*
- *Identify an appropriate road hierarchy and access strategy that minimises access to Crookwell Road. This must include consideration of the topography in the area and the ability to provide constructible links.*
- *Preserve land required for future road infrastructure upgrades, including internal links with the planning proposal to connect to the existing local road network.*
- *Identify necessary road upgrades on Crookwell Road (e.g. the intersection of Mary's Mount Road with Crookwell Road)*
- *Consider how the necessary road infrastructure will be funded and ensure there is an appropriate planning mechanism in place.*

In the absence of the above, the RMS was concerned development would compromise Crookwell Road, particularly development of lots with frontage to Crookwell Road with no alternate local road access. Council's Development Engineer also provided preliminary advice on the original proposal, as follows:

- *Access to Crookwell Road:* Council's Development Engineer considers that this would be restricted to one access point from Crookwell Road and this would need to be located at the optimum position in terms of sight distances. The Engineer clarifies that the RMS would likely require an intersection design to its satisfaction (most likely with turn lanes in both directions)
- *'Preserve land required for future road infrastructure...':* This indicates that a lot (or more than one) would likely need to be set aside for road connection to Lot 4.
- *Council's Engineer* noted that the current Mistful Park road system was not designed to receive additional traffic. Additional traffic through this road network would have negative amenity impacts.
- *'Identify necessary road upgrades...':* The Development Engineer considers that a traffic study would be required which should include the Crookwell road Mary's Mount Road intersection where an upgrade has been designed and supported by the RMS.

This approved design includes turn lanes, however the study may reveal a different treatment, such as a roundabout is warranted. Work on the intersection may need to be deferred until this issue is resolved.

- *'Consider how the necessary road infrastructure...':* The development Engineer concurs that an appropriate funding mechanism like a VPA or the like needs to be implemented detailing works/contributions required.
- *Recommends* that direct access for lots with frontage to Crookwell road be prohibited.

Given the issues with biodiversity, however, it is too early to determine likely residential development yields from the site. It is possible that if yields are low due to constraints, that the issues around access from within the existing Marys Mount subdivision may not be as problematic.

At this stage due to the issues surrounding biodiversity, it is recommended that the biodiversity study be undertaken first, in order to determine appropriate zone boundaries, minimum allotment

sizes and yields. Following this information, the potential impacts and assessment on roads can be undertaken.

Reticulated Water/Sewer Supply

With regard to reticulated water services, Council's Development Engineer previously advised that the new Mary's Mount Developer Servicing Plan (DSP) was based on the current GM LEP 2009 and has not included any contingency for rezoning which may result in an increased lot yield within this precinct. The Developer Servicing Plan will need to be updated to include each of the urban release areas identified in the *Urban and Fringe Housing Strategy*.

It is understood that there is some capacity for water servicing up to 690m (the highest point on the site is around the 690m contour), however, pressure issues may arise at this level. It is also likely that a sewer pumping station may be required to service this development.

At this stage without understanding the potential residential yields it is hard to gauge the impact on supply and capacity. Similar to other issues raised, the biodiversity assessment will be required to inform further assessment of other infrastructure demand/capacity.

Aboriginal Cultural Heritage

The preliminary advice from the Office of Environment and Heritage (now Department of Planning, Industry and Environment – Environment) objected to the Planning Proposal based on the potential for impacts to Aboriginal Cultural Heritage:

A number of Aboriginal objects have been found within 1 km of the site. It also appears that the site might be identified as a place of Aboriginal significance on Figure 3-2 of the Goulburn Mulwaree DCP 2009.

The Office of Environment and Heritage concluded, based on the above, that an Aboriginal Cultural Heritage Assessment should be completed prior to submitting the Planning Proposal to identify any Aboriginal cultural heritage values and if these are present, apply an appropriate zoning that would allow for impacts to be avoided.

The adopted *Urban and Fringe Housing Strategy* includes as an action (J1-1) requiring preparation of an Aboriginal Cultural heritage Assessment in consultation with Aboriginal people prior to public exhibition of a planning proposal.

Given the need to undertake further biodiversity assessment to underpin the planning of the site it is recommended that the biodiversity assessment occur first as there may be feasibility issues associated with proceeding. Subject to the outcome of the biodiversity assessment, an Aboriginal cultural heritage assessment is also to be undertaken prior to public exhibition of the Planning Proposal to ensure appropriate zone boundaries and minimum allotment sizes are identified.

