

**12.3 DRAFT PLANNING PROPOSAL - 20 TYLERS ROAD, BARGO****File Number: 12275#445**

**Address:** 20 Tylers Road, Bargo  
**Current Zoning:** SP2 Infrastructure (Sewerage System) and E2 Environmental Conservation  
**Proposal:** Draft Planning Proposal to amend the Wollondilly Local Environmental Plan 2011  
**Applicant:** L & R Projects Pty Limited

**EXECUTIVE SUMMARY**

The purpose of this report is to seek Council's support to proceed with an amended planning proposal for land at 20 Tylers Road, Bargo.

It is noted that this report is being considered during the caretaker period ahead of the Council elections on 4<sup>th</sup> December. It is still open to Council to make a decision on this planning matter as it is not constrained by the caretaker provisions. It is also open for Council to defer this matter should it wish.

The draft planning proposal seeks to rezone the portion of the site that is currently zoned SP2 – Infrastructure (Sewerage System) to be developed for rural residential housing. The SP2 portion of the site previously provided private wastewater treatment facilities to service the nearby Waratah Highland Retirement Village. The System has since been decommissioned and is no longer required now that Bargo has been connected to the Sydney Water reticulated wastewater system.

The proposal seeks to rezone the land from its current Special Purpose zone to R5 Large Lot Residential with a minimum lot size for subdivision of 4,000 square metres and a maximum building height of 9 metres. It also seeks to amend the minimum lot size for subdivision for the portion of the site zoned E2 Environmental Conservation to enable it to be separated from the remainder of the site. If rezoned in the manner proposed, the proposal indicates that the site has the capacity for an additional 6 lots.

Community and stakeholder feedback was invited during a preliminary consultation period between 18 March 2020 and 15 April 2020. No community submissions were received. A total five (5) submissions were received from Public Agencies.

The Planning Proposal was reported to the Wollondilly Local Planning Panel (LPP) for its advice on 30 September 2021. The Panel advised that the planning proposal in the form submitted by the proponent does not have strategic planning merit and should not proceed to Gateway on account of the inconsistencies with planning framework and Council policies. The Panel also identified that the proposal has not addressed the cumulative impacts on threatened species and ecological communities, fragmentation of wildlife corridors and the heritage impacts on the cultural region known as the Bargo Brush.

This report recommends that the planning proposal as submitted, not be supported at this time. If Council are of the mind to support rural residential development, it is recommended that an amended planning proposal be progressed to achieve a better outcome for the site.

It is also open to Council to make decision on this planning matter as it is not constrained by the caretaker provisions, however it is also open for the elected Council to defer this matter should it wish to.

The recommendation of this report has been communicated to the landowner and proponent who have indicated that they do not support the approach but have chosen not to withdraw the proposal. However, this report is based on a sound assessment of the planning issues and it is considered the recommendation provides an appropriate way forward.

## RECOMMENDATION

That Council:

1. Notes the advice of the Wollondilly Shire Local Planning Panel meeting on 30 September 2021.
2. Not support the Draft Planning Proposal for No 20 Tylers Road, Bargo in the form submitted by the proponent for the following reasons:
  - a) The proposal does not have strategic or site specific merit.
  - b) The proposal is inconsistent with the strategic planning framework including:
    - the Western City District Plan
    - *Create Wollondilly Community Strategic Plan 2033 (CSP)*
    - *Wollondilly 2040 (Council's Local Strategic Planning Statement).*
  - c) The proposal is inconsistent with Ministerial Direction 5.10 Implementation of Regional Plans.
  - d) The proposal is inconsistent with the Wollondilly Local Housing Strategy.
  - e) The proposal is premature as the Wollondilly Hazards Analysis and Emergency Management Study has not been completed.
  - f) The proposal has not adequately addressed the potential cumulative impacts on biodiversity, koala linkages and fragmentation of wildlife corridors.
  - g) The proposal has not adequately addressed the cumulative heritage impacts on the cultural region known as Bargo Brush.
  - h) The proposal has not demonstrated that the interrelationship between the necessary setbacks for bushfire, flood prone land, riparian corridor, threatened ecological communities, and wastewater servicing can adequately be managed.
3. Supports the preparation of a planning proposal in an amended form to reflect the current context by:
  - a) Amending the Land Zoning Map to rezone the area currently zoned SP2 Infrastructure (Sewerage System) to:
    - E2 Environmental Conservation for the area of SSTF in the north western corner and the riparian corridor
    - E4 Environmental Living for the remaining area.
  - b) Amending the Natural Resources – Biodiversity Map to include all of the area currently zoned SP2 infrastructure (Sewerage System).
4. Forwards the planning proposal in the form recommended by 3, above, to the Department of Planning, Industry and Environment for a Gateway determination.
5. Notify the applicant/landowner and submitters of Council's decision.

## REPORT

### Background

The Draft Planning Proposal for No 20 Tylers Road was submitted to Council for consideration in March 2020.

The draft Planning Proposal seeks to amend the Wollondilly Local Environmental Plan 2011 (WLEP 2011) to rezone the portion of the site which is current zoned SP2 – Infrastructure (Sewerage System) to enable rural residential housing. The proposal also seeks to amend the WLEP 2011 to enable the residue area currently zoned E2 Environmental Conservation to be included in a separate lot.

The SP2 portion of the site previously provided private wastewater treatment facilities to service the nearby Waratah Highland Retirement Village. In 2016, urban zoned land in Bargo, including the retirement village, was able to connect to the reticulated wastewater system as part of Sydney Water's Priority Sewerage Program. The private sewerage treatment plant was then decommissioned as it was no longer required.

Since the Draft Planning Proposal has been submitted to Council the proponent has been requested to provide additional information as part of the preliminary assessment. The additional information has not altered the intended outcome of the proposed amendments.

