

## Planning Services

IRF18/6107

### Gateway determination report

<b>LGA</b>	Yass Valley LGA
<b>PPA</b>	Yass Valley Council
<b>NAME</b>	Rezone Lot 5 DP 838497, 2090 Sutton Road Sutton to RU5 Village Zone, R5 Large Lot Residential Zone and E3 Environmental Management Zone (75 house lots)
<b>NUMBER</b>	PP_2018_YASSV_003_00
<b>LEP TO BE AMENDED</b>	Yass Valley LEP 2013
<b>ADDRESS</b>	2090 Sutton Road Sutton
<b>DESCRIPTION</b>	Lot 5 DP 838497
<b>RECEIVED</b>	19 October 2018
<b>FILE NO.</b>	IRF18/6107
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required.
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal.

### INTRODUCTION

#### Description of planning proposal

Yass Valley Council seeks to amend provisions under Yass Valley LEP 2013 applying to Lot 5 DP 838497 (area of 183.6 ha) 2090 Sutton Road, Sutton to rezone the land from RU1 Primary Production Zone with a 40 ha minimum lot size to;

- RU5 Village Zone and 5,000 sqm minimum lot size (41.1 ha area) that will generate 32 house lots.
- R5 Large Lot Residential Zone and 5,000 sqm minimum lot size (40.5 ha area) that will generate 39 house lots.
- E3 Environmental Management Zone and 20 ha minimum lot size (61 ha area) that will generate 3 'stewardship' house lots.
- E3 Environmental Management Zone and 40 ha minimum lot size (40 ha area) that will generate 1 'stewardship' house lot.

The planning proposal also seeks to permit a minimum lot size of 2,000 sqm in the RU5 Village Zone if the land becomes serviced by public reticulated water and sewerage supply sometime in the future.

The planning proposal will enable the creation of approximately 110 house lots if reticulated water and sewerage is provided to land proposed to be zoned RU5 Village Zone (i.e. approximately 70 serviced lots). At this stage Council and the proponent do not intend to provide a reticulated water and sewerage supply.

### Site description

The property is used for cattle grazing on gently undulating topography (Figure 1). Vegetation on the site comprises pasture and areas of significant native vegetation and wildlife. For example, the site includes Box Gum Woodland, an endangered ecological community listed under the NSW *Biodiversity Conservation Act 2016* and Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.



Figure 1 – Site (Source: Planning Proposal Dated July 2018)

### Existing planning controls

The land is currently zoned RU1 Primary Production Zone and a 40-ha minimum lot size applies to the site under the Yass Valley LEP 2013 (Figure 2).

### Surrounding area

The site is located south of the village of Sutton bounded by Sutton Road, Guise Street Sutton, the Federal Highway and the Yass River and is located approximately 22 kilometres north of the ACT.

Land bordering the site to the west and east is used for grazing. The site also adjoins 'Tulip Top Gardens' to the southeast that is a tourist attraction and plant nursery.



Figure 2 Existing Zone (Source: Planning Proposal dated July 2018)

### Summary of recommendation

It is recommended that the planning proposal be issued with a Gateway determination to enable it to proceed subject to conditions because;

- The proposal is accompanied by supporting studies that seek to address ecological issues, bush fire risk management and servicing/infrastructure.
- The proposal is generally consistent with the Yass Valley Settlement Strategy 2036 endorsed by the Department on the 20 September 2018.

## PROPOSAL

### Objectives or intended outcomes

The planning proposal clearly states its objective is to rezone Lot 5 DP 838497 Sutton to RU5 Village, R5 Large Lot Residential and E3 Environmental Management zones to permit future subdivision for housing (74 house lots) and for environmental management.

The planning proposal states that the proposal is based on a subdivision 'concept plan' (Figure 3) that seeks to minimise potential development impacts on areas of the site containing significant native vegetation and wildlife habitat.

The planning proposal acknowledges that any subsequent development application for the subdivision of the land will need to be supported by a biodiversity development assessment report (BDAR) under *the Biodiversity Conservation Act 2016*. A BDAR is required to identify how the proponent proposes to avoid and minimise any potential impact that could be characterised as serious and irreversible and identify the offset obligation required to offset the likely biodiversity impacts of the development.

### Explanation of provisions

The planning proposal clearly identifies that amendments will be required to;

- The Land Zoning Map sheets LZN\_005 and LZN\_005F,
- The Lot Size Map sheets LSZ\_005 and LSZ\_005F, and
- To the instrument by inserting new provisions that permit a minimum lot size of 2,000 sqm in the proposed RU5 Village Zone if reticulated water and sewerage supply become available to service the development.

