



IRF 23/1030

## Gateway determination report – PP-2023-592

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Amendment to Wentworth Local Environmental Plan 2011 by rezoning land from RU4 Primary Production Small Lots to part RU5 Village and part SP2 Special Infrastructure and remove minimum lot size provision at 191 Pitman Avenue, Buronga

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# Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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**Table 1 Reports and plans supporting the proposal**

Relevant reports and plans
Planning Proposal for Gateway – PP-2023-592 – 191 Pitman Ave
Council Report and Minutes – PP-2023-592
Planning Proposal Council Assessment Report – PP-2023-592
Buronga Gol Gol Structure Plan 2020

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

<b>LGA</b>	<b>Wentworth</b>
<b>PPA</b>	Wentworth Shire Council
<b>NAME</b>	Amendment to Wentworth Local Environmental Plan 2011 by rezoning land from RU4 Primary Production Small Lots to part RU5 Village and part SP2 Infrastructure and remove minimum lot size provision at 191 Pitman Avenue, Buronga, Lot 108 DP 756946
<b>NUMBER</b>	PP-2023-592
<b>LEP TO BE AMENDED</b>	Wentworth Local Environmental Plan 2011 (WLEP 2011)
<b>ADDRESS</b>	191 Pitman Avenue, Buronga NSW 2739
<b>DESCRIPTION</b>	Lot 108 DP 756946
<b>RECEIVED</b>	26/04/2023
<b>FILE NO.</b>	IRF23/1030
<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
<b>DWELLINGS/JOBS</b>	Est 20 dwellings/0

## 1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that explain the intent of the proposal. The objectives of the planning proposal are to:

- Rezone land at 191 Pitman Avenue from RU4 Primary Production Small Lots zone to RU5 Village zone
- Enable subdivision of the land by amending to no Minimum Lot Size to allow unrestricted lot size
- Provide means for Council to acquire part of the land to maintain existing storm water infrastructure and zone such land as SP2 Infrastructure.

The objectives of this planning proposal are clear and adequate however it is recommended the planning proposal be updated to reflect the subject land for rezoning to include the adjoining road reserve.

## 1.3 Explanation of provisions

To facilitate the amendments proposed will require map only amendment to the land zoning maps (LZN\_004F) and the lot size map (LSZ\_004F) and there will be no other changes to the provisions of the WLEP 2011.

The planning proposal seeks to amend the Wentworth Shire Council LEP 2011 per the changes below:

**Table 3 Current and proposed controls**

Control	Current	Proposed
Zone	RU4 Primary Production Small Lots	Part RU5 Village and Part SP2 Special Infrastructure
Minimum lot size	10 hectares	Nil
Number of dwellings	One	Detail not provided but estimated as up to 20 lots, if developed for residential with no MLS

The planning proposal also intends to enable subdivision of a portion of the land to enable Wentworth Shire Council to acquire the land for SP2 Infrastructure - water supply system.

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved, however it is recommended the planning proposal be updated to consider alternative mechanisms for achieving the desired result and the types of permissible development and scale that might result from a changed zone and no minimum lot size.

## 1.4 Site description and surrounding area

The subject land is located north of Pitman Avenue, Buronga, approximately 3.8km north of the NSW/Victoria border. The site contains a dwelling, other farm structures and abandoned horticultural crops shown in Figure 1. The planning proposal states it is not being used for productive agriculture and aerial imagery shows history of agricultural practices.

The subject site currently acts as a buffer between RU5 Village zone to the south of Pitman Avenue and C2 Environmental Conservation zone to the north.

An easement in favour of Council traverses the subject site for the purposes of a stormwater drainage pipeline however the pipeline to drain stormwater to Drainage Basin 3 is not located within the easement as shown in Figure 2.