A number of specialist studies have been prepared by professional consultants engaged by the proponent to inform and support the Draft Planning Proposal. These include:

- Flood Study
- Traffic Impact Assessment
- Stormwater Management Plan
- Bushfire Emergency Management & Evacuation Plan
- Wastewater Management Plan
- Ecological Assessment
- Aboriginal Cultural Heritage Due Diligence Assessment
- Phase One Contamination Report.

### **Site Description**

The Draft Planning Proposal relates to land at No 20 Tylers Road, Bargo (Lot 2 in DP 270324) and has a total area of 9.414 hectares. The location of the site is shown, outlined in red, in Figure 1 below.

The site includes two distinctly different areas that are characterised as follows:

- The western portion of the site (approximately 6.64 ha and 82% of the site) is covered in native vegetation identified as Shale Sandstone Transition Forest (SSTF). SSTF is a listed endangered ecological community. The area is part of a vegetation corridor that links with extensive bushland areas to the east and west, including the Nattai National Park. The area is zoned E2 Environmental Conservation which reflects the environmentally sensitive nature of this area.
- The eastern portion of the site (approximately 2.8 hectares) is zoned SP2 Infrastructure (Sewerage System) and is the focus of the Draft Planning Proposal and is described in more detail below.

The eastern portion of the site (the site) is bound by Tylers Road to the east with the Waratah Highlands Retirement Village, the Bargo Sportsground to the north, rural land to the far west and south and rural residential development to the south east. The mix of land uses surrounding the site reflect its location on the periphery of the Bargo urban area.

The relatively flat site contains a single storey detached dwelling and remnants of the decommissioned sewerage treatment plant which, up until relatively recently, serviced the Waratah Highlands Retirement Village.

There are areas of bushland vegetation on the site, however, the majority of the land zoned SP2 has been cleared with scattered mature trees remaining. A small unnamed watercourse passes through the north eastern corner of the site which is in a degraded state with weed invasion, including Privet and Blackberry.

The site is located within the Bargo Mine Subsidence Area, with underground longwall mining operations occurring in the area associated with the Tahmoor Colliery (SIMEC Group).

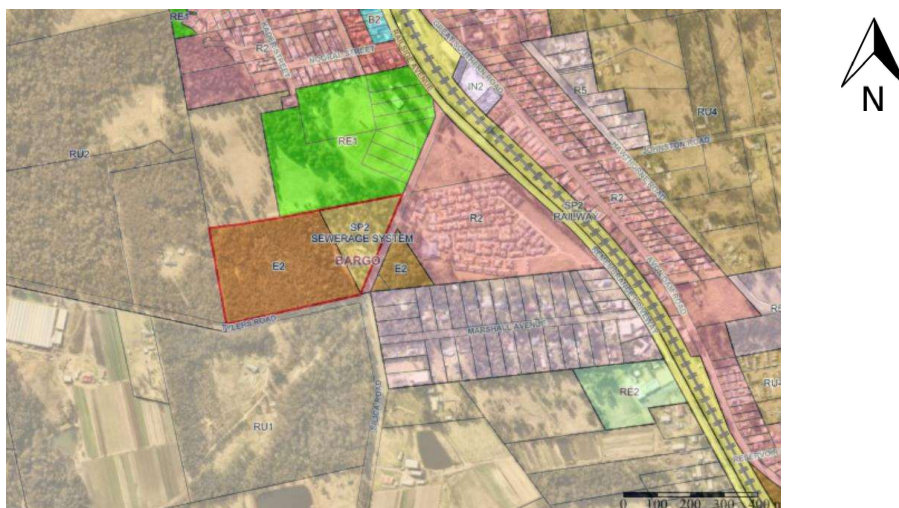


FIGURE 1: Location map of subject site at No 20 Tylers Road, Bargo

### Description of proposal

The Draft Planning Proposal seeks to amend the *Wollondilly Local Environmental Plan 2011* (WLEP 2011) to enable development of part of the site for rural residential style development. It seeks to achieve this by:

1. Amending the Land Zoning Map to rezone the area currently zoned SP2 Infrastructure (Sewerage System) to R5 Large Lot Residential.
2. Amending the Lot Size Map to reduce the minimum lot size for subdivision:
  - a) from 100ha to 4000m<sup>2</sup> for the portion of the site zoned SP2 Infrastructure, and
  - b) from 100ha to 5ha for the portion of the site zoned E2 Environmental Conservation.
3. Amending the Height of Buildings Map to introduce a maximum building height of 9 metres for the portion of the site zoned SP2 Infrastructure.

A copy of the proponent's Draft Planning Proposal is provided in Attachment 1.

An indicative proposed Layout Plan for the future development of the site for large lot residential development is provided in Attachment 2.

### Fundamental Strategic Merit Tests to Determine Direction of Planning Proposal

The information and recommendations in this report have been informed by three strategic merit tests which are fundamental in determining how the *Wollondilly Local Environmental Plan 2011* should be applied to the site.

These are detailed below but the outcome can be summarised as follows:

- The current Special Purposes zone is no longer relevant to the site and a more appropriate zone for the site should be identified
- A place-based assessment of the site has determined that an E4 Environmental Living zone or an RU4 Primary Production zone could be considered in place of the current Special Purposes zone, and

- The next section of the report considers the merits of the proponent's Draft Planning Proposal.

***Test 1: Is the current Special Purpose Zone appropriate?***

No. As the site is no longer being used as a private wastewater facility for Waratah Heights Retirement Village, the current zone, i.e. SP2 Infrastructure (Sewerage System), is no longer relevant.

***Test 2: What land use zone should be applied to the site (in the absence of a draft planning proposal)?***

The current Special Purpose and Environmental Protection zones were first applied to the site on 23 February 2011 when *Wollondilly Local Environmental Plan 2011* (WLEP 2011) first came into force.