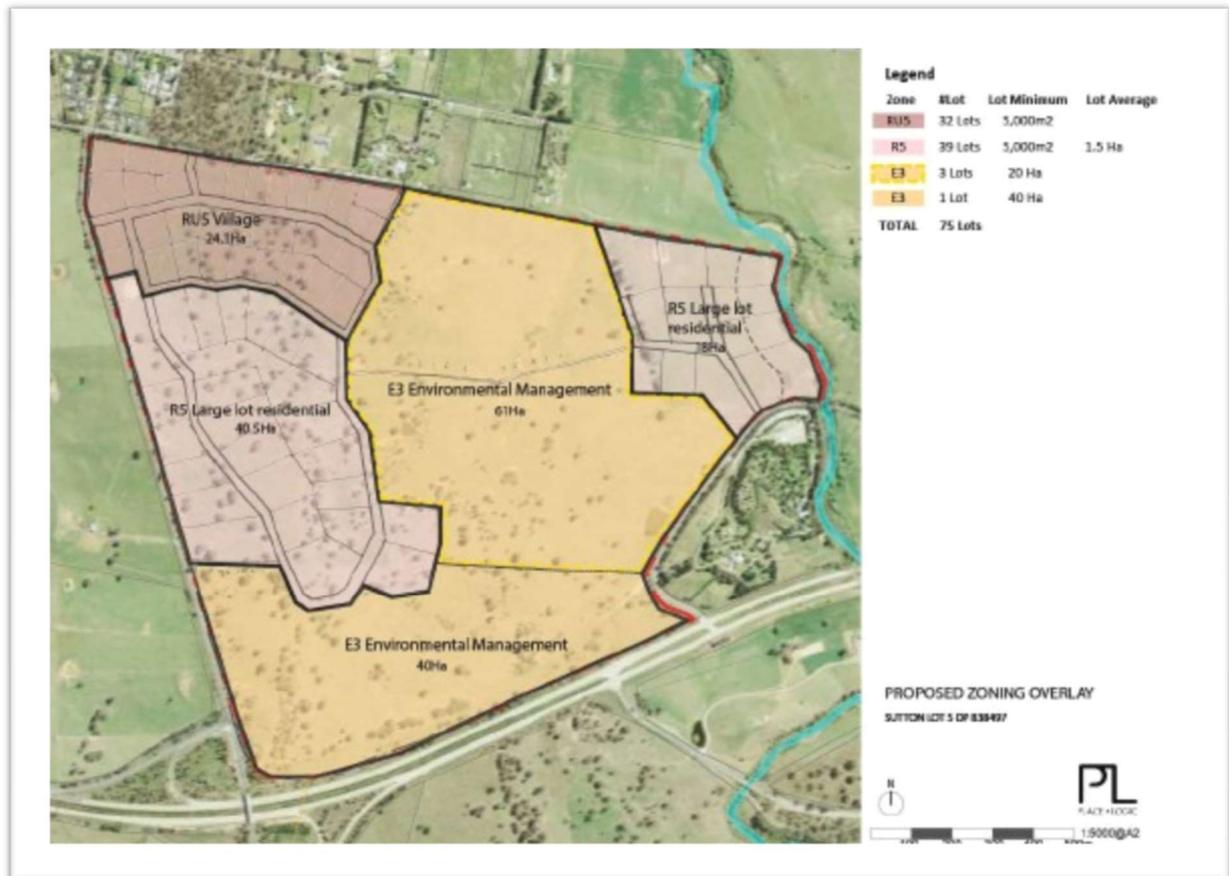


Figure 3 Proposed Zones and minimum lot sizes and concept layout  
(Source: Planning Proposal Dated July 2018)

### Mapping

The planning proposal provides adequate information on the proposed changes to the land zoning and lot size maps (Figure 3). Council will be required to prepare maps in accordance with the Department’s guidelines for preparing LEP maps prior to final approval and notification.

### NEED FOR THE PLANNING PROPOSAL

The planning proposal is the only way for Council to amend the Yass Valley LEP 2013 to permit future development on Lot 5 DP 838497 that is consistent with the proponent’s concept layout plan comprising subdivision of land to create 32 x 5,000 sqm unserviced village house lots (with potential for 60-70 serviced lots); 39 x 5,000 sqm unserviced large residential lots; 3 x 20 ha ‘environmental stewardship’ lots; and 1 x 40 ha ‘environmental stewardship lot.

## **STRATEGIC ASSESSMENT**

---

### **Regional**

The planning proposal states that it is consistent with the South East and Tablelands Regional Plan 2036 (Regional Plan). The proposal responds to relevant Directions and the local narrative for Yass Valley and Sutton in the Regional Plan.

#### Direction 8 Protect Important Agricultural Land

The proposal acknowledges that the site has a long history of agricultural use and the proposal now seeks to facilitate the orderly and proper release of existing agricultural lands for residential purposes. The change in land use is justified by the proposal on the basis that the release of the land for residential use will have no significant impact on agricultural worth in the region.

#### Comment

The local narrative for Yass under the South East and Tablelands Regional Plan (Regional Plan) states that villages, including Sutton, are expected to retain their small village character and only accommodate minimal growth.

