

Our reference: DOC19/68052
Your reference: PP 2018 Yass 003.00

The General Manager
Yass Shire Council
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Attention Liz Makim

Dear Ms Makim

Planning Proposal PP_2018_YASSV 003_00 Lot 5 DP 838487, 2090 Sutton Road, Sutton

The Office of Environment and Heritage (OEH) has reviewed the information in regard to the Planning Proposal to rezone rural land to RU5 Village Zone, R5 Large Lot Residential Zone and E3 Environmental Management Zone. The proposal has a range of environmental, natural hazard and cultural heritage constraints that require more detailed consideration at this stage of the planning process.

We do not support the draft planning proposal in its current form as there are likely to be a number of environmental impacts which would result from allowing further development within these areas. These impacts have not been fully quantified or addressed in the planning proposal.

Our review of the planning proposal identified the following issues which have not been adequately addressed:

- Biodiversity
- Aboriginal Cultural heritage
- Flooding

These issues are discussed in greater detail in Attachment 1.

We note that the Minister for Planning and Environment has delegated their authority to Council. However in "A guide for preparing local environmental plans"

(http://www.planning.nsw.gov.au/Portals/0/Guide_LEPs.pdf) states that:

"A council must not use its delegation under section 59 of the Act where there is an unresolved agency objection to the draft LEP. In this instance, council is to contact the relevant regional office of the department to seek assistance in resolving the matter so that the LEP may proceed under delegation. Where it is not possible to resolve the objection, the

delegation may be withdrawn, and the department may proceed with finalising the plan, or the Minister (or delegate) may determine that the planning proposal no longer proceeds.”

This submission should be considered as an objection to the planning proposal and an invitation to Council to work together and resolve the issues raised in Attachment 1.

Please contact Tania Ashworth, Senior Conservation Planning Officer on 6229 7176 should further information be required regarding this matter.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Allison Treweek'.

ALLISON TREWEEK 12/02/2019
Senior Team Leader - South East Planning
Conservation and Regional Delivery

Attachment 1 Detailed Comments

Ministerial Direction 2.3 Heritage Conservation

OEH is concerned that the 2018 due diligence assessment does not provide enough information to determine whether an adequate survey and consideration of cultural values was undertaken. In particular, no consultation has been undertaken with the Aboriginal community which may provide more information about cultural values of the land.

The 2013 Yass Valley Aboriginal heritage study recommends that Sutton is an area of interest which includes Aboriginal pathways. Neither the 2013 study or more recent archaeological assessments in the surrounding Sutton area (Bowen 2014, Past Traces 2017) have been considered in the background assessment. We also note that the proponent has chosen not to undertake an assessment at the rezoning stage of the area identified as archaeologically sensitive along the western banks of the Yass River. Instead this area is recommended for further archaeological investigation, including sub-surface testing, if any impacts are to occur in this area in the future. As the nature, extent and significance of the archaeologically sensitive area remains unknown OEH is concerned that the proposed rezoning may be underestimating the full archaeological resource of the area.

Undertaking Aboriginal consultation and a more comprehensive archaeological assessment at this current stage gives more certainty to any future development proposals and will provide up front measures which could be taken to avoid or mitigate impacts if Aboriginal objects are located. Currently, OEH cannot not guarantee an AHIP would be issued if any future development applications for residential development that may harm Aboriginal objects are lodged.

Ministerial Direction 2.1 Environmental Protection Zones

This rezoning layout, Lot size and orientation in its current form is not supported by OEH.

In the onsite discussions with the proponent leading up to this referral, OEH officers explained the requirements of Lot sizes across all proposed zoning in order to give protection to the Box Gum Woodland that is currently proposed to be cleared.

Of particular concern are the R5 Lot sizes. OEH records indicate that this was to be 2ha minimum Lot size. It is not appropriate to zone this land to a minimum Lot size of 5,000m² as:

- Single dwelling placement and the associated clearing for fences, roads, water tanks and other infrastructure would cause the loss of significant habitat on a site of R5 with 1.5ha lots. Additionally, the placing of an R5 with a minimum Lot size of 5,000m² and an average of 1.5ha allows for further development at a future date (potentially an additional 39). This will essentially double the impact of the development on the Box gum woodland. OEH is concerned that this will raise the expectation of future developers, and result in the clearing of all the trees located within this area.
- OEH did not agree to the Box Gum Woodland under the R5 sites being cleared, the current lot layout would result in all trees being removed. OEH does not support the removal of all the large significant trees located within this R5 area. OEH does not support the current R5 area as it has been extended into areas not previously discussed.
- It is unclear as to what the proponent is assuming as lost, partially protected, or fully protected under an agreement. While it is assumed that this will be more clearly illustrated in a future DA for the development, OEH requires this to be made clear at this stage.
- It is unclear how a Section 88B covenant as suggested would be able to protect the area of Box gum woodland as it there appears to be little room for building envelopes that do not impact on the trees. In OEH's previous experience when the lot size is so small all the trees are removed. We have expressed these concerns previously.

Ministerial Direction 4.3 Flood Prone Land

This rezoning layout and location in its current form is not supported by OEH.

As the proposed development area is potentially affected by flooding and/or has the potential to affect flood behaviour, it will need to be considered by council in accordance with the NSW Government's Flood Prone Land Policy as set out in the NSW Floodplain Development Manual (2005). The primary objective of the policy is to reduce the impact of flooding and flood liability on individual owners and occupiers, and to reduce the private and public losses resulting from flooding, utilising environmentally positive methods wherever possible.

The implications of the full range of floods, including events greater than the design flood, up to the Probable Maximum Flood (PMF) should be considered by council, including:

- The impact of flooding on the proposed development;
- The impact of the proposed development on flood behaviour (particularly downstream flood impacts as a result of potential encroachment, land use and land form changes);
- The impact of flooding on the safety of people/users of the development for the full range of floods including issues linked with isolation and accessibility for emergency services;
- The outcomes, actions and objectives from the Sutton FRMS&P (2016).

From the information available to us, it is unclear as to whether adequate consideration has been given to all these matters in their entirety, particularly:

- Appropriate buffers to accommodate flood and riparian constraints; and
- Potential isolation and accessibility for emergency services during a flood.

Council's Sutton Floodplain Risk Management Study and Plan (FRMSP, 2016) indicates that some areas proposed to be rezoned for residential development are significantly flood affected. Furthermore, the proposed large lot residential area to the north east of the site is traversed by two tributaries of the Yass River. Zoning boundaries which are cognisant of flood and riparian constraints are preferable, to enable appropriate management of such areas and avoid creating an expectation of future development.

Council's Sutton Floodplain Risk Management Study and Plan (FRMSP, 2016) indicates that the majority of the Sutton township (including the site) is subject to potential isolation during a flood. It is suggested that the approval authority be satisfied that increasing the residential population at this location does not represent an increased risk to life, which may be achieved through the assessment and identification of appropriate strategies to facilitate flood evacuation.