Prior to 23 February 2011, the site was zoned No 1 (a2) (Rural "A2" Zone) under the former *Wollondilly Local Environmental Plan 1991* (WLEP 1991) which was a broadscale agricultural zone. The 1(a) zone also applied to adjoining land to the east and west but not to the north or south.

From 2005, NSW Councils were required to prepare new local environmental plans to respond to planning reforms that aimed to reduce the number of plans and improve the consistency of planning instruments. The reforms included the introduction of the *Standard Instrument (Local Environmental Plans) Order 2006* (template LEP) which provided a 'template' which Councils were to use as the basis for preparing a new local environmental plan for their area. The Standard Instrument established the form and content for principal local environmental plans.

In terms of land zones, the process of transitioning the WLEP 1991 to the Standard Instrument format generally involved applying the equivalent (or best fit) under the Standard Instrument to land use zone across areas with similar zones applying the available land use zones.

For example, areas previously zoned No 1 (a2) (Rural "A2" Zone) under WLEP 1991 were generally rezoned to RU2 Rural Landscape under WLEP 2011.

However, a different approach was applied to some locations, including the subject site, where justified. For example to reflect existing uses or in response to strategies prepared to inform the review.

In the case of No 20 Tylers Road, the current zones were applied to the site to reflect the approved Retirement Village which was under construction at the time of the review. The investigations undertaken as part of the development approval informed the rezoning of land required for the retirement village.

It is noted that the preparation of the local environmental plan in line with the Standard Instrument (LEP template) was a significant undertaking, and broadly speaking, was focussed on the transition of the local environmental plan to the new format.

The current draft planning proposal provides an opportunity to review the relative merits of the site and apply a place-based approach to the future intended use of the land under the local environmental plan.

In this regard, the site is located amongst a mix of land use zones. The table below summarises the adjoining land zones and considers their suitability for the site:

Land	Land zone	Suitability for the site
Land to the north	RE1 Public Recreation	Land to the north (Bargo Sportsground) is in public ownership and is currently used for public recreation purposes. A strategic need has not been identified to expand the sportsground.
Land to the East	R2 Low Density Residential/ E2 Environmental Conservation	<p>Land to the east zoned R2 is predominantly used for seniors housing as part of the Waratah Highland Retirement Village. Although there is an entrance to the Village from Tylers Road, the dwellings are set back from and are not oriented to Tylers Road and do not have a visual connection with the subject site.</p> <p>In particular, a small bridge separates the section of Tylers Road which adjoins the Village from land to the east and south and provides a solid visual separation.</p> <p>Land to the south and east of the retirement village has a distinctively different landscape which is characterised predominantly by stands of native vegetation with clearings.</p> <p>The subject site does not present as a natural extension to the R2 Low Density Residential zone.</p> <p>However, the E2 to the east of the site reflects a vegetation corridor which has a strong connection to extensive bush land to the east which takes in the subject site.</p>
Land to the south	RU1 Primary Production	RU1 tends to be reserved for prime agricultural lands. The site has not been identified as prime agricultural land under the previous or current local environmental plan.
Land to the west	RU2 Rural Landscape	<p>The portion of the site proposed to be rezoned is separated from land to west by the E2 Environmental Conservation zone on the site.</p> <p>An RU2 zone is not considered ideal as the area to be rezoned is not extensive and would result in an isolated pocket of land with this zone.</p> <p>It is noted that an RU2 would have been applied to the site (including the E2 portion) as part of the previous LEP Review in the absence of the sites association with the retirement village.</p>
Land diagonally to south east	R5 Large Lot Residential	<p>The Special Purposes zoned portion of the site has an area of approximately 2.8 hectares, which is significantly larger than areas across Wollondilly within a large lot residential zone.</p> <p>In particular, nearby lots along Marshall Avenue and Silica Road, within an R5 zone are consistently around the 4000sq.m size.</p>

The table demonstrates that the site is located at the confluence of a number of zones at the periphery of Bargo. For the most part, adjoining land use zones are not a logical fit for the subject site with one exception. The site sits within a vegetation corridor which is reflected by the Environmental Protection Zones on the western portion of the subject site and land to the east.

Council's endorsed *Environmental Protection Zones Protocol* (AP0014) provides direction in applying environmental protection zones where 'environmental assets' are present.

The site, as a whole, meets the term 'environmental asset' due to its size and the presence of threatened flora. It is considered that the application of the Protocol could justify an E4 Environmental Living zone as an appropriate land use zone for the majority of the portion currently zoned SP2 Infrastructure (Sewerage System).

One further relevant consideration is the valid development consent for the 'Construction of a Dwelling-House and Igloos' approved by Development Application No D358-08 on 10 June 2008.

The approval was activated by the construction of the dwelling house in 2018 and means there is a valid approval for an agricultural development on the site.

The development consent approved the construction of igloos to be used '*for the growing of cut flowers and tree and plant seedling propagation*'. The proponent has confirmed that they still intend to construct the igloo and consider this to be viable.

The approved use would be defined as 'intensive plant agriculture' under WLEP 2011 which is prohibited within the E4 Environmental Living zone.

Wollondilly 2040 Local Strategic Planning Statement is clear in its intent to support rural industries and the suitability for the site for agriculture has been established by a merit based assessment undertaken as part of the Development Application No. D358-08.

Although the approved development could still proceed if the land was rezoned to an environmental protection zone, the E4 Environmental Living Zone is not intended for agriculture and the ongoing practical operation of any future agricultural development could potentially be limited.

Alternatively, the approved development could be supported by an RU4 Primary Production Small Lots zone in place of the current Special Purposes zone. In particular, 'intensive plant agriculture' is a permissible development with consent in the zone and the objectives of the RU4 zone would support the development of igloos on the site.