The conversion of agricultural land for urban expansion (71 residential lots) to the south of Sutton Village is generally consistent with Direction 8 in the Regional Plan as it is unlikely to have a significant impact on agriculture in the region. The targeted approach by Council for the conversion of agricultural land to urban use adjacent to Sutton Village is minimal and the concept plan underlying the proposal is intended to retain the village character.

#### Direction 14 Protect Important Environmental Assets and Direction 15 Enhance Biodiversity Connections.

The planning proposal acknowledges that the site has significant biodiversity values and seeks to protect and enhance the majority of these values by rezoning the land from an RU1 Primary Production Zone to and E3 Environmental Management Zone.

The planning proposal also seeks to use the E3 Environmental Management Zone to identify land to be converted from predominately agricultural use to 'environmental stewardship lots' to be managed in perpetuity for the protection and enhancement of biodiversity values and provide potential biodiversity offsets for future urban development.

#### Comment

The planning proposal has the potential to provide greater protection and improve important environmental assets in areas proposed to be zoned E3 Environmental Protection Zone and for the enhancement of biodiversity connections consistent with Direction 14 and 15 of the Regional Plan.

A requirement in the Gateway determination for consultation with the Office of Environment and Heritage will enable Council and the Department to determine if the planning proposal is consistent with Directions 14 and 15.

#### Direction 18 Secure Water Resources

The planning proposal indicates that future development of the site will not be reliant on reticulated water or sewerage supply systems.

It also states that on-site effluent disposal systems to be used on house sites are unlikely to pose unacceptable risk to sensitive receiving catchments and future development on the site would rely on harvesting rainwater and possibly bore water.

The planning proposal includes a specific report on investigation on the site's capability for utilising on-site effluent disposal entitled 'Soil and Water Lot 5 DP 838497 – Sutton Land Capability Assessment May 2018'. The report concludes that the proposed 5,000 sqm minimum lot size for the village extension (RU5 and R5 Zones) is adequate to sustain on-site effluent dispersal.

#### Comment

The Yass Valley Settlement Strategy seeks to limit development in Sutton to only 150 lots because of a lack of reticulated water and sewerage supply. The planning proposal is therefore generally consistent with Direction 18 because the proposed 71 x 5,000 sqm residential lots (Or 60-70 serviced lots) that could be potentially created are part of a limited release of lots in Sutton under the Yass Valley Strategy 2036.

In addition, the 5,000 sqm minimum lot size applied to unserviced lots is to ensure that there is an adequate area of land for on-site effluent disposal and adequate buffer area between these areas and potential bores. This approach was recently applied to the urban expansion of Gundaroo under Yass LEP 2013 (Amendment No 2).

#### Direction 23 Protects the Region's Heritage

The planning proposal states that there are no significant European cultural heritage items within the site.

The planning proposal also includes an 'Aboriginal Heritage Due Diligence Assessment' by Ecological Australia dated May 2018. This report concludes that no Aboriginal material was observed across much of the study area and no items are recorded as being present in a search in the Aboriginal Heritage Information Management System.

The report also concluded that it is possible that Aboriginal objects may be located on the lower slopes and banks of the Yass River in the north-eastern section of the site.

The report recommends that no works that disturb the ground surface should take place within 200m of the western banks of the Yass River. If works are required within this area, further archaeological investigation, including sub-surface testing, will be required.

#### Comment

The area near the Yass River identified in the 'Aboriginal Heritage Due Diligence Assessment' that could potentially contain Aboriginal objects is also proposed to be zoned R5 Large Lot Residential Zone comprising 4 x 5,000 sqm house lots.

A requirement in the Gateway determination for consultation with the Office of Environment and Heritage will enable Council and the Department to determine if the due diligence report is adequate and if the planning proposal is consistent with Direction 23.

#### Direction 24 Deliver Greater Housing Supply and Choice

The planning proposal indicates that rezoning of land for urban expansion in Sutton is consistent with Direction 24 because it will provide a ready supply of well-located land for residential development in Sutton in accordance with the Yass Valley Settlement Strategy without impacting on existing village amenity, biodiversity or agriculture on adjoining land.

#### Comment

The proposed release of 71 residential lots to expand Sutton Village is generally consistent with Direction 24. The proposal to provide additional housing supply and housing choice to enable Sutton Village to expand is within the 150-lot threshold applied to Sutton in under the Yass Valley Settlement Strategy.

#### Direction 25 Focus Housing Growth in Locations that Maximise Infrastructure and Services

The planning proposal indicates that it is consistent with Direction 25 because it is also consistent with the Yass Valley Settlement Strategy that provides for limited growth of Sutton Village.

#### Comment

Although there is no reticulated public water or sewerage supply in Sutton, and Council and the proponent do not intend to provide these services, the proposed extension of the existing village may have implications for other infrastructure and services, i.e. energy utilities, local roads and the primary school.

A recommended requirement in the Gateway determination for consultation with the relevant infrastructure and service providers (e.g. NSW Roads and Maritime Services, Department of Education and ACT Government) will enable Council and the Department to determine if the proposal is consistent with Direction 25.

