

27 April 2023

Contact: *Stuart Little*
Telephone: *0436 948 347*
Our ref: *D2023/34841*

Susan Stannard
Senior Strategic Land Use Planner
Wingecarribee Shire Council
PO Box 141
MOSS VALE NSW 2577

Dear Ms Stannard,

RE: Planning Proposal for Mittagong Aerodrome land

I refer to your email and letter of 14 March 2023 referring a Planning Proposal to amend the *Wingecarribee Local Environmental Plan 2010* (WLEP) to allow the re-subdivision of land (two lots) at Mittagong Aerodrome while preserving the existing dwelling entitlement on one of the lots. We also refer to an email of 21 April providing further clarification regarding the relationship of the Proposal to various provisions of the WLEP.

WaterNSW supports the intention of the Planning Proposal to deliver a boundary adjustment that better aligns lot boundaries with land use. Based on the current information, including proposed lot configuration, we believe that while the site is heavily constrained, there is sufficient space available on the proposed new 'dwelling' lot to facilitate a boundary adjustment and accommodate a dwelling, necessary Asset Protection Zones (APZs) and the stormwater and wastewater management measures that would later likely deliver a neutral or beneficial effect (NorBE) on water quality.

The Proposal appears to be trying to overcome a Minimum Lot Size (MLS) and associated planning control constraints associated with clause 4.6(6) of the WLEP by making specific provisions in Schedule 1 for the site. This would see the existing building entitlement preserved on one lot with other provisions foreshadowing the intended boundary adjustment in accordance with land use. From a land use zoning perspective, dwellings are already permissible with consent in the C3 zone on both lots, and it appears the MLS is the restricting matter. We ask Council to explore whether the proposed amendment sufficiently overcomes the MLS and clause 4.6(6) constraints. This includes whether the proposed amendment to Schedule 1 needs to explicitly mention the MLS constraint and/or whether clause 4.6(6) may need amendment to refer to Schedule 1 of the WLEP.

Given that the land is associated with an aerodrome, we believe that a Preliminary Site Investigation (PSI) report is required to ensure that any water quality risk from fuels or chemicals associated with the aerodrome has not affected the area proposed for the dwelling. We note that the intention is for the Planning Proposal to be on exhibition at the same time as the development application (DA) for the subdivision. A PSI report would help inform both the Planning Proposal and the DA for the boundary adjustment.

We believe that the Proposal should refer to the positive covenant that occurs on the site and which currently favours the Sydney Catchment Authority (now WaterNSW). While the Proposal generally accords with the provisions of the covenant, the terms of the covenant would need to

be re-examined at DA stage. The covenant may either need to be carried forward or amended. WaterNSW would need to be consulted if modifications to the covenant are required to align with the new proposed subdivision design and lot boundaries. We have assessed the Proposal considering the current requirements of the covenant.

The site is constrained by environmental risk (e.g. bushfire and overland flow) and values (e.g. native vegetation). In assessing the Proposal, we have treated relevant site plans as being indicative regarding how a dwelling and associated infrastructure (e.g. APZ) could achieve a neutral or beneficial effect (NorBE) on water quality at later development application (DA) stage. Our comments on the plans are made to help inform our assessment of the capacity of the Proposal to deliver the outcome intended. We understand that further design refinements may occur or be needed at DA stage.

Our detailed comments are provided in Attachment 1. Should you have any questions on these matters, please contact Stuart Little (stuart.little@waternsw.com.au).

Yours sincerely

A handwritten signature in black ink, appearing to be 'Alison Kniha', with a stylized flourish extending to the right.

ALISON KNIHA
Catchment Protection Planning Manager

ATTACHMENT 1 - DETAIL

The Site

The land concerns Lot 11 DP 1226788 (37 ha) and Lot 841 DP 1253894 (4.6 ha) which, combined, support a runway, club house and associated hangers. Most of the infrastructure (club house, hangers) occur in Lot 11, which also has areas of remnant vegetation and frontage to Diamond Fields Road. Half the runway for the airfield occurs in Lot 11 and half in Lot 841. We also understand that Lot 11 also has a dwelling entitlement carried across under an earlier Local Environmental Plan (LEP) that has not been taken up.

Objectives and Intended Outcomes

The objective of the Proposal is to facilitate a boundary adjustment (subdivision) for the two existing lots so that two new lots can be created, distinct in their purpose, while carrying forward the dwelling entitlement for one of those lots. The existing dwelling entitlement would be reassigned to the newly created lot not associated with the airfield. The new lot retaining the airfield would be approximately 31 ha (proposed Lot 843) and the residual lot retaining the dwelling entitlement would be approximately 10.6 ha (proposed Lot 844).