### ***Test 3: Does the draft Planning Proposal have strategic planning merit?***

Discussion of the strategic merits of the draft planning proposal forms the basis of the remainder of this report.

### **Gateway Determination**

If supported by Council, a Draft Planning Proposal will be sent to the NSW Government Department of Planning, Industry and Environment (the Department) with a request for a Gateway determination.

## **PLANNING CONTEXT**

### **Wollondilly Community Strategy Plan 2033 (CSP 2033)**

The Create Wollondilly Community Strategic Plan 2033 (CSP) is Council's highest level long term plan. It identifies and expresses the aspirations held by the Community of Wollondilly and sets strategies for achieving those aspirations.

The CSP includes a position statement on growth which establishes four key principles and objective for considering growth. The first two principles are relevant to the Draft Planning Proposal and relate to Rural Protection and Growth in and around our existing villages. The Draft Planning Proposal does not conflict with the other two principles which relate to major growth areas.

Wollondilly 2040 provides a more current framework for considering growth and is discussed below. The Draft Planning Proposal is not considered to be consistent with the CSP as it is not considered consistent with the growth framework established by Wollondilly 2040.

A more detailed assessment on the suitability of the Planning Proposal against the CSP is provided at Attachment 3.



**Wollondilly 2040 Local Strategic Planning Statement (LSPS)**

Council's Local Strategic Planning Statement 2040 (LSPS) is a 20 year land use vision for Wollondilly and will guide the implementation of the Western City District Plan at a local level.

The vision is for a prosperous, sustainable and resilient future for Wollondilly residents, with an enviable lifestyle of historic villages, modern living, rural lands and bush settings. Wollondilly 2040 identifies a number of actions under each of its 18 Planning Priorities.

The Draft Planning Proposal is considered inconsistent with a number of Planning Priorities outlined in the LSPS.

Planning Priority		Draft Planning Proposals Consistency
3	<i>Establishing a framework for sustainable managed growth</i>	<ul style="list-style-type: none"> <li>Outside of the State Government declared growth areas rural land and sensitive environments are to be protected by supporting agriculture and minimising fragmentation of rural lands.</li> <li>The Draft Planning Proposal does not meet the criteria set out for supporting growth in and around existing towns and villages. In particular, as there is not an identified need.</li> </ul>
5	<i>Providing housing options that meet local needs and match the local character of towns and villages</i>	<ul style="list-style-type: none"> <li>Bargo is identified as an area that is limited in terms of areas suitable for local housing in the medium to long term due to the need to protect State significant mineral resources. The LSPS indicates that Bargo is unsuitable for expansion and further intensification until mining activity is complete.</li> <li>The Wollondilly Local Housing Strategy was adopted by Council in March 2021 and provides a 20 year vision for housing in Wollondilly. The Strategy is currently being considered by the NSW Department of Planning, Industry and Environment for approval in accordance with the Department's Local Housing Strategy guideline.  A key finding of the strategy is that Wollondilly has sufficient capacity to supply additional housing within current residential land across all towns and villages and through planned growth in the Wilton Growth Area meet demand over the next 20 years (to 2041).  The Strategy recognises the environmental constraints and considerations across Wollondilly that contribute to identifying appropriate locations for housing and the limited capacity to accommodate growth.  The Draft Planning Proposal is not considered to be consistent with the Wollondilly Local Housing Strategy as it: <ul style="list-style-type: none"> <li>Represent the further release of land for residential development which is not supported,</li> <li>Is not located within an area that has been identified as having the greatest opportunity to accommodate sustainable local growth,</li> </ul> </li> </ul>



Planning Priority		Draft Planning Proposals Consistency
		<ul style="list-style-type: none"> <li>Land use constraints acknowledged to impact on the delivery of additional housing that are relevant to Bargo include: <ul style="list-style-type: none"> <li>High biodiversity and wildlife habitats including koalas,</li> <li>Protecting areas of environmental importance,</li> <li>Bush fire and flooding risks,</li> <li>Ease of access and location to services and social infrastructure</li> <li>Proximity to resource and mineral extraction activities.</li> </ul> </li> </ul>
10	<i>Attracting investment and growing local jobs</i>	<ul style="list-style-type: none"> <li>This report recommends supporting an amendment to the WLEP 2011 in a different form to that proposed in the Draft Planning Proposal.</li> </ul>
11	<i>Leveraging Greater investment and business opportunities from the Western Sydney International (Nancy-Bird Walton) Airport</i>	<ul style="list-style-type: none"> <li>An RU4 Primary Production Small Lots zone on the site, if supported, would support the realisation of an approved agricultural development on the site. This has the potential to contribute to local jobs and grow agribusiness in Wollondilly.</li> <li>The proposed E4 Environmental Living zone will not directly attract investment and jobs. However, it will contribute to maintain and enhance the biodiversity and scenic values of the Shire which attract tourists and investments, and indirectly support the local economy. As stated above, the site benefits from an active consent for 'intensive plant agriculture'. Although 'intensive plant agriculture' is prohibited under the E4 Environmental Living zone the approved agricultural development can still proceed and support the local economy.</li> </ul>
12	<i>Valuing the ecological health of Wollondilly's waterways</i>	<ul style="list-style-type: none"> <li>Rezoning the riparian corridor located in the north eastern portion of the site to an E2 Environmental Conservation land use zone will strengthen protection of waterways.</li> </ul>
13	<i>Protecting biodiversity and koala habitat corridors</i>	<ul style="list-style-type: none"> <li>The site is located within an identified primary koala habitat corridor.</li> <li>The Draft Planning Proposal is not consistent with Wollondilly 2040's aim to protect and maintain biodiversity and important wildlife corridors from development, including smaller scale developments.</li> </ul>