#### Direction 27 Deliver More Opportunities for Affordable Housing

The planning proposal states that the rezoning of the land for residential development will not limit or remove affordable housing options available under the provisions of the Yass Valley LEP 2013 or SEPP (Affordable Rental Housing) 2009

#### Comment

Actions under Direction 27 focus on encouraging strategies and local plans to enable greater variety and diversity of housing types and to incentivise private investment in affordable housing.

The provision of affordable housing within the site is likely to be compromised by the intent of the proposal to create larger house lots and low housing densities that could increase the cost of land and housing. The proposal is justifiably inconsistent with Direction 27 because of the need for larger lots to accommodate on-site effluent disposal, rainwater harvesting for water supply and to protect and manage significant biodiversity values.

#### Direction 28 Manage Rural Lifestyles

The planning proposal has justified the proposal for rural residential development on the basis that:

- the land has been identified in a local land use strategy (endorsed by the Department); and
- the site forms the logical expansion of Sutton without placing undue pressure on existing infrastructure and/or major infrastructure augmentation.

### Comment

The proposal is generally consistent with the Actions under Direction 28 because the rural residential development (R5 Large Lot Residential Zone) is in close proximity to an existing urban settlement (Sutton Village) and avoids/minimises land use conflict with adjoining productive agricultural land and natural resources.

Action 28.2 under the Direction requires new rural residential areas to avoid high environmental, cultural and heritage significance, important agricultural land and areas affected by natural hazards. A recommended requirement in the Gateway determination for consultation with the relevant natural resource and environmental agencies (Office of Environment and Heritage and Department of Primary Industries) will enable Council and the Department to determine if the proposal is consistent with Direction 28.

### **Local**

The Yass Valley Settlement Strategy 2036 recommends only limited growth for Sutton, i.e. less than 150 lots, consistent with the local narrative for Yass under the Regional Plan. The Yass Valley Settlement Strategy ensures that there is a targeted approach to the conversion of agricultural land to urban use near existing settlements that avoids indiscriminate and ad hoc fragmentation of rural land and

### Comment

The conversion of agricultural land for urban expansion to the south of Sutton Village is generally consistent with the Yass Valley Settlement Strategy which outlines a minimal expansion of Sutton village (150 lots in total).

## **Section 9.1 Ministerial Directions**

### Direction 1.2 Rural Zones

The Direction applies when a planning proposal affects land within an existing rural zone.

The planning proposal acknowledges that it is inconsistent with Direction 1.2 Rural Zones because it seeks to rezone rural zoned land to an urban zone. The planning proposal further states that the inconsistency is considered reasonable and justified for the following reasons;

- The proposal is consistent with a Regional Strategy and a local strategy endorsed by the Department that aims to ensure that the conversion of agricultural land for residential development is not indiscriminate fragmentation of rural land.
- The proposal does not create an undesirable precedent in the future application of this Direction.
- The minimum lot sizes are reflective of community expectations for preserving the existing village character of Sutton.

### Comment and Recommendation

The targeted approach by Council for the conversion of agricultural land to urban use adjacent to Sutton Village is likely to have a minimal impact on rural lands in the region and is consistent with the Regional Plan and Yass Valley Settlement Strategy that both seek to retain the character of villages in Yass Valley.

It is recommended that the Secretary be satisfied that the inconsistency with this Direction has been justified because the inconsistency is minor or justified by the Yass Valley Settlement Strategy.

### Direction 1.5 Rural Lands

This Direction applies when a planning proposal affects land within an existing or proposed rural or environmental zone.

The planning proposal indicates that it is inconsistent with the aims of the Direction to protect the agricultural production of the land and facilitate the orderly and economic development of rural lands for rural and related purposes.

The planning proposal further states that the inconsistencies are reasonable and justified for the following reasons;

- The planning proposal is not inconsistent with the Rural Subdivision Principles outlined in SEPP (Rural Lands) 2008.
- The minimum lot sizes are reflective of community expectations for preserving the existing character of Sutton village.
- The proposal does not create an undesirable precedent in the future application of this Direction.

### Comment and Recommendation

The planning proposal is consistent with at least two of the Rural Planning Principles under the SEPP (Rural Lands) 2008:

- Provide opportunities for rural lifestyle, settlement and housing.
- Ensures that there is consistency with any DPE regional strategy or endorsed local strategy.

The design of the subdivision concept plan on which the planning proposal is based has attempted to take into account many of the SEPPs Rural Subdivision Principles including ensuring that planning for dwelling opportunities takes into account natural and physical constraints.

It is recommended that the Secretary be satisfied that the inconsistency with this Direction has been justified as any inconsistency is minor or justified by the Yass Valley Settlement Strategy.

### 2.1 Environmental Protection Zones

This Direction applies to all planning proposals. It requires that a proposal must include provisions that facilitate the protection and conservation of environmentally sensitive land.