Figure 1 Subject site (source: Council Assessment – PP-2023-592)

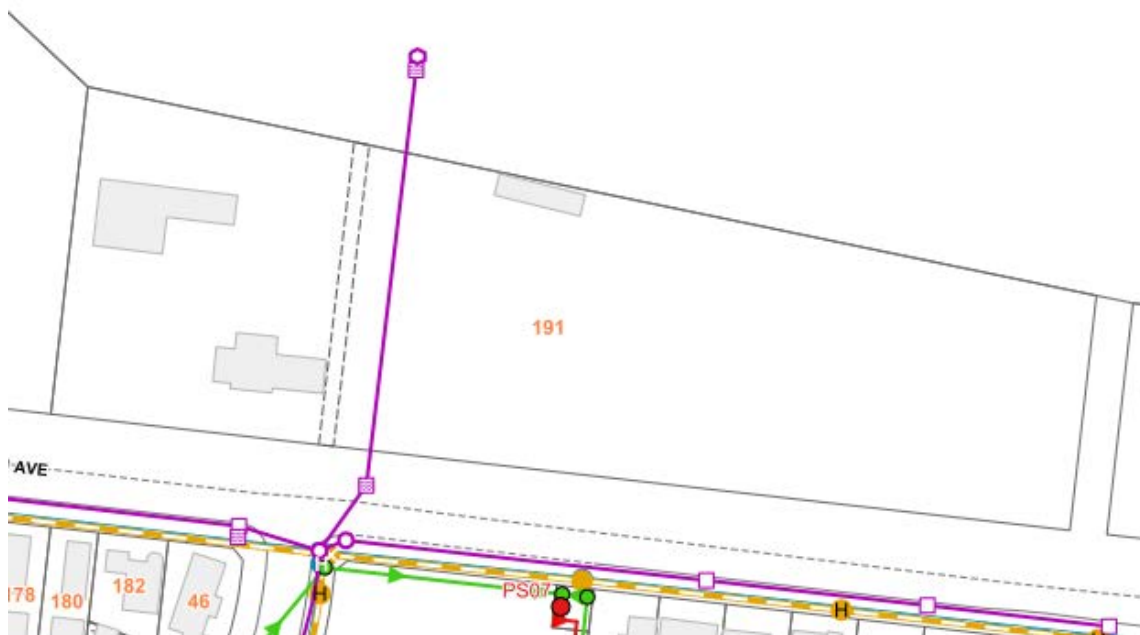
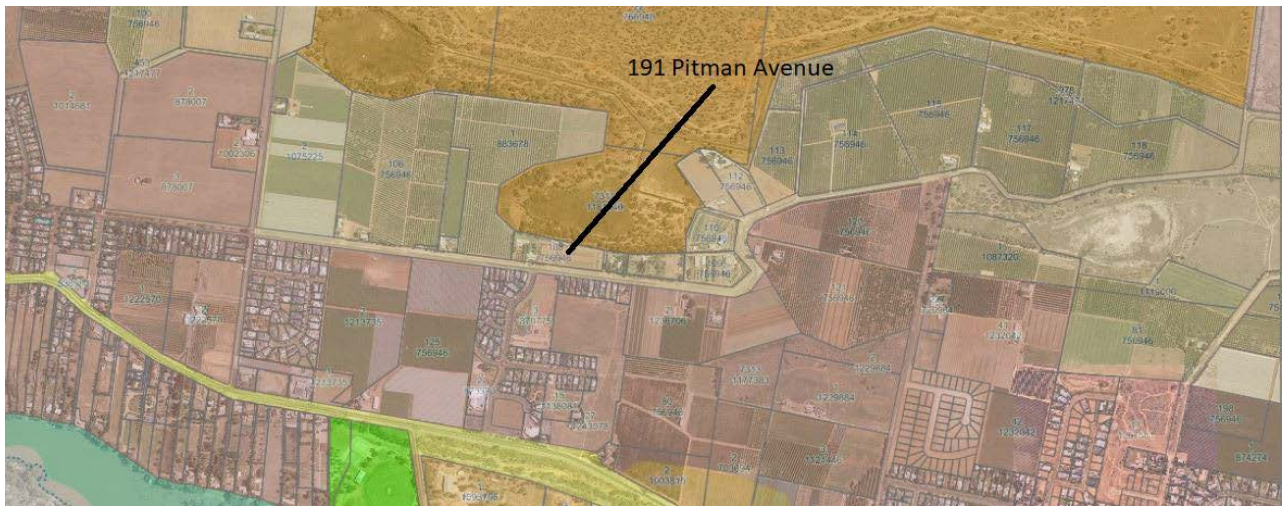


Figure 2 Easement and location of infrastructure pipeline (source: Council Assessment PP-2023-592)





**Figure 3 Site context (source: Planning Proposal)**

## 1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the land zoning and lot size maps, which are suitable for community consultation.