From what we understand:

- both existing lots are zoned C3 Environmental Management which allow dwellings with consent. The airfield is an existing use. No change to the zoning is proposed
- a Minimum Lot Size (MLS; 40ha) applies to both current lots. Both existing lots are less than the MLS that applies to the land. The proposed boundary adjustment would similarly deliver two lots below the MLS. No change to the MLS is proposed
- current Lot 11 has a dwelling entitlement that has yet to be realised
- controls under clause 4.4(6) of the WLEP do not accommodate this type of subdivision on C3 zoned land and potentially blocks a subdivision of this nature, even it is for a boundary adjustment.

In addition to the above we note that Lot 11 is affected by a public positive covenant in favour of the Sydney Catchment Authority (now WaterNSW). The covenant protects the remnant native vegetation on Lot 11. While not directly relating to Planning controls, this matter is relevant in terms of the capability of the land to deliver the intended boundary adjustment and associated dwelling.

We support the intention of the Proposal and what it is trying to deliver. At face value, it appears that the Proposal is trying to sustain an existing entitlement through the later boundary adjustment (subdivision) process and overcome the MLS restriction that applies at subdivision stage. This could be made clearer. While the land use table allows dwellings in the C3 zone subject to consent, the MLS effectively restricts dwellings being created on land less than the MLS. It could elaborate that changing the MLS is not considered a proposed solution as it would set a precedent for the area and adjoining C3 lots which is not desired (if this is the case).

The Proposal would benefit from a clearer narrative explaining when the current lots and covenant were created, the existing zoning and MLS controls that apply to the site (including the public positive covenant), how and why the currently dwelling entitlement applies, and better explaining what obstacles the Planning Proposal is trying to overcome. It should also more clearly explain how clause 4.4(6) of the WLEP does not allow for any subdivision of the subject land (due to its zoning), thus generating the need for the Planning Proposal. In this regard, the justification on pages 10-11 currently suggests that clause 4.2C of the Wingecarribee LEP 2010 is the main impediment. Further communication with Council has clarified that clause 4.2C does not apply in this circumstance. The Proposal needs to be updated accordingly.

Contamination risk

The Planning Proposal notes that all site-specific Planning Proposals must include a Preliminary Site Inspection (PSI) Report. We believe that a PSI report is required as the land has historically

been associated with the aerodrome. It is possible that the land has been used for the storage of past fuels and chemicals such as PFAS (per-and polyfluoroalkyl substances).

Positive Covenant

The Proposal should identify that the vegetation on site is protected by a positive covenant in favour of the Sydney Catchment Authority (now WaterNSW), which was registered in 2017 (Our ref: DAD21036). The covenant requires that no Effluent Management Area (EMA) is to be located within 100 metres of any watercourse (whether perennial or intermittent) or within 40 metres of a drainage depression. The positive covenant also operates to protect native vegetation on site. However, the covenant allows for limited vegetation clearing associated with the establishment of a dwelling envelope and associated Asset Protection Zone (APZ) (see below). We believe that the current Proposal can generate a subdivision design that meets the intent of the current covenant. The covenant may require modification in association with the later DA for a boundary adjustment.

Watercourse and effluent management areas

A first order drainage features passes through the site from the west to the east. The watercourse occurs on the lower lying areas of the lot that would be allocated the dwelling entitlement. The EMA would need to be 100 m from any watercourse (intermittent or perennial) or 40 m from a drainage depression. This is also stated in the positive covenant that applies to the site. The approximate position of the proposed EMA is provided in Figure 3.2 (page 22) of the Water Cycle Management Study (WCMS). It appears that the EMA distances can be met by the Proposal and that the EMA could be accommodated within the APZ. The final position of the EMA will need to be worked out at DA stage.

Flooding Risk

The proposed lot for the dwelling is constrained by overland flow (flooding) risks. Stormwater drainage is dominated by a natural watercourse that enters from the west and traverses towards the north-western corner of the site (see above). While lower lying areas are cleared, the dwelling would be located outside of flood-risk areas. This then necessitates some clearing of vegetation to provide for the dwelling envelope and associated APZ (see below).