Planning Priority		Draft Planning Proposals Consistency
16	<i>Enhancing and protecting the diverse values of the Metropolitan Rural Area</i>	<ul style="list-style-type: none"> <li>The site is located within the Metropolitan Rural Area.</li> <li>Wollondilly 2040 seeks to protect significant mineral resources and discourages growth of land above the future proposed longwalls and state significant mineral resources until operations cease.</li> <li>Fragmentation of rural land (which is not limited to rural zoned land) will only be supported in limited areas that will be identified in the Local Housing Strategy and Rural Lands Strategy. At the time of this report the Local Housing Strategy has been adopted and the Rural Lands Strategy will be considered by Council at the September Council meeting. In any case, neither document identifies a need for housing that would support the Draft Planning Proposal.</li> <li>If the Draft Planning Proposal was to be supported it should be supported by mechanisms to maintain and enhance environmental values on the site. This could include a Biodiversity Stewardship Agreement for land identified as sensitive land and revegetation of the riparian area.</li> </ul>
18	<i>Living with climate impacts and contributing to the broader resilience of Greater Sydney</i>	<ul style="list-style-type: none"> <li>Sets out that before Council can consider planning proposals for local growth in the Shire that Council will develop 'an appropriate emergency management approach' to natural and human made hazards. The Wollondilly Hazards Analysis and Emergency Management Study is currently underway is yet to be finalised. Subsequently, it is considered premature to support the Draft Proposal at this time.</li> <li>The site is wholly located within a designated bush fire prone area and forms part of a vegetation corridor that links to extensive bush fire hazard interface to the west of the site.</li> <li>A <i>Bushfire Emergency Management &amp; Evacuation Plan</i> has been prepared by a suitably qualified consultant to inform the planning proposal. The Study appropriately considers the sites suitability for development but does not consider the cumulative impact of development and the need, if any, for appropriate buffers and safe evacuation at a regional level.</li> </ul>

A more detailed assessment of the Draft Planning Proposal and its suitability under Wollondilly 2040 is provided at Attachment 3.

## Western City District Plan & the Greater Sydney Region Plan (2018)

The Western City District Plan is a 20 year plan that guides implementation of the Greater Sydney Region Plan and acts as a bridge between regional and local planning. It outlines a number of directions, priorities and actions for managing growth, delivering infrastructure and protecting and enhancing bushland and biodiversity.

Of particular relevance to the Draft Planning Proposal is the site's location within the Metropolitan Rural Area. Although the Draft Planning Proposal has the potential to make a modest contribution to medium to long-term housing targets, the District Plan indicates that rural-residential development is generally not supported.

The District Plan directs that limited rural-residential growth could be considered '*where there are no adverse impacts on the amenity of the local area and the development provides incentives to maintain and enhance the environmental, social and economic values of the Metropolitan Rural Area*'. The District Plan indicates that an example of this would be the creation of a protected biodiversity corridor.

However, significant areas within the site are already protected by an E2 Environmental Conservation zone and the site is located within a primary koala habitat corridor. Subsequently, it is not considered that growth at this location can be justified by environmental outcomes. A more detailed assessment of the Draft Planning Proposal and its suitability under the regional planning framework is provided at Attachment 3.

### Section 9.1 Ministerial Directions

The Minister for Planning has issued a number of Directions under the *Environmental Planning and Assessment Act 1979* which apply to the assessment of planning proposals.

The Draft Planning Proposal is considered to be inconsistent with a number of Ministerial Directions as described in the table below. A more detailed assessment of the proposal against the directions is provided at Attachment 3.

Ministerial Direction	Assessment
1.3 <i>Mining, Petroleum Production and Extractive Industries</i>	<p>This Direction seeks to ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.</p> <p>It is anticipated that the site may be affected by the Tahmoor South Project approved earlier this year. The approval will extend underground operations and associated infrastructure south, within the Bargo area.</p> <p>If the Draft Planning Proposal is supported to progress, additional consultation should be undertaken with the following public authorities and/or organisations as part of any future public exhibition to ensure that growth on the site would not restrict the potential development of resources of coal which are of State or regional significance;</p> <ul style="list-style-type: none"> <li>• Subsidence Advisory NSW,</li> <li>• NSW Resources and Geoscience, and</li> <li>• SIMEC.</li> </ul>

Ministerial Direction		Assessment
1.5	<i>Rural Lands</i>	<p>This Direction applies to the ongoing use of rural lands. It is relevant as the Draft Planning Proposal will affect land within an existing or proposed environmental protection zone.</p> <p>The Draft Planning Proposal is considered inconsistent with Direction 1.5 as the proposal is not considered to be consistent with any applicable strategic plan and does not pass the strategic merit test established by the Direction.</p> <p>The recommended approach to support the Draft Planning Proposal in an amended form would be consistent with this Direction.</p>
5.10	<i>Implementation of Regional Plan</i>	<p>This Direction seeks to give legal effect to Regional Plans.</p> <p>The Draft Planning Proposal is not considered to be consistent with the Greater Sydney Region Plan and the Western City District Plan as it will not maintain or enhance the values of the Metropolitan Rural Area.</p>

### State Environmental Planning Policies (SEPPs)

The NSW Government publishes State Environmental Planning Policies (SEPPs) and Sydney Regional Environmental Plans (SREPs). These documents deal with matters of state or regional planning significance.

The Draft Planning Proposal is considered to be capable of being consistent with the relevant SEPPs. A more detailed assessment is provided at Attachment 3.

## CONSULTATION

### Community Consultation

As part of Council's commitment to early engagement with the community and other stakeholders a formal preliminary consultation was undertaken in accordance with Council's adopted *Planning Proposal Policy*.

