

6.2 PARKWOOD PLANNING PROPOSAL

SUMMARY

To advise of the outcomes of agency and community consultation and the proposed revisions to the Planning Proposal to create a site specific *Parkwood LEP* and remove the land from the *Yass Valley LEP 2013 Land Application Map*.

RECOMMENDATION

That:

1. *The Planning Proposal for a site specific Parkwood LEP be endorsed as exhibited and varied as per the table in section 11 of this report.*
2. *The varied Planning Proposal be forwarded to the Minister for Planning to request the Parkwood LEP be made.*
3. *The varied Planning Proposal be forwarded to the Minister for Planning to request the subject land be removed from the Yass Valley LEP 2013 Land Application Map.*
4. *The Letter of Comfort from the ACT Government be noted.*
5. *Delegation be provided to the General Manager to sign the Parkwood Urban Release Area Governance Framework with the ACT and NSW.*
6. *The Parkwood Planning Proposal Memorandum of Understanding with Riverview Developments Pty Ltd and Reid and Stevens Pty Ltd be signed and executed by the Mayor and General Manager.*
7. *The Parkwood Planning Proposal Conservation Corridor Dedication Heads of Agreements with Fleming & Moore and Shaw & Armitage be signed and executed by the Mayor and General Manager.*

FINANCIAL IMPLICATIONS

Resources for planning proposal assessment are provided for in the Operational Plan.

POLICY & LEGISLATION

- *Environmental Planning & Assessment Act 1979*
- *Local Government Act 1993*
- *Biodiversity Conservation Act 2016*
- *Environment Protection & Biodiversity Conservation Act 1999*
- *South East and Tablelands Regional Plan*
- *Yass Valley Local Environmental Plan 2013*
- *Yass Valley Settlement Strategy 2017*

REPORT

1. Planning Proposal

The Parkwood Planning Proposal involves the rezoning land bounded by the Murrumbidgee River, Ginninderra Creek and the NSW/ACT border from 'RU1 Primary Production' and 'E3 Environmental Management' to a combination of 'R1 General Residential', 'E2 Environmental Conservation', 'E3 Environmental Management' and 'SP1 Special Activities'.

The purpose of the rezoning is to facilitate the development of a new suburb linked into the ACT.

In addition to the rezoning a 'Satisfactory Provisions' clause and 'Development Control Plan' clause are proposed to ensure urban subdivision and development does not occur until arrangements for service delivery have been negotiated with all relevant providers.

The Planning Proposal document and supporting studies can be accessed via the NSW LEP's Online System.

2. Background

The Parkwood Planning Proposal was originally submitted in July 2014, with the first Gateway Determination issued in April 2015 containing a number of conditions including the requirement for a forum with all relevant government service providers and a subsequent cross border report – both of which were completed.

Further additional ecological, bushfire and heritage assessments were also undertaken and the planning proposal was revised and considered by Council at its October 2017 meeting. It was resolved to send the revised proposal to the Department and further investigation be undertaken into local government service delivery.

3. Revised Gateway Determination

The Department of Planning, Industry & Environment (DPIE) issued a revised Gateway Determination in August 2018 with some additional conditions and updated agency list for referral.

It also required the preparation of a Strategic Bushfire Study prior to community consultation.

A condition was included in the Gateway requiring a Memorandum of Understanding (MoU) to be agreed by the ACT and NSW Governments and Yass Valley Council to establish appropriate governance arrangements and servicing model for the provision of government services and infrastructure to the Parkwood urban release area prior to the finalisation of the LEP.

Council staff had preliminary discussions with DPIE, the NSW Cross Border Commissioner and Department of Premier and Cabinet in November 2018 in relation to the MoU. At that time the difficulties in executing a development specific MoU were discussed, and the preferred option was incorporating Parkwood under the updated MoU for regional collaboration between the NSW and ACT governments which is understood to be imminent.