The planning proposal states that it is not inconsistent with this Direction. The proposal includes ecological studies that acknowledge the site contains noteworthy biodiversity values. The planning proposal has subsequently applied appropriate

zones (e.g. E3 Environmental Management Zone) and minimum lot sizes designed to control and regulate the orderly development of the land.

### Comment and Recommendation

The proposed E3 Environmental Management Zone to be applied to approximately 55 percent of the site reflects the outcomes of environmental assessments and a concept development plan submitted with the planning proposal.

A recommended requirement in the Gateway determination for consultation with the Office of Environment and Heritage will enable Council and the Department to determine if the proposed 'stewardship lots' to be created within the proposed environmental zones will satisfy the objective of the Direction.

It is recommended that the Secretary's delegate advise Council that it will need to obtain agreement for any inconsistency with s9.1 Direction 2.1 Environmental Protection Zones after consultation with the Office of Environment and Heritage and prior to the plan being made.

### 2.3 Heritage Conservation

This Direction applies to all planning proposals and requires conservation of items, areas, objects and places of environmental heritage significance and indigenous heritage significance.

The 'Aboriginal Heritage Due Diligence Assessment' prepared by Ecological Australia dated May 2018 that was submitted with the planning proposal concluded that no Aboriginal material was observed across much of the study area and no items are recorded as being present on the site based on a search of the Aboriginal Heritage Information Management System.

The report also concluded that it is possible that Aboriginal objects may be located on the lower slopes and banks of the Yass River in the north-eastern section of the site. The report recommends that no works that disturb the ground surface should take place within 200m of the western banks of the Yass River. If works are required within this area, further archaeological investigation, including sub-surface testing, will be required.

### Comment

The area near the Yass River identified in the 'Aboriginal Heritage Due Diligence Assessment' that could potentially contain Aboriginal objects is also proposed to be zoned R5 Large Lot Residential Zone.

It is recommended that the Secretary's delegate advise Council that it will need to obtain agreement for any inconsistency with s9.1 Direction 2.3 Heritage Conservation after consultation with the Office of Environment and Heritage and prior to the plan being made.

### 3.1 Residential Zones

This Direction applies when a planning proposal affects land within an existing or proposed residential zone.

The planning proposal indicates that it is consistent with the Direction because the proposed residential use of part of the land is in accordance with the Regional Plan and Yass Valley Settlement Strategy.

### Comment

The planning proposal to rezone land to RU5 Village Zone and R5 Large Lot Residential Zone to potentially create 71 unserviced residential lots is consistent with this Direction because the rezoning for residential development is consistent with the Yass Valley Settlement Strategy that provides for limited growth (150 lots) of Sutton Village.

Direction 3.1 also requires residential development to be adequately serviced or that satisfactory arrangements have been made to service it.

There is no reticulated public water or sewerage supply in Sutton and there is no intention to provide these services by Council or the proponent. The planning proposal, however, includes a specific investigation and report on the capability for utilising on-site effluent disposal entitled 'Soil and Water Lot 5 P 838497 – Sutton Land Capability Assessment May 2018'. The report concludes that the proposed 5,000 sqm minimum size for the village extension is adequate to sustain on-site effluent dispersal.

A traffic impact assessment by consultants Ontoit submitted with the planning proposal has concluded that;

- there is sufficient road capacity along the primary access corridors that will be servicing the proposed development area;
- traffic generated from the proposed development is likely to be minimal and traffic impacts are likely to be negligible;
- the proposed access arrangements have been located at logical points on the road network; and
- no impacts are anticipated on pedestrian and cycle access.

A recommended requirement in the Gateway determination for consultation with the relevant infrastructure and service providers (e.g. NSW Roads and Maritime Services, Department of Education and ACT Government) will enable Council and the Department to determine if the proposal is consistent with Direction 3.1 Residential Zones.

It is recommended that the Secretary's delegate advise Council that it will need to obtain agreement for any inconsistency with s9.1 Direction 3.1 Residential Zones after consultation with the relevant infrastructure and servicing agencies and prior to the plan being made.

### 3.4 Integrating Land Use and Transport

This Direction applies to planning proposals that creates an urban zone. The purpose of the Direction is to improve the choice of transport modes used for access to housing, jobs and services, i.e. public transport, walking and cycling.

The planning proposal indicates that it is not inconsistent with this Direction because the concept plan used to develop the proposed LEP provisions seeks to promote improved public and pedestrian access within the site and to Sutton village.

### Comment

The isolation of Sutton from major regional centres makes it difficult to improve choice of transport modes for access to these centres. The proposed concept subdivision however seeks to provide choice of transport for access within Sutton Village, e.g. cycling ways and pedestrian pathways.

It is concluded that the planning proposal is generally consistent with this Direction.

#### 4.3 Flood Prone Land

This Direction applies to a planning proposal that affects flood prone land. The purpose of the Direction is to ensure planning proposals consider the potential flood impacts consistent with the NSW Flood Prone Land Policy and principles of the Floodplain Development Manual.