The preliminary consultation was held from 18 March 2020 until 15 April 2020. During the consultation community and stakeholder feedback was invited through a preliminary public exhibition. Feedback was encouraged by letters to affected residents, a notice in the relevant local newspaper and through Council's website. Hard copies of the exhibition documents were available at Wollondilly Library and Council's Customer Service Centre.

It is noted that the emerging COVID 19 pandemic would have limited access to physical documents as health orders came into place during the exhibition period.

No community submission was received during the preliminary consultation.

### Consultation with Public Agencies & Key Stakeholders

Early feedback on the draft planning proposal was also invited from the relevant public agencies and key stakeholders.

Seven submissions were received in response and are summarised in the following table. A more detailed assessment of the submissions is provided at Attachment 4.

Public Authority/ Key Stakeholder Consulted	Outcome
Cubbitch Barta Native Title Claimants Aboriginal Corporation	No submission received during the preliminary notification.
Endeavour Energy	Did not object to the Draft Planning Proposal.
Environment, Energy and Science Group	EES has made a number of recommendations and comments on the draft planning proposal. In particular, that residential development should be discouraged and avoided within core koala habitat and primary corridors.  EES has also recommended that remnant patches of Shale Sandstone Transition Forest (SSTF) and the riparian corridor (to be rehabilitated) are zoned E2 Environmental Conservation.  The submission is addressed at Attachment 4.
Geological Survey NSW	No submission received during the preliminary notification.
Natural Resources Access Regulator	Supports the retention of the E2 Environmental Conservation zone on the existing site as it will conserve a watercourse and its associated riparian corridor.  The submission is addressed at Attachment 4.
NSW Rural Fire Service	Did not object to the Draft Planning Proposal in principle.
Simec Mining	Did not object to the Draft Planning Proposal.
Subsidence Advisory NSW	Did not object to the Draft Planning Proposal.
Sydney Water	A submission was received and is addressed at Attachment 4.

The following feedback provided by public agencies is considered to justify amendments to the Draft Planning Proposal:

### Environmentally Sensitive Areas

The Environment, Energy and Science Group (EES) have recommended that protection of environmentally sensitive areas within the site is strengthened by rezoning affected areas E2 Environmental Protection. This relates to two remnant areas of Shale Sandstone Transition Forest (SSTF) in the north west and south west of the site and the riparian corridor.

The recommendations are supported for the area of SSTF in the north western section of the site and the riparian corridor.

In addition it is noted that in applying an E2 zone to the riparian corridor, the area to be zoned should extend to the corner of the site to avoid an isolated pocket of land within a different zone that is effectively too constrained for development. This approach also recognises the opportunity to regenerate vegetation at this location.

It is not considered there is enough evidence to support rezoning the remnant SSTF in the south west area of the site. However, it is noted that the submission does not appear to apply the same weight for this recommendation in terms of the area.

### Koalas

The Environment, Energy and Science Group (EES) have also recommended that new residential development within core koala habitat and primary corridors is avoided and residential development and koala populations are separated to minimise threats.

EES have expressed concern that the Draft Planning Proposal has not adequately addressed the site's location in a primary koala corridor and notes that approximately 2ha of the 2.8 hectare site is located within a primary koala corridor.

There is also primary koala corridor to the west and south east of the site which effectively forms part of an unbroken vegetated link out from the Bargo River.

The Ecological Assessment (dated June 2018) prepared by a suitably qualified consultant concludes that it is unlikely that koalas are present or active within the site, however, that it is likely that koalas may pass through the area. The study concludes that the proposal will not have a significant impact on koalas.

Since the study's preparation there have been at least two reviews of the relevant state environmental planning policy. Further studies have also been released and/or undertaken by the NSW Department of Planning, Industry and Environment and also by Council which have used existing and new data to better understand high-quality koala habitat, core koala habitat, koala movement corridors and koala road-kill hotspots.

On balance, it is not considered that there is a need for additional housing that substantiates supporting growth at this location.

## LAND CAPABILITY

A number of additional matters have been identified as part of the assessment of the Draft Planning Proposal. These relate to the sites capability to support the proposed land use that would result from the proposed amendments to WLEP 2011. These have been informed by input from specialist staff within Council. Unless mentioned otherwise, the comments in the table refer to the portion of the site which is currently zoned SP2 Infrastructure (Sewerage System).

CONSIDERATION	COMMENTS
BIODIVERSITY	<p>The site is considered to support sensitive ecological values;</p> <ul style="list-style-type: none"> <li>The site contains vegetation identified on the Biodiversity Values (BV) Map. The BV Map identifies land which high biodiversity value that is particularly sensitive to impacts from development and clearing.</li> <li>Any future clearing of vegetation within these areas as part of a future development will require a Biodiversity Development Assessment Report prepared in accordance with the <i>Biodiversity Conservation Act's 2016</i> (BC Act) Biodiversity Assessment Method.</li> <li>Shale Sandstone Transition Forest (SSTF) is present on the site (in the north western and south western corner) and is a listed threatened ecological community at both a state and federal level.</li> <li>Apart from the areas of SSTF mentioned above, the site is predominantly covered by mature scattered native trees. The scattered trees are SSTF canopy species, however it is not considered SSTF as the understorey is absent and the ground cover is predominantly exotic grasses.</li> <li>The Ecological Assessment prepared by a suitably qualified consultant was prepared in 2018 and there have been substantial changes in legislation since its preparation. If the proposal progresses, an addendum may be required to provide an updated assessment.</li> </ul> <p>To ensure adequate protection of sensitive areas within the site it is recommended that:</p> <ul style="list-style-type: none"> <li>The whole site is identified on the Natural Resources Biodiversity Map, and</li> </ul>