A Governance Framework has since been drafted which will sit under the updated 2019 MOU to be agreed to by Yass Valley, ACT and NSW. This process is being progressed independently of the Planning Proposal assessment, and will establish a steering committee to progress agreement on the preferred governance mechanisms and service delivery models.

3.1 Agency Forum

The Gateway Determination required another forum to be held with agencies to outline the revised proposal and cross border servicing report. The forum was held on 12 March 2019 and all agencies within the revised gateway were invited. Representatives from 23 NSW and ACT agencies were present, in addition to Council and DPIE staff and the Proponent's consultancy team.

The outcome of the forum was some minor adjustments to the service delivery and infrastructure options.

Unfortunately, some key NSW agencies declined to attend or be briefed – the most notable being NSW Treasury who is key to the funding and delivery of future services and infrastructure in NSW.

The whole of government response from the ACT following this forum stated the Territory is are committed to ensuring it is an integrated and well serviced community, regardless of where the border lies. Moving the border would be the simplest solution to achieve this as it would eliminate many cross border complexities regarding standards and the logistics of service

delivery. The Territory will continue to keep working with NSW and Yass Valley to determine the best and most cost effective way to deliver services in Ginninderry.

Discussions relating to service delivery and infrastructure will continue in parallel with the planning process.

3.2 Strategic Bushfire Study

Comment was sought from NSW Rural Fire Service (RFS) on the planning proposal prior to community consultation as required by the Minister's Direction *Planning for Bushfire Protection*. Their response required additional information and the preparation of a *Strategic Bushfire Study* prior to community consultation.

The requirement for a Strategic Study is a recent requirement from RFS (under the proposed *Planning for Bushfire Protection 2018*) and following a number of meetings and revisions, the decision was made to progress the planning proposal with the requirement for the study to be prepared prior to community consultation which was done. The RFS advised that the document sufficiently addressed the matters required in the Gateway.

4. Agency Consultation

It is noted that a significant proportion of the NSW Agencies – despite most being briefed, did not provide a written response to the Planning Proposal. This may be due to a number of reasons, however the long lead time to development and the uncertainty of the situation/environment in the future makes it difficult to provide input.

The agencies referral responses are discussed in detail in **Attachment A**, and are summarised below. Copies of the responses can be viewed at <https://www.yassvalley.nsw.gov.au/our-services/planning-and-building/lep-amendments/>

The ACT Government are supportive of the proposal but have a preference of the NSW/ACT border to be moved to remove the need for cross border service agreements.

Agencies such as ICON Water, NSW Police, NSW Ambulance, Transport for NSW, NSW Fire & Rescue, raised issues relating to service delivery and the need for ongoing discussion and the development of agreements. The Service Delivery Report recognises that arrangements are possible however these do not need to be finalised until when development is actually planned to commence in NSW.

NSW Crown Land seeks involvement with planning for the proposed conservation corridor and advise of the need for approvals for access and management in the waterways.

NSW Education identified the need for school facilities and the dedication of land. A MoU, as a precursor to a Voluntary Planning Agreement for a school site along with inclusion in the proposed Satisfactory Arrangements and Development Control Plan clause will address this matter.

Department of Primary Industries (Agriculture) have requested a 1,000m buffer separation between the existing poultry farm and future housing. This can be incorporated into the proposed LEP although the expiry of the current lease is likely to occur before development occurs in this locality.

The Office of Environment & Heritage (OEH) accept the basis upon which the conservation corridor has been defined and recommend Biodiversity Certification be pursued. They have also suggested the standard Heritage LEP clause include the implementation of *Aboriginal Heritage Management Plan* recommendations. They also requested additional flooding information, and clarification of the mechanism to secure the 'E2 Environmental Conservation' area.

5. Environmental Protection & Biodiversity Conservation (EPBC) Approval

Approval was sought for the entire Ginninderry development within NSW and ACT under s146B *EPBC Act 1999*. The approval is valid until 2067 and contains a number of conditions in relation to the NSW (Parkwood) portion of the site i.e.