The planning proposal acknowledges that the site adjoins the Yass River and supports a number of minor tributaries that create localised flooding during major storm events. It also recognises that the land is included in the Sutton Floodplain Risk and Management Study and Plan adopted by Yass Valley Council in 2016.

The planning proposal concludes that it is not inconsistent with the Direction because;

- Development of land for residential purposes would need to be in accordance with the strategic directions of the flood study and plan.
- The proposal adopts suitably located zones with appropriate minimum lot sizes that would result in a subdivision pattern that could accommodate siting of dwellings, and any associated on-site effluent disposal system, well above the established flood level.

#### Comment

The planning proposal seeks to rezone rural land adjoining the Yass River to R5 Large Lot Residential Zone.

Although the planning proposal acknowledges that parts of the site are susceptible to localised flooding it does not include information of the location of flood planning areas within the site identified in the Sutton Floodplain Risk and Management Study and Plan. This information would be of interest to the Office of Environment and Heritage (Flood Unit) and DPI Water (on-site effluent disposal).

It is therefore recommended that the planning proposal be revised to include mapping of flood categories (e.g. floodway, flood storage and flood fringe) and the flood planning areas identified in the Sutton Floodplain Risk and Management Study and Plan. The maps showing the flood planning areas should also be used as an overlay on a diagram showing the proposed land use zones.

It is also recommended that the Secretary's delegate advise Council that it will need to obtain agreement for any inconsistency with s9.1 Direction 4.3 Flood Prone Land after consultation with the Office of Environment and Heritage and prior to the plan being made.

#### 4.4 Planning for Bushfire Protection

This Direction applies to planning proposals that affect, or is in close proximity, to land mapped as bushfire prone land.

The planning proposal states that the site does not contain land identified as bush fire prone land on the Bush Fire Prone Land Map.

The planning proposal includes a report entitled 'Bushfire Opportunities/Constraints Analysis July 2018 that includes recommendations on how to achieve compliance with s100B *Rural Fires Act 1997*, Clause 44 of the *Rural Fires Regulation 2013* and 'Planning for Bush Fire Protection 2006'. The report includes recommendations for

the provision of Asset Protection Zones (APZs), vehicular access, water supply for firefighting, the safe installation of utilities and discussion of building construction standards for future dwellings.

#### Comment and Recommendation

Although the site does not contain land identified as bushfire prone land, it is in close proximity to land identified as bushfire prone land south of the Federal Highway on the Palerang Bushfire Prone Land Map. Direction 4.4 Planning for Bushfire Protection therefore applies to the land and the planning proposal must be referred to the NSW Rural Fire Service in accordance with the Direction.

It is recommended that:

- The planning proposal be referred to the NSW Rural Fire Service for comment in accordance with Direction 4.4 Planning for Bushfire Protection.
- The Secretary be satisfied that the planning proposal will not be consistent with this Direction until after Council has referred the proposal to the NSW Rural Fire Service and has reflected comment provided by the RFS in the planning proposal, in accordance with Direction 4.4 Planning for Bushfire Protection.

#### 5.10 Implementation of Regional Plans

This Direction requires a planning proposal to be consistent with the South East and Tablelands Regional Plan. Consistency with the Regional Plan is discussed in the previous section on Regional Strategic Assessment.

The assessment concluded that a requirement in the Gateway determination for consultation with the relevant environmental and servicing agencies will enable Council and the Department to determine if the proposal is consistent with the following Directions under the Regional Plan:

- Direction 14 Protect Important Environmental Assets and Direction 15 Enhance Biodiversity Connections.
- Direction 23 Protects the Region's Heritage
- Direction 25 Focus Housing Growth in Locations that Maximise Infrastructure and Services
- Direction 28 Manage Rural Lifestyles

It is recommended that the Secretary's delegate advise Council that it will need to obtain agreement for any inconsistency with s9.1 Direction 5.10 Implementation of Regional Plans after consultation with relevant agencies and prior to the plan being made.

#### 6.3 Site Specific Provisions

The Direction applies where a planning proposal allow a particular development to be carried out.

#### Comment

Although the planning proposal is not allowing a particular type of development to be carried out it seeks to introduce site specific provisions to apply a lower minimum lot size of 2,000 sqm in the RU5 Village Zone than shown on the lot size map (5,000 sqm) if the land becomes serviced by reticulated water and sewerage. This would

generate approximately 70 x 2,000 sqm serviced house lots in the proposed RU5 Village Zone compared to the 32 x 5,000 sqm house lots shown in the concept plan. Although at this stage Council and the proponent do not intend providing reticulated water and sewerage, there is merit in permitting smaller lot sizes consistent with existing lot sizes in Sutton Village if Council decides to provide reticulated water and sewerage sometime in the future. Council has included a similar provision for the subdivision of land at Gundaroo (clause 6.12 Yass Valley LEP 2013).

### **State environmental planning policies (SEPPs)**

The two relevant SEPPs that apply to the site are SEPP 55 (Remediation of Land) and SEPP (Rural Lands) 2008.