Department of Planning, Industry and Environment (DPIE)

The preliminary comments from the former Department of Planning and Environment (now Planning Industry and Environment - Planning) in 2018 make reference to the *South East and Tablelands Regional Plan 2036* and that an 'avoid, minimise and offset' hierarchy for biodiversity will be applied to areas for new or intensive development. In these circumstances, the Department's comments infer that a Biodiversity Assessment Methodology (BAM) may be applied in these circumstances.

The Department noted the relevant Local Planning (Ministerial) Directions particularly 2.1 Environment Protection Zones. In relation to Direction 2.1 Environmental Protection Zones, the DPE understands that the subject site supports remnant Yellow Box – Blakeley's Red Gum grassy woodland which is listed as Threatened Ecological Community (TEC). The Flora and Fauna Study that was undertaken by the applicant in support of the planning proposal (as originally proposed)

states that the subject land is suitable for rezoning to R2 Low Density Residential and R5 Large Lot Residential with proposed minimum lot sizes of 700m² and 2,000m² respectively.

Further, this study recommends that the Endangered Ecological Community could be managed by its retention in as few lots as possible and plans of management being required for these lots. DPIE considered that it is unclear how the proposal, and particularly an R2 Zone and 700m² minimum lot size will better protect identified Endangered Ecological Community's than the current E4 Zone and 10ha minimum lot size.

The Department advised that if the proposal was sent to it for a Gateway Determination, the following studies would be required to be completed prior to referral to the relevant agency (OEH) for comments:

1. Additional biodiversity survey work to be undertaken to identify and validate the location and condition of the Endangered Ecological Community on the subject site in accordance with OEH validation criteria.
2. Where land containing Endangered Ecological Community's is proposed to be zoned for development, the preparation of a biodiversity offset strategy to be prepared by an accredited biodiversity assessor in consultation with the OEH.

The presence of the Endangered Ecological Community must therefore be clearly located and delineated prior to consideration of any subdivision application. Careful consideration must also therefore be given to the applicable instrument to regenerate or rehabilitate the site because there will be management issues in either of these mechanisms. The referral comments close off with a recommendation to discuss the preparation of a Biodiversity Offset Strategy with OEH for the broader area rather than a site by site basis.

There is currently no Terrestrial Biodiversity mapping on the subject site.

Master Planning, Urban Release Area Provisions and Site Specific Development Control Plan (DCP)

Given the issues raised in this report and specific site constraints it is suggested that following the outcome of the various studies flagged above, that a concept master plan also be prepared for this site and used in the development of appropriate zoning and site specific DCP controls. It is noted that the *Urban and Fringe Housing Strategy* details the mechanism to deliver the Strategy and suggests the use of Part 6 of the *Goulburn Mulwaree Local Environmental Plan* (LEP) in relation to the urban release area provisions.

The urban release area provisions include the following requirements:

Part 6 Urban release areas

6.1 Arrangements for designated State public infrastructure

(1) This clause applies to land in an urban release area, but does not apply to any such land if the whole or any part of it is in a special contributions area (as defined by section 7.1 of the Act).

(2) The objective of this clause is to require satisfactory arrangements to be made for the provision of designated State public infrastructure before the subdivision of land in an urban release area to satisfy needs that arise from development on the land, but only if the land is developed intensively for urban purposes.

(3) Development consent must not be granted for the subdivision of land in an urban release area if the subdivision would create a lot smaller than the minimum lot size permitted on the land immediately before the land became, or became part of, an urban release area unless the Director-General has certified in writing to the consent authority that satisfactory

arrangements have been made to contribute to the provision of designated State public infrastructure in relation to that lot.

(4) Subclause (3) does not apply to—

(a) any lot identified in the certificate as a residue lot, or

(b) any lot to be created by a subdivision of land that was the subject of a previous development consent granted in accordance with this clause, or

(c) any lot that is proposed in the development application to be reserved or dedicated for public open space, public roads, public utility undertakings, educational facilities or any other public purpose, or

(d) a subdivision for the purpose only of rectifying an encroachment on any existing lot.

6.2 Public utility infrastructure

(1) Development consent must not be granted for development on land in an urban release area unless the Council is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when required.