- Must be in accordance with the program details in the *Urban Development at West Belconnen Report April 2017*
- The Conservation Corridor is established as per the program

- The NSW portion of the corridor must be secured for conservation in perpetuity through a legally binding mechanism within 2 years of approval
- Preparation of a *Conservation Corridor Management Plan* and *Construction Environmental Management Plan*
- Undertake a further survey for Pink Tailed Worm Lizard and Natural Temperate Grassland
- Establish a cat containment policy across the entire site

The approval also includes works within the corridor:

- Drilling of a sewer tunnel underneath the Pink Tailed Worm Lizard and Box Gum Woodland Habitat
- Recreation and tourist facilities
- Bushfire and maintenance management

It should also be noted that this approval was sought when an 'E3 Environmental Management' zone was proposed over the NSW portion of the conservation corridor. The 'E3 Environmental Management' zone has since been superseded by a proposed 'E2 Environmental Conservation' zone which would afford a greater level of protection and which now covers a larger area. Most of these conditions have either been satisfied or mechanisms are in place to do so. The condition relating to cat containment requires some legislative change in NSW.

6. Community Consultation

The Planning Proposal documents and supporting studies were made available for community consultation from 25 March until 17 May 2019 at Yass Library, Council's Administration Building, Kippax Library and Hall Post Office. The 3D model was located at the Yass Library for the duration of the period.

The electronic version of the documents were able to be viewed through a link on Council's website to the LEP Online Tracking website. An advertisement was placed in the *Yass Tribune* and *Canberra Times*, and a media release issued. The consultation period was notified through the Council Page and e-newsletter.

At the conclusion of the consultation period, a total of 54 submissions and 12 postcards were received. A further petition was lodged with 140 signatures on behalf of the Ginninderra Falls Association. Copies of the submissions can be viewed (here) on Council's Website:

<https://www.yassvalley.nsw.gov.au/assets/2019/Planning/Community-Responses-May-2019.pdf>

A Planning Forum was held on the 29th July 2019 in the Council chambers with nine presentations made to the Councillors including two on behalf of the proponent. In particular, presentations were made on behalf of The Ginninderra Falls Association, Friends of Grasslands, Ginninderra Landcare as well as ecologists focussing on Rosenberg's Monitor.

7. Petition

A petition was presented by the Ginninderra Falls Association to Council with 140 signatures, collected at the Yass, Murrumbateman and Hall markets. It is understood a similar petition was provided to the ACT Government.

The Petition raises the following points:

- Murrumbidgee and Ginninderra Gorges – aesthetic value, traditional roles in aboriginal life, sanctuary for native plant and animal species; contribute to dynamic bushfire propagation (not adequately covered by Bushfire Standards).
- Proposed buffer zones around urban areas will not adequately protect ecology, history or residents.
- Requests Council not approve rezoning before further independent research establishes effective buffers to better protect biodiversity, aboriginal heritage and future residents from bushfire.

As the full suite of Planning Proposal documents were not made available at the markets, signatories to this petition may have had an incomplete understanding of the project. Details of the proposal included on the petition only mentioned the proposed R1 Residential zone, and there is no mention of the proposed 'E2 Environmental Conservation' and 'E3 Environmental Management' zoned land, nor the proposed Conservation Corridor and proposed management.

The Petition was tabled at the Council meeting in June 2019.

8. Issues Raised by Community

The issues raised by the community during consultation and the planning responses are included in **Attachment B**. A summary of the issues is as follows:

- Rights of adjoining landowners
- Need for independent review and research
- Format of planning documentation
- Existing use rights for the quarry
- Dedication of land in the proposed E2 Environmental Conservation zone
- Transmission lines and the use of the easements
- Shape, width and area of the conservation corridor
- Biodiversity values (particularly Rosenberg's Monitor, Pink Tailed Worm Lizard, Natural Temperate Grassland)
- Conservation Trust and management arrangements
- Preference for a National Park
- Bushfire risks and overlap of Ginninderra Falls Precinct with Asset Protection Zone
- Proximity of housing and special activities area to the Ginninderra Falls
- Retention of the existing Environmental zoning
- Aboriginal cultural heritage
- Lack of reference to Aboriginal land, water rights and Native Title
- Urban/conservation interface
- Need for holistic approach to development north of the ACT
- Proposed lots within the conservation corridor and adjacent to the Falls
- Cat containment
- Land ownership and staging
- Land within the ACT
- Matters relating to the ACT planning process