Bush Fire Risk

The supporting bushfire assessment report applies a nominal area of 600 m² for the 'potential building envelope'. It calculates an APZ based on a bushfire attack level rating of BAL-29 as required for subdivisions per *Planning for Bush Fire Protection 2019*. It identifies that the required APZ for the 'potential dwelling envelope' is approximately 6,950 m². While the APZ can be accommodated within the boundaries of the proposed new residual lot, 5,460 m² of the APZ will affect native vegetation covered by an existing positive covenant (discussed above). We note that the WCMS provides slightly different area estimates,¹ however the principles used to derive the estimates are consistent. The exact areas can be calculated at DA stage and there is sufficient area on the proposed new dwelling lot to accommodate a required APZ. Also, given that the current positive covenant makes allowance for vegetation clearing for a dwelling and APZ, the current Proposal does not appear to conflict with the intent of the current positive covenant.

Water Cycle Management Study

The Proposal is also accompanied by a WCMS to support how the proposed new lot (in the west) could deliver a dwelling and associated APZ while having a NorBE on water quality. Using MUSIC modelling, the report shows how an arrangement of three bioretention basins can deliver an

¹ The WCMS (page 8) identifies that the forested area under the Covenant will be reduced by approximately 6,800 m² to facilitate the future dwelling envelope and surrounding curtilage including the associated APZ. However, it also notes all land area calculations are subject to final boundary locations and the extent of clearing required to accommodate an APZ that does not exceed a rating of BAL-29. We agree with this approach.

overall NorBE outcome for the site. We note that alternative measures such as dams or wetlands might be able to be used, but this can be further considered at DA stage.

The proposed residual lot would not be serviced by Council water or sewer. The site is and would remain unsewered. The WCMS notes that the WaterNSW 2021 'Water Sensitive Design Guide for Rural Residential Subdivision' was consulted in the wastewater management assessment. The WCMS includes an indicative EMA of 420 m² retained within the boundaries of the new proposed residual lot (Lot 844). Based on the accompanying site plan, this is positioned within but close to the outer edge of the required APZ (Figure 3.3. of the WCMS), thereby minimising any need for further clearing. It also appears that there is sufficient land area to meet the required EMA setback buffer distances from watercourses and drainage features.

Special Area

The site lies within land that is a designated Special Area Schedule 1 under the *Water NSW Act 2014* and associated Regulation 2022. Special Areas are generally managed to protect water quality and maintain ecological integrity. However, Special Area controls on private land are limited. The Special Area designation reflects the site's position in the Upper Nepean Catchment of the Metropolitan Special Area, and its proximity to Nepean Dam and Reservoir.

Strategic Land and Water Capability Assessment

This Planning Proposal does not constitute a change in land use nor result in any nett increase in the number of dwellings permissible on the site. We do not believe a SLWCA is relevant in this circumstance.

Part 6.5 Biodiversity and Conservation SEPP

The Planning Proposal includes a response to State Environmental Planning Policy (Biodiversity and Conservation) 2021 (the B&C SEPP). The response should be updated to also recognise that the provisions of Part 6.5 are relevant to the Sydney Drinking Water Catchment and that new development, including any DA for the boundary adjustment or later dwelling, will need to have a NorBE on water quality.

The Planning Proposal and its supporting reports provide supporting evidence that the Planning Proposal can deliver a boundary adjustment and later development (dwelling) that is likely to be able to achieve a NorBE at DA stage. The proposed residual allotment is heavily constrained as described above. However, based on the information currently available, we believe that there is a reasonable likelihood that NorBE can be achieved. A more detailed NorBE assessment will be required at DA stage.

Direction 3.3 Sydney Drinking Water Catchments

The Planning Proposal includes a response to s9.1 Ministerial Direction 3.3 Sydney Drinking Water Catchments. The Proposal notes that it will not increase the number of dwellings that could be developed on the land. The site is, however, unsewered and would require appropriate wastewater and stormwater management measures. A WCMS accompanies the Proposal (discussed above).

Having regard to the provisions of Direction 3.3, we note the following:

- We believe the Proposal is consistent with Part 6.5 of the B&C SEPP and that the Planning Proposal is likely to be able to deliver a NorBE on water quality at later DA stage including when the boundary adjustment is assessed.
- Water quality risks to drainage feature on site are assessed in the WCMS.
- We do not believe a SLWCA is relevant in this circumstance (see above).
- The 'Special Area' provisions of Direction 3.3 do not apply in this circumstance. The Proposal affects private land and does not involve 'rezoning' of land as covered in Direction 3.3.