(2) This clause does not apply to development for the purpose of providing, extending, augmenting, maintaining or repairing any public utility infrastructure.

6.2A Development control plan

(1) The objective of this clause is to ensure that development on land in an urban release area occurs in a logical and cost-effective manner, in accordance with a staging plan and only after a development control plan that includes specific controls has been prepared for the land.

(2) Development consent must not be granted for development on land in an urban release area unless a development control plan that provides for the matters specified in subclause (3) has been prepared for the land.

At this stage it is too early to determine whether or not the infrastructure requirements of this site can be addressed, furthermore Council is in the process of updating its Local Infrastructure Contributions Plans (s7.11 and 7.12 Plans) and Section 64 Developer Servicing Plans Plans for Water, Sewer and Drainage. The application of the Part 6 provisions may be required depending on the timing of the delivery of these plans and on the outcomes of future infrastructure needs. As previously stated in this report, it is hard to determine at this stage the capacity of the site (in terms of dwelling yields) and also the timeframes in relation to the updating of these other infrastructure plans. Therefore, there must be consideration of the need to apply the Part 6 Urban Release Area provisions pending the outcome of the further studies for this site.

Fees

The Planning Proposal commencement fee was paid on 5 October 2017, however the Planning Proposal was deferred by Council in 2018. Given the specific history of this application it is recommended that the fees applied to the processing of this proposal shall be as per the fee structure at that time for planning proposals. This means that Council processing of this application will be charged at an hourly rate of \$130 for staff time. This amount will be calculated throughout the process and invoiced prior to completion of the planning proposal.

RECOMMENDATION

In conclusion, there may be urban residential potential for this site as identified in the *Urban and Fringe Housing Strategy*, however, to determine environmental capacity (particularly around biodiversity constraints) further site specific technical studies will be required. **It is possible that following such studies that a significant revision to the proposal may be required.** Given that the proponent has already prepared an initial Flora and Fauna Study, and is seeking some preliminary endorsement before proceeding with further biodiversity assessment (in the form of a Gateway Determination), the planning proposal is supported.

It is considered that identifying the whole site as potentially suitable for residential would also mean that the biodiversity assessment (Biodiversity Assessment Method and Biodiversity Assessment Report) should also be undertaken over the whole site. This will allow a better understanding of potential yields and allow the further studies to then refine the proposal further.

15.2 PLANNING PROPOSAL TO REZONE 'MISTFUL PARK' TO RESIDENTIAL**RESOLUTION 2020/357****Moved: Cr Peter Walker****Seconded: Cr Margaret O'Neill****That**

- 1. The report from the Business Manager Strategic Planning regarding the Planning Proposal to rezone Mistful Park (Lot 1 & 4 DP 1223269 and Lot 214 DP 1231260) be received.**
- 2. Council resolve to prepare a Planning Proposal to amend *Goulburn Mulwaree Local Environmental Plan (GMLEP) 2009* which will:**
 - (a) Rezone land being Lot 1 & 4 DP 1223269 and Lot 214 DP 1231260 from E4 Environmental Living to R2 Low Density Residential under GM LEP 2009, and**
 - (b) Amend the minimum lot size map on the subject lands to 700m².**
- 3. When the Planning Proposal is prepared, a request for a Gateway Determination be forwarded to the Department of Planning, Industry and Environment.**
- 4. The proposed R2 Low Density Residential Zoning and 700m² minimum allotment size are to be further assessed following the outcome of site specific investigations/studies identified in this report following a Gateway Determination, which in this case, may significantly impact development yields. The Planning Proposal is to be updated prior to public exhibition following the outcome of various site specific assessments, in particular the Biodiversity Assessment Method and Biodiversity Assessment Report.**
- 5. The Department of Planning, Industry and Environment be requested to issue delegations so that Council is the Relevant Planning Authority to process the subject Planning Proposal.**
- 6. The Council fees for the processing of this planning proposal be applied at the rates applicable when the planning proposal was originally submitted in the 17/18 financial year.**

Section 375A of the *Local Government Act 1993* requires General Managers to record which Councillors vote for and against each planning decision of the Council, and to make this information publicly available.

CARRIED

In Favour: Crs Bob Kirk, Peter Walker, Andrew Banfield, Leah Ferrara, Alfie Walker, Margaret O'Neill, Carol James and Denzil Sturgiss

Against: Nil