In the main the submitted Planning Proposal and supporting documents adequately address the relevant issues. For others, variations to the Planning Proposal will adequately address the concerns.

Several issues raised are outside the scope of the Planning Proposal to address and these have been set aside.

9. MoU/Letter of Comfort

A Memorandum of Understanding (MoU) has been drafted between Riverview Developments, Reid and Stevens and Council, and the respective lawyers. A Voluntary Planning Agreement (VPA) would be the usual vehicle to agree to infrastructure delivery and funding within a development, however the length of time and planning required before development commences in NSW means a VPA is not appropriate in this instance at this point of time.

The draft MoU outlines the intention of the Proponent and Council to enter into future VPA's and making a Contributions Plan and Development Servicing Plan. These will incorporate:

- Infrastructure, community facilities and open space
- Dedication of the Conservation Corridor land on land owned by Reid and Stevens
- Establishment of the Conservation Management Trust

- Reimbursement of costs incurred by the developer to ensure proportionate contribution by all landowners
- Dedication of land for Council purposes if required (e.g. administration building, depot or waste management facilities)
- Dedication of land for a school

A copy of the draft MOU is attached as a **Separate Enclosure**.

ACT entered into a Joint Venture with Riverview Developments in 2016 for this cross border development straddling the NSW-ACT border. While not a party to the proposed MoU, the ACT has provided a letter of comfort (refer **Attachment C**) indicating support for the Heads of Agreements proposed for future dedication of the conservation corridor, negotiating and entering into planning agreements, and the provision of public infrastructure. It also supports the agreement which allows the Joint Venture the first right of refusal to acquire the existing dwelling within the conservation corridor (see below).

10. Conservation Corridor & Agreements

Conservation Corridor Dedication Heads of Agreements have been drafted between the landowners Fleming and Moore, Shaw and Armitage (attached as a **Separate Enclosures**) and Council in relation to dedication of the 'E2 Environmental Conservation' land to Council upon the registration of the first urban subdivision plan.

The agreement with Fleming and Moore also allows the Joint Venture first offer on the residual lot containing the existing house, and that upon acquisition it be dedicated to Council.

The landowner of the lot adjacent to the Falls has not entered into a Heads of Agreement to dedicate the land to Council. As such, an additional Satisfactory Arrangement Clause is proposed to be added to ensure the conservation of the 'E2 Environmental Conservation' land in perpetuity, whereby if the land is not dedicated, separate biodiversity certification will be required before any Development Consent is granted. While this locks in the conservation requirements of the 'E2 Environmental Conservation' land, it does not allow for the generation of income through a levy for its' management.

11. Recommended variations

It must be noted that the suggested wording of the clauses proposed in the *Parkwood LEP* is subject to the review and consideration of DPIE – particularly during the legal drafting of the instrument. As such, the commentary within the Planning Proposal and the suggested clause wording has been drafted to capture the intent of the proposed instrument.

In regard to the Planning Proposal at this stage in the planning process Council can:

- **Reject** the proposal
- **Vary** the proposal
- **Adopt** the proposal as exhibited

The concerns raised in submissions have been discussed in detail above and none warrant the rejection of the proposal. From the consideration of community and public authority submissions, it is recommended that the Planning Proposal be adopted subject to the following variations:

Clause/Map/Schedule	Required Amendment	Rationale
Heritage Conservation Clause	Add requirement to standard Heritage Conservation Clause When consent not required: <i>If development is consistent with an approved heritage management document.</i>	OEH referral response, due to identified Aboriginal Cultural Values and the recommendation to prepare an Aboriginal Heritage Management Plan.