#### SEPP 55 (Remediation of Land)

Clause 6 of the SEPP requires planning authorities to consider, as part of rezoning land, whether land is contaminated and any requirements for the remediation of land for urban development.

The planning proposal includes a site-specific investigation entitled 'Preliminary Site Investigation May 2018' that concludes that contaminants of concern found at various locations across the site are of low risk and would not limit the proposed residential development of the site. The proposal appears to have satisfied the requirements of SEPP 55.

It is recommended that the Gateway determination require Council to consult with the NSW Environmental Protection Authority on the planning proposal to ensure that land remediation issues have been addressed.

#### SEPP (Rural Lands) 2008

As previously discussed, the planning proposal is not considered to be inconsistent with the SEPP Rural Lands.

### **SITE-SPECIFIC ASSESSMENT**

---

#### **Social**

There do not appear to be any adverse social impacts arising from the planning proposal and the subsequent development of part of the site for 71 residential lots. The proposal is consistent with the intent of the Yass Valley Settlement Strategy 2036 adopted by Council that seeks to limit the growth of Sutton Village to 150 lots because of a lack of public reticulated water and sewerage supply and a desire to retain the small village character of Sutton.

#### **Environmental**

The proposal includes environmental studies that address the protection and/or management of significant biodiversity values, bushfire risk, land contamination and on-site effluent disposal.

Further work is recommended, as previously discussed under the section on Ministerial Direction 4.3 Flood Prone Land, to revise the planning proposal to include mapping of flood categories and planning area outlined in the Sutton Floodplain Risk and Management Study and Plan.

A recommended requirement in the Gateway determination for consultation with the environmental agencies will enable Council and the Department to determine if the

proposal will protect and maintain identified areas of high environmental value and heritage assets and manage environmental hazards.

### **Economic**

There do not appear to be any adverse economic impacts arising from the planning proposal. The proposal is consistent with the intent of the Yass Valley Settlement Strategy 2036 that seeks to provide limited growth of Sutton Village to 150 lots because of a lack of public reticulated water and sewerage supply and to retain its village character.

Additional housing will likely create positive economic impacts for businesses in Sutton and may place downward pressure on house prices because of an increase in the supply of housing.

### **Infrastructure**

The planning proposal indicates that future development of the site will not be reliant on reticulated water or sewerage supply systems.

It also states that on-site effluent disposal systems proposed to be used for house sites are unlikely to pose unacceptable risk to sensitive receiving catchments and that future development would rely on harvesting rainwater and possibly bore water for water supply.

The planning proposal includes a specific investigation and report on the site's capability for utilising on-site effluent disposal entitled 'Soil and Water Lot 5 P 838497 – Sutton Land Capability Assessment May 2018'. The report concludes that the proposed 5,000 sqm minimum size for the village extension is adequate to sustain on-site effluent dispersal.

There is merit in the intent of the planning proposal to including provisions to permit smaller lot sizes (2,000 sqm) in the RU5 Village Zone, consistent with existing lot sizes in Sutton Village, if Council decides to provide reticulated water and sewerage sometime in the future

A requirement in the Gateway determination for consultation with the servicing agencies will enable Council and the Department to determine if the proposal will create a significant issue with the provision of services and infrastructure.

## **CONSULTATION**

---

### **Community**

The planning proposal has indicated that it is likely that community consultation will be for 28 days. The proposal is moderately complex because the site contains significant ecological values and addresses several environmental issues (on-site effluent disposal, bushfire risk management, flooding and land contamination).

It is therefore recommended that community consultation be undertaken for a minimum of 28 days.

### **Agencies**

The planning proposal has recommended consultation with the following government agencies;

- Commonwealth Department of Environment and Energy (DEE)

Consultation with DEE is appropriate because the planning proposal has acknowledged that assessment/approval under the *Environment*

*Protection and Biodiversity Conservation Act 1999* (EPBC Act) may be required for future development of the site if it impacts on commonwealth listed native flora and fauna.

- Department of Planning and Environment

Consultation with DPE is not required because DPE already has a role in the assessment of the proposal for a Gateway determination.

- Office of Environment and Heritage

Consultation with OEH is appropriate because of the potential for impacts on significant native vegetation and wildlife habitat, impacts associated with localised flooding and potential impacts on riparian areas.

- Department of Primary Industries

Consultation with DPI Water, DPI Agriculture and DPI Fisheries is appropriate because;

- Water – The planning proposal will enable the site to be subdivided to permit house lots without access to reticulated water or sewerage systems. Previous planning proposals to permit unserviced house lots in Gundaroo was of interest to the DPI Water therefore the current proposal for Sutton should also be referred to DPI -Water for comment.
- Agriculture – The proposal's intention to convert the site from agricultural use to a residential use should be referred to DPI Agriculture for comment.
- Fisheries – The proposal's intention to development land for housing in proximity to the Yass River should be referred to DPE Fisheries for comment.