**Figure 4 Current (left) and proposed (right) zoning map (Source: Council assessment – PP-2023-592)**



**Figure 5 Current (left) and proposed (right) minimum lot size map (Source: Council assessment – PP-2023-592)**

## 1.6 Background

It is noted the planning proposal was developed prior to the subject site being rezoned from RU1 Primary Production to RU4 Primary Production Small Lots in late 2022 as a result of concerns received from Department of Primary Industries – Agriculture ((DPI Agriculture) regarding proposed amendments to rural planning controls in PP-2021-6509 (Amendment 20).

Amendment 20 of the WLEP 2011 rezoned all irrigation districts in the LGA from RU1 Primary Production to RU4 Primary Production Small Lots with a minimum lot size of 10 hectares. Further consultation with DPI Agriculture will be included as a gateway condition due to the recent nature of the amendments and the potential for land use conflict as the land is located between zone RU4 land.

## 2 Need for the planning proposal

Q1. Is the planning proposal a result of an assured local strategic planning statement, or Department approved local housing strategy, employment strategy or strategic study or report?

The proposal is not the result of a Department approved regional or local strategy, rather a means for council to access stormwater infrastructure that current exists on the subject site. Strategic assessment of this proposal is discussed in more detail in Section 3.2 of this report.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The planning proposal states it is the best means for Council to acquire part of the subject site that is affected by stormwater infrastructure, however, there is a lack of investigation of alternative mechanisms to achieve the intended outcomes including those that do not require a planning proposal.

The planning proposal should be updated to include thorough investigation of alternative mechanisms including, but not limited to, variation of the existing easement location, a split zone of RU4/SP2 with a limitation on dwelling capacity.

Following the recent rezoning to RU4 in consultation with DPI Agriculture, this investigation of alternatives should be undertaken in consultation with DPI Agriculture prior to public exhibition to resolve any potential concerns. A condition of gateway will be included to this affect.

## 3 Strategic assessment

### 3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the Far West Regional Plan 2036 (Table 4). It is noted that the Far West Regional Plan 2041 remains in draft form pending approval at the time this planning proposal was assessed. Assessment against its objectives is outlined in Table 5.

**Table 4 Far West Regional Plan 2036 assessment**

Regional Plan Objectives	Justification
Direction 27 Provide greater housing chouse	The proposed amendments are consistent with this direction as the subject site is identified as having existing adequate infrastructure and aims to increase housing options.



Direction 29 Manage rural residential development	<p>The planning proposal is inconsistent with this direction as it is not identified in a local strategy and the current zoning of the site reflects a buffer between residential land use and conservation land use.</p> <p>However, this inconsistency is partially justified as the planning proposal aims to enable subdivision of the land for the part acquisition by council for ongoing maintenance of stormwater infrastructure. However, the planning proposal should be updated to include consideration for the number of proposed dwellings for the site.</p> <p>Conflict with nearby environmentally sensitive land and zone RU4 land should be managed through separation buffer distances, vegetation plantings and appropriate location of houses with regards to topography to help in avoiding conflict where possible. Council has not provided suitable measures for the conflict to be managed. DPI Agriculture consultation is also required to consider this inconsistency.</p>
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**Table 5 Draft Regional Plan 2041 assessment**

Draft Regional Plan 2041 Objectives	Justification
Objective 8 Enable appropriate rural residential development	Assessment against this objective is like that provided for Direction 29 in Table 4.
Objective 12 Protect rural and mining industries	<p>This objective aims to identify and manage land use conflicts on productive agricultural lands, avoid fragmentation and ensure the location of land uses adjacent to highly productive agricultural lands are compatible with agricultural production. Increased residential development is not considered compatible with nearby agricultural production, therefore the proposed amendments are considered inconsistent with this objective although the land is only 2.1ha in area, and located between the village and conservation zone so its value for productive agricultural use is limited.</p> <p>As stated above, the proposed amendments are partially justified as they aim to enable subdivision of the land for the part acquisition by council for ongoing maintenance of stormwater infrastructure.</p> <p>In justifying this inconsistency, consultation is required with DPI Agriculture and a condition of Gateway determination will be recommended to this effect.</p>