	(Box 1)	
Heritage Map	Add a heritage map to give effect to the heritage conservation clause which: <i>includes all the land within the E2 zone given the significant Aboriginal Cultural values within the corridor rather than identification of specific locations.</i>	OEH referral response, due to identified Aboriginal Cultural Values. Standard instrument heritage conservation clause wording makes reference to a map (Planning Proposal flagged that a decision would be made as part of the assessment whether a map and clause was included).
Local Clauses Map	To amend the Local Clauses Map to: <i>increase the buffer between residential development and the existing egg farm to 1,000m.</i> (Figure 22)	DPI (Agriculture) response requesting increased separation between residential development and a poultry farm as outlined in <i>Living and Working in Rural Areas' Handbook</i> (DPI).
Development Control Plan Clause	Add requirement to Development Control Plan Clause to include: <i>bushfire requirements, including the recommendations outlined in a Strategic Bush Fire Assessment Report endorsed by Council.</i> (Box 7)	RFS referral response re: mechanism to ensure implementation of recommendations within the <i>Strategic Bushfire Assessment</i> (Eco Logical February 2019) within subsequent planning phases.
Development Control Plan Clause	Add requirement to Development Control Plan Clause to include a provision to give effect that: <i>should the quarry located on Lot 61 DP801234 be operating at the time approval is sought for residential uses on adjoining Lot 62 DP 801234, or Lot 4 or Lot 5 DP 771051 the impacts of the quarry on the residential uses, and the impacts of the residential uses on the quarry must be considered.</i> (Box 7)	Submission by owners of quarry located within the subject site.
Development Control Plan Clause	Add requirement to Development Control Plan Clause to include a provision to give effect that: <i>an area is to be set aside for any waste or resource facility, municipal services depot or</i>	Requested by Council staff to reflect the Additional Permitted Uses and land that may be required in future by Council.

	<i>public administration building required by Council.</i> (Box 7)	
Development Control Plan Clause	Add requirement to Development Control Plan Clause to include a provision to give effect that: <i>an area is to be set aside for a public school as per the school planning site requirements of the NSW Department of Education.</i> (Box 7)	NSW Department of Education referral response.
Development Control Plan Clause	Add requirement to Development Control Plan Clause to include a provision to give effect that: <i>the impacts, integration and access to the adjacent Crown Waterways – Murrumbidgee River and Ginninderra Creek must be considered.</i> (Box 7)	DPI (Lands & Water) referral response.
Development Control Plan Clause	Add requirement to Development Control Plan Clause: <i>flooding requirements including recommendations outlined in a Parkwood Floodplain Risk Management Study and Plan endorsed by Council.</i> (Box 7)	OEH referral response requiring additional flood risk management information for the site.
Additional Permitted Uses Schedule Part Lot 5, DP771051 Part Lot 1, DP1184677 Part Lot 2, DP1184677 Part Lot 3, DP1184677	Amend the proposed Additional Permitted Use Schedule to: <i>clarify that subdivision of the land would only be for the existing dwelling house (i.e. no new dwellings) and the lot area would be between 3 and 5 hectares, with frontage to the Murrumbidgee River.</i> (Box 12)	OEH referral response and public submissions relating to improving connectivity of the conservation corridor until such time as this existing dwelling is acquired to be included within the Conservation Corridor.