CONSIDERATION	COMMENTS
	<ul style="list-style-type: none"> <li>The area of SSTF in the north western corner is rezoned to E2 Environmental Conservation.</li> <li>Any LEP amendment will need to ensure that land zoned E2 Environmental Conservation remains within a single lot (including the extended areas) and is not isolated from the main lot.</li> </ul>
RIPARIAN CORRIDOR	<p>The site contains a watercourse which passes through the north-eastern part of the site. A 30 metre (each side) riparian zone is required to the watercourse.</p> <p>The information provided to support the Draft Planning Proposal to date has not demonstrated that adequate setbacks can be achieved to support indicative building envelopes and the associated wastewater effluent application areas.</p> <p>The presence of the watercourse and the need to protect the riparian corridor would not prevent growth on the site. However it is a key consideration in land capability and determining an appropriate minimum lot size for subdivision if the Draft Planning Proposal is to proceed.</p>
BUSHFIRE	<p>The site is wholly within a designated bush fire prone area on the Wollondilly Bush Fire Prone Land Map. If development on the site was to proceed, an Asset Protection Zone (APZ) would be required to reduce the level of hazard to future properties.</p> <p>A Bushfire Hazard Assessment Report has been prepared by a suitably qualified consultant and has identified a need for a 29 metre APZ from the E2 Environmental Conservation zoned portion of the site.</p> <p>However, asset protection zones would also be necessary along the northern boundary (so that they do not rely on adjoining land), and to vegetation within the site that has been recommended by this report for an E2 Environmental Conservation land use zone.</p> <p>The site is considered capable of facilitating APZ's within the site but is likely to be a key consideration in determining the land capability and an appropriate minimum lot size for subdivision if the Draft Planning Proposal is to proceed.</p>
FLOODING	<p>Two watercourses pass through the site. One of these is located within the area currently zoned E2 Environmental Conservation and may impact on the area proposed to be rezoned in extreme events.</p> <p>The watercourse that passes through the eastern portion of the site will inundate areas within the site during events. This will constrain the suitability of development in the north eastern portion of the site. Insufficient information has been provided to date to adequately understand the capability of the site to support growth, particularly whether a dwelling could be serviced on the eastern side of the watercourse.</p> <p>The flooding constraints would not prevent growth on the site. However it is a key consideration in land capability and determining an appropriate minimum lot size for subdivision if the Draft Planning Proposal is to proceed.</p>



If growth was to occur on this site it is unlikely that the site is capable of supporting six large lot residential sites. Further investigation would be required to determine what a suitable minimum lot size for subdivision would be and is dependent on the interrelationship between the following constraints:

- Providing suitable asset protection zones within the site boundary
- Demonstrating that any effluent application areas are not located within the riparian corridor, flood prone land or areas containing threatened ecological communities
- Ensuring the ongoing management of sensitive areas is sustained by preventing fragmentation and ensuring that a dwelling is associated with these areas. For this site it is suggested that the western portion of the whole site (including the area in the north west corner) is retained within a single lot and the riparian area is retained within a single lot.

### **LOCAL PLANNING PANEL ADVICE**

Local Planning Panel Direction – Planning Proposals, issued on 27 September 2018, requires all planning proposals to be referred to the local planning panel for advice before Council considers the matter.

The Draft Planning Proposal was reported to the Wollondilly Shire Local Planning Panel on 30 September 2021 to seek the Panel's advice.

The Panel concurred with the Council Officer's recommendation that the Draft Planning Proposal in the form submitted does not have strategic planning merit and should not proceed to Gateway given inconsistencies with the planning framework and Council policies. The Panel identified two additional reasons for this position:

- Cumulative impacts on cultural heritage, and
- Fragmentation of wildlife corridors.

The Panel concluded that council should consider rezoning the area currently zoned SP2 Infrastructure (Sewerage System) to zone E4 Environmental Living following the completion of the outcomes of the Wollondilly LGA Koala Plan of Management.

The Koala Plan of Management (KPoM) is currently under preparation and has been funded to date by the Accelerated LEP Review Program. It is yet to be finalised for community feedback and adoption is still some time off.

Given an environmental protection zone has already been identified in the preliminary assessment as an appropriate zone for the site, it is not considered reasonable to delay rezoning the site for this purpose on the basis of the KPoM where there is no change to the minimum lot size. While it is considered that the site is not an appropriate location for additional housing, it is recommended that a more relevant land use zone is applied.

A copy of the Panel Meeting Minutes is provided at Attachment 5.

Council officer comments on Panel's advice are provided in the Conclusion Section below.

### **CONCLUSION**

The Draft Planning Proposal for 20 Tylers Road, Bargo seeks a number of amendments to facilitate the development of a portion of the site for rural residential housing.

It is considered that the proponent's Draft Planning Proposal does not have strategic planning merit and should not be supported on the grounds that the proposal:

1. Is inconsistent with the regional, district and local strategic planning framework in place for Wollondilly.
2. Is inconsistent with Ministerial Direction 5.10 Implementation of Regional Plans.
3. Is inconsistent with the Wollondilly Local Housing Strategy.

4. Is premature as the Wollondilly Hazards Analysis and Emergency Management Study has not been completed.
5. Has not adequately addressed the potential cumulative impacts on biodiversity and koala linkages and fragmentation of wildlife corridors.
6. Has not adequately addressed the cumulative heritage impacts on the cultural region known as the Bargo Brush.
7. Has not demonstrated that the interrelationship between the necessary setbacks for bushfire, flood prone land, riparian corridor, threatened ecological communities, and wastewater servicing can adequately be managed.

However, the current Special Purposes land use zone (SP2 – Infrastructure (Sewerage System) that applies to the eastern portion of the site no longer reflects the current or future intended use of the site and is no longer applicable. On this basis it is considered appropriate to amend the Local Environmental Plan as it applies to the site so that it is relevant and can appropriately guide future development.