- NSW Rural Fire Service

The planning proposal states that the land is not identified as bush fire prone land on the bush fire prone land map. However, the planning proposal is near bush fire prone land. It also includes reports on bushfire risk assessment. The planning proposal and bush fire reports should therefore be referred to the NSW Rural Fire Service for comment in accordance with s9.1 Direction 4.4 Planning for Bushfire Protection.

#### Other agencies

- NSW Roads and Maritime Services

The site's southern boundary is the Federal Highway and it is likely that the additional 75 dwellings site will generate additional traffic on Sutton Road and on the intersection of Sutton Road with the Federal Highway. The planning proposal should therefore be referred to the NSW Roads and Maritime Services for comment.

- NSW Environmental Protection Authority

The planning proposal includes a site-specific investigation on land contamination that concludes contaminants of concern found at various locations across the site are of low risk and would not limit the proposed residential development of the site. The planning proposal and contamination

report should therefore be referred to the NSW Environmental Protection Authority for comment.

- ACT Government

Sutton Village is approximately 8 kms from the ACT border and it is likely that many future residents within the proposed urban release area will travel to the ACT for work, education, recreation or shopping. The planning proposal should therefore be referred to the ACT Government to note and for comment.

- NSW Department of Education

Sutton Primary School is located to the north of the site. The NSW Department of Education will be interested in the potential impact on the current primary school as a result of the increase in population of Sutton from the future development of the site. The planning proposal should therefore be referred to the NSW Department of Education Services for comment.

- Queanbeyan Palerang Regional Council

The southern section of the site is in close proximity to the boundary between Yass Valley LGA and Queanbeyan Palerang Region LGA. The planning proposal should therefore be referred to the Queanbeyan Palerang Regional Council for comment.

## **TIME FRAME**

---

The planning proposal estimates that the plan can be completed by March 2019 provided Council is given authority for plan making. This does not provide enough time to undertake agency and community consultation, assess and prepare reports to council on submissions, time lost between Christmas and the New Year break and for finalising the instrument and LEP Maps for notification.

It is recommended that the timeframe for completing the plan be 12 months from the date of the Gateway determination.

## **LOCAL PLAN-MAKING AUTHORITY**

---

Council has not requested authorisation to be the local plan making authority. It is recommended that authorisation not be given to Council to be the local plan making authority because of the complex nature of issues associated with the proposal and the requirement for Council to seek the Secretary's agreement for any inconsistency with section 9.1 Directions 2.1 Environmental Protection Zone 2.3 Heritage Conservation, 3.1 Residential Zones, 4.4 Flood Prone Land and 5.10 Implementation of Regional Plans prior to the plan being made.

## **CONCLUSION**

---

The planning proposal is supported to proceed with conditions, including a condition requiring revisions to the planning proposal to include further information on flooding.

The proposal has merit because the rezoning of land to permit 71 residential house lots is generally in accordance with the South East and Tablelands Regional Plan, and the Yass Valley Settlement Strategy 2036 which is endorsed by the Department.

The proposal has also provided information to support the concept subdivision plan that has been used as the basis for proposed amendments to the Yass Valley LEP 2013.

## **RECOMMENDATION**

---

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions 1.2 Rural Zones and 1.5 Rural Lands are minor or have been justified.
2. note that the consistency with section 9.1 Directions 2.1 Environmental Protection Zones, 2.3 Heritage Conservation, 3.1 Residential Zones, 4.3 Flood Prone Land and 5.10 Implementation of Regional Plans are unresolved and will require justification. Council must obtain agreement for any inconsistency with these Directions after consultation with relevant agencies and prior to the plan being made.
3. Note that consistency with Direction 4.4 Planning for Bushfire Protection can't be determined until Council has consulted with RFS prior to community consultation and has reflected comments provided by RFS in the planning proposal.

It is recommended that the delegate of the Minister for Planning determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 28 days.
2. Consultation is required with the following public authorities;
  - Commonwealth Department of Environment and Energy
  - Office of Environment and Heritage
  - NSW Environmental Protection Authority
  - Department of Primary Industries – Agriculture
  - Department of Primary Industries – Water
  - Department of Primary Industries - Fisheries
  - NSW Rural Fire Service
  - NSW Roads and Maritime Services
  - NSW Department of Education
  - ACT Government
  - Queanbeyan Palerang Regional Council
3. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.
4. Given the nature of the planning proposal, Council should not be authorised to be the local plan-making authority to make this plan.
5. The planning proposal is to be revised prior to community consultation to include mapping of the flood planning area and flood categories (floodway,

Flood Storage and flood fringe) for the site, derived from the Sutton Floodplain Risk Management Study and Plan. The flood planning area is to be included as an overlay on the proposed zone map.



26/11/2018

**George Curtis**  
**Acting Team Leader, Southern**  
**Region**



26/11/2019

**Luke Musgrave**  
**Acting Director Regions,**  
**Southern**  
**Planning Services**

Contact Officer: Graham Judge  
Senior Planner, Southern  
Phone: 6229 7906