Additional Permitted Uses Schedule Lot 62, DP801234	Amend the proposed Additional Permitted Use Schedule to specify: <i>the subdivision of this land must include all land zoned E3 – Environmental Management within the lot created of Lot 62, DP801234.</i> (Box 14)	OEH referral response. To clarify that a lot containing the existing Ginninderry Homestead development can be created which must include all land within the 'E3 Environmental Management' zone on that lot. This will reduce fragmentation and improve management outcomes for this land which is not proposed to be managed as part of the Conservation Corridor.
Conservation Corridor Definition/ Clause	To include a definition within the LEP to specify: <i>that any reference to the Conservation Corridor relates to the E2 zoned land only.</i> (Figure 22/ Box 4)	Response to public submissions and clarification by OEH.
Conservation/ Urban Edge Interface Clause	Amend Conservation/Urban Edge Interface Clause e) to include: <i>and the recommendations outlined in a Strategic Bush Fire Assessment Report endorsed by Council.</i> (Box 4)	RFS referral response re: mechanism to ensure implementation of recommendations within the <i>Strategic Bushfire Assessment</i> (Eco Logical February 2019) within subsequent planning phases.
Conservation/ Urban Edge Interface Clause	Amend Conservation/Urban Edge Interface Clause h) to include: <i>corridor fencing and edge road treatments have been provided for within the interface area.</i> (Box 4)	Response to public submissions concerned about the impact on Rosenberg's Monitor. The current proposed wording of h) refers to habitat values only, not specifically addressing impacts of urban development.
Urban release areas Clause (Conservation Corridor)	Add an additional urban release area clause specifying: Development consent must not be granted in an urban release area unless satisfactory arrangements have been made to secure the conservation of the E2 zoned land. This may include: <i>The dedication of the Parkwood land zoned E2– Environmental Conservation to the Council;</i> or	To specify that development consent will not be issued until satisfactory arrangements have been made to secure the 'E2 Environmental Conservation' land. To define what would constitute satisfactory arrangements to satisfy this clause.

	<i>The biodiversity certification (or similar equivalent agreement) of the Parkwood land zoned E2– Environmental Conservation to ensure conservation in perpetuity of the land;</i> <i>or</i> <i>Both</i>	
Urban release areas Clause (State and Territory public infrastructure)	Include a definition for designated State and Territory public infrastructure including: <i>(a) State, Territory and regional roads,</i> <i>(b) bus interchanges and bus lanes,</i> <i>(c) land required for regional open space,</i> <i>(d) land required for social infrastructure and facilities (such as land for schools, hospitals, emergency services and justice purposes).</i> (Box 5)	To clarify what satisfactory arrangements are required for State and Territory infrastructure or facilities.
Urban release areas Clause (Local public infrastructure)	Rename the proposed 'Public utility infrastructure' clause to 'Local public infrastructure' and include a definition to include: <i>a) trunk water,</i> <i>b) trunk stormwater,</i> <i>c) trunk sewerage,</i> <i>d) trunk electricity,</i> <i>e) trunk roads,</i> <i>g) land for waste or resource management facilities,</i> <i>h) community facilities,</i> <i>i) public open space and local parks,</i> <i>j) land for municipal services depots,</i> <i>k) land for public administration building.</i> (Box 6)	To clarify what satisfactory / adequate arrangements are required for local public infrastructure.
Biodiversity Map	<i>Biodiversity Map to include additional suitable and low mapping of Pink Tailed Worm Lizard habitat (Capital Ecology 2019) outside the 'E2 Environmental Conservation' zone on the Biodiversity Map.</i>	OEH referral response.

STRATEGIC DIRECTION

Key Pillar 1. Our Environment

CSP Strategy EN4 - Maintain a balance between growth, development and environmental protection through sensible planning

Delivery Program Action EN4.1 - Ensure Council's statutory planning instruments are up to date and reflective of the community needs

Operational Plan Activity EN4.1.1 – Undertake ongoing strategic land use planning and reviews of existing instruments

ATTACHMENTS:

- A. Agency Responses [↓](#)
- B. Community Issues [↓](#)
- C. ACT SLA Letter of Comfort [↓](#)
- D. MoU Riverview & Reid and Stevens (*Under Separate Cover*) [⇒](#)
- E. Heads of Agreement Fleming and Moore (*Under Separate Cover*) [⇒](#)
- F. Heads of Agreement Shaw and Armitage (*Under Separate Cover*) [⇒](#)