Applying a place-based approach, an E4 Environmental Living zone would appropriately reflect the environmentally sensitive characteristics of the site.

Prior to receiving the Panel's advice, the assessment had favoured supporting the potential for agricultural development on the site in light of the active development consent for igloos. On this basis it was recommended to rezone the relevant portion of the site to RU4 Primary Production Small Lots.

However, it is noted that the approved igloos have not been constructed since the consent was issued (2008) or the decommissioning of the private sewerage treatment plant (2016) and may not eventuate.

In light of the Panel's advice, it is now considered that the site's environmental value is favoured and an environmental protection zone should be applied across the site as detailed in this report.

The recommended approach is illustrated by the indicative map provided at Attachment 6.

If Council is of a mind to support the principle of some growth on the site for rural residential style development it is considered that:

- The interaction of constraints and setbacks on the site require further investigation to determine an appropriate minimum lot size for subdivision. On the basis of the information available to date, it is unlikely the site is capable of supporting 6 rural residential lots.
- In addition, further investigation is required to consider the sites suitability in terms of cumulative impacts on threatened species and ecological communities, fragmentation of wildlife corridors and the heritage impacts on the cultural region known as the Bargo Brush.
- Any LEP amendment will need to ensure that land zoned E2 Environmental Conservation remains within a single lot (including the extended areas) and is not isolated from the main lot.
- Any LEP amendment should include appropriate mechanisms to protect sensitive areas within the site by extending the E2 Environmental Conservation Zone, applying an E4 Environmental Living zone and including the site on the Natural Resources - Biodiversity Map.
- Any rezoning should be accompanied/supported by a Biodiversity Stewardship Agreement for the E2 portion of the site to ensure that targeted environmental outcomes are delivered to the Metropolitan Rural Area, and

Any rezoning should be accompanied by an amendment to the *Wollondilly Development Control Plan 2016* to include site specific planning controls to guide future development on the site. As an amended planning proposal would not constitute growth given its minor nature, the Wollondilly Hazards Analysis and Emergency Management Study will not need to be finalised prior to considered the recommended proposal.

This position will not apply, should an alternative zone or more dense proposal be supported. It is recommended that an amended Planning Proposal for the site is prepared to update the *Wollondilly Local Environmental Plan 2011* to guide future planning decisions on the site, as follows:

1. Amend the Land Zoning Map to rezone the area currently zoned SP2 Infrastructure (Sewerage System) to:
  - a. E2 Environmental Conservation for the area of SSTF in the north western corner and the riparian corridor.
  - b. E4 Environmental Living for the remaining area.
2. Amend the Natural Resources – Biodiversity Map to include all of the area currently zoned SP2 infrastructure (Sewerage System).

No other changes are recommended to the Local Environmental Plan.

### **OPTIONS FOR MOVING FORWARD**

The options to be considered by Council are:

#### **Option 1 - Resolve to support the draft Planning Proposal in the form as submitted by the proponent.**

This option is to support the planning proposal as described in the Description of Proposal section of this report.

If the proponent's Draft Planning Proposal was to proceed, then the following additional amendments to the WLEP are required to ensure that future development protects environmentally sensitive land by:

- Amending the Land Zoning Map to rezone the area currently zoned SP2 Infrastructure (Sewerage System) to E2 Environmental Conservation for the area of SSTF in the north western corner and the riparian corridor.
- Amend the Natural Resources – Biodiversity Map to include all of the area currently zoned SP2 infrastructure (Sewerage System).

#### **Option 2 - Resolve to support the draft Planning Proposal in an amended form as recommended by this report.**

This option would require at minimum:

- Amend the Land Zoning Map to rezone the area currently zoned SP2 Infrastructure (Sewerage System) to:
  - E2 Environmental Conservation for the area of SSTF in the north western corner and the riparian corridor
  - E4 Environmental Living for the remaining area.
- Amend the Natural Resources – Biodiversity Map to include all of the area currently zoned SP2 infrastructure (Sewerage System)
- No change to the Lot Size Map.

Council officers would commence this amendment in house following a resolution of Council.

#### **Option 3 - Resolve to support growth on the site by progressing the draft Planning Proposal in some other form.**

- Should a proposal for E4 or another zone be contemplated accompanied by an amendment to the minimum lot size to facilitate growth, then an amended planning proposal would need to await the outcomes of the Wollondilly Hazards Analysis and Emergency Management Study.

**Option 4 - Resolve to not to support the draft Planning Proposal**

With this option there is no further action to be taken on the Draft Planning Proposal other than to inform the proponent and submitters that the proposal has not been supported. With this option the applicant may ask the NSW Department of Planning, Industry and Environment for a Pre-Gateway Review. A Rezoning Review would then be carried out independently by the Sydney planning panels.

**Option 2** is the recommendation of this report.

**FINANCIAL IMPLICATIONS**

Funding for this project to date has been partially offset through the adopted planning proposal fees and charges and has been covered within the Sustainable Growth operational budget.

Should the proposal proceed in a format that would enable growth on the site, any further studies required and Council's assessment costs would need to be funded by the proponent and additional fees paid in accordance with Council's adopted Fees and Charges applicable at the time.

If the proposal proceeds in the manner recommended by this report, it is considered appropriate that the project is covered within the Sustainable Growth operational budget.

**ATTACHMENTS**

1. **Draft Planning Proposal (version submitted by the proponent)** [⇒](#)
2. **Proponent's Indicative Layout Plan for Future Subdivision** [⇒](#)
3. **Assessment against Strategic Planning Framework** [⇒](#)
4. **Table Summarising Public Agency & Key Stakeholders Submissions** [⇒](#)
5. **Relevant Minutes from Wollondilly Shire Local Planning Panel meeting on 30 September 2021** [⇒](#)
6. **Recommended approach for site (under separate cover)** **I**