## 3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

**Table 6 Local strategic planning assessment**

Local Strategies	Justification
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Local Strategic Planning Statement	<p>The LSPS identifies the necessity of ensuring that utility infrastructure and services to have capacity to cope with increase in demand in the expanding community of Buronga Gol Gol.</p> <p>The planning proposal seeks to rezone the subject site to allow for subdivision, enabling Council to acquire a portion of the land where existing stormwater infrastructure is located. This is consistent with the intent of the LSPS for the improvement and expansion of infrastructure to support and adequately service the community.</p>
Community Strategic Plan	<p><i>3.1 Promote the efficient delivery of water supply, sewer and drainage services for the long-term interests of future generations</i></p> <p><i>3.2 Plan for and develop the right assets and infrastructure</i></p> <p>The proposed amendments are consistent for the same reasons outlined in the above justification.</p>
Buronga Gol Gol Structure Plan (BGGSP)	<p>The BGGSP identifies a 21-year supply of RU5 Village Zoned land and does not identify the subject site for any proposed amendments. The planning proposal is inconsistent with the land use principles of the BGGSP.</p> <p>Council notes this inconsistency in its assessment and offer that justification for supporting the planning proposal is based on the outcomes being beneficial to Council and the public interest with managing, maintaining and improving stormwater infrastructure to service the growing community. However the same outcome could be achieved by other means eg. correcting the location of the easement without the need to create inconsistency with the BGGSP.</p> <p>Pre-exhibition consultation with DPI Agriculture to determine the significance of the inconsistency.</p>

### 3.3 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

**Table 6 9.1 Ministerial Direction assessment**

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Consistent	As outlined in Section 3.1, the planning proposal is consistent with this Direction.
1.3 Approval and Referral Requirements	Consistent	The planning proposal does not include provisions that require concurrence, consultation or referral to a Minister or public authority.

1.3 Conservation Zones	Consistent	<p>The subject site is largely devoid of vegetation due to historic horticultural uses, and should any clearing be proposed as part of the development of the site it will be considered at development assessment stage. The proposal does not propose changes to any conservation zoning or considerations.</p> <p>The subject land abuts Drainage Basin 3 (zoned C2 Environmental Conservation) and has the potential to increase developmental potential in close proximity to this site. The C2 land is also mapped as a wetland in the WLEP. The planning proposal does not consider potential land use conflicts at this time with surrounding land and does not propose any mitigation strategies for this conflict. The proposal should be updated to assess the potential of this impact.</p>
4.4 Remediation of Contaminated Land	Inconsistent, further work required	<p>The subject site has previously been used for horticultural purposes and a preliminary contamination assessment report is required and a condition to this affect has been included in the Gateway determination.</p>
5.1 Integrating Land Use and Transport	Consistent	<p>The planning proposal is considered consistent with Direction as the subject site has access to services and infrastructure.</p>
6.1 Residential Zones	Consistent	<p>The proposal is consistent with this Direction as the proposed rezoning will enable residential development.</p>
8.1 Mining, Petroleum Production and Extractive Industries	Consistent	<p>The proposal is consistent with this Direction as the proposed rezoning to zone RU5 will continue to permit such uses. Although such uses are unlikely to be developed on this land.</p>
6.2 Caravan Parks and Manufactured Home Estates	Consistent	<p>The planning proposal is consistent with this Direction as this development is permitted with consent in the proposed RU5 zone.</p>
9.1 Rural Zones	Inconsistent	<p>The intention of the proposed amendments is to facilitate subdivision and the acquisition of stormwater infrastructure by Council which is generally consistent with Council's LSPS and BGGSP. However, the proposed rezoning of the whole of the subject site to zone RU5 without a MLS is largely inconsistent with this Direction.</p> <p>Consultation with DPI Agriculture is required to allow Council to further assess this inconsistency with this Direction.</p>
9.2 Rural Lands	Inconsistent	<p>The planning proposal does not include assessment against this Direction and should be updated.</p> <p>The proposed amendments are inconsistent with this Direction as the proposal seeks to rezone a rural zone to a village zone and remove the MLS. Consultation with DPI Agriculture is required to allow Council to further assess this inconsistency.</p>

### 3.4 State environmental planning policies (SEPPs)

The planning proposal's consistency with relevant SEPPs is discussed below:

**Table 7 Assessment of planning proposal against relevant SEPPs**

SEPPs	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Biodiversity and Conservation) 2021	Yes	Subsequent development on the subject site as a result of the planning proposal will be subject to a development application where this SEPP may be considered.
SEPP (Housing) 2021	Yes	The planning proposal will result in additional RU5 Village zoned land and will therefore add to the existing stock of land available for residential development.
SEPP (Primary Production) 2021	No, consultation required	Council has advised that the subject site has previously been used for horticultural purposes and is not considered to be significant agricultural land.  The subject site was recently rezoned from RU1 Primary Production to RU4 Primary Production Small Lots following consultation with DPI Agriculture on proposed amendments of PP-2021-6509 (discussed in Section 1.6). Consultation is required with DPI Agriculture and a condition will be included in the gateway determination to this affect.
SEPP (Resilience and Hazards) 2021	No - further work is required	The subject site has previously been used for horticultural purposes and a preliminary contamination assessment report is required and a condition to this affect has been included in the Gateway determination.
SEPP (Transport and Infrastructure) 2021	Yes	The proposed amendments intend to enable Council to acquire the portion of land covered by existing stormwater infrastructure. This acquisition will provide greater certainty and efficiency of the management and maintenance of this infrastructure.

## 4 Site-specific assessment

### 4.1 Environmental, Social and Economic

The subject site is largely devoid of vegetation and identified in the planning proposal as containing abandoned horticultural crops. Any clearing required as part of the development of the site will be considered at development assessment stage.

The land directly north of the subject site is zoned C2 Environmental Conservation, a natural habitat that is also known as Drainage Basin 3. The current zoning of the subject site is considered a buffer between residential development to the south and the Drainage Basin in the north.

Conflict with nearby environmental sensitive land could be managed through separation buffer distances, vegetation plantings and appropriate location of houses with regards to topography to

help in avoiding conflict where possible. Council needs to undertake further work to assess the potential impact.

## 4.2 Infrastructure

Council advised there is adequate infrastructure to support the outcomes of the planning proposal:

- sealed road frontage to Pitman Avenue, and
- power, sewer, filtered and raw water and stormwater infrastructure is located to the south side of Pitman Avenue.

## 5 Consultation

### 5.1 Community

Council proposes a community consultation period of 28 days (20 working days). The exhibition period proposed is considered , and forms to the conditions of the Gateway determination.

### 5.2 Agencies

The proposal does not specifically raise which agencies will be consulted. It is recommended the DPI Agriculture be consulted on the planning proposal prior to public exhibition. A gateway condition will be included to this affect.

## 6 Timeframe

Council proposes a 6 month time frame to complete the LEP.

The Department recommends a time frame of 6 months to ensure it is completed in line with its commitment to reduce processing times.

## 7 Local plan-making authority

Council does not request delegation to be the Local Plan-Making authority. The Department recommends that Council not be authorised to be the local plan-making authority for this proposal as it has an interest in the land.

## 8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- It is generally consistent with relevant local, regional and State legislation and policy however further consultation is required with agencies

Based on the assessment outlined in this report, the proposal must be updated before consultation to:

- Reflect current zoning of subject site as RU4 Primary Production Small Lots
- Include the adjoining road reserve within the subject land to be rezoned
- Thoroughly investigate alternative mechanisms to achieve the intended outcomes in consultation with DPI Agriculture
- Include consideration of land use conflict with C2 Environmental Conservation and RU4 Primary Production Small Lots land next to the subject site, including proposed DCP provisions to manage the conflict



## 9 Recommendation

It is recommended the delegate of the Secretary:

- Note that the consistency with section 9.1 Directions 3.1 Conservation Zones, 4.4 Remediation of Land, 9.1 Rural Zones, and 9.2 Rural Lands is unresolved and will require justification.

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

1. Prior to community consultation the planning proposal is to be updated to:
  - a. Reflect current zoning of subject site as RU4 Primary Production Small Lots
  - b. Include the adjoining road reserve within the subject land to be rezoned
  - c. Investigate and document alternative mechanisms to achieve the intended outcomes in consultation with DPI Agriculture.
  - d. Consider the impacts of land uses that may result from the preferred mechanism ie. the density and types of permissible development that may result.
  - e. Include consideration of land use conflict with C2 Environmental Conservation an RU4 Primary Production Small Lots land adjoining the subject site, including proposed site specific DCP provisions to manage the conflict
  - f. Include preliminary contamination assessment

To satisfy Condition 1, the updated planning proposal is required to be submitted to the Minister for confirmation prior to proceeding to public exhibition.

2. The planning proposal should be made available for community consultation for a minimum of 28 days (20 working days).
3. The timeframe for completing the LEP is to be six (6) months from the date of the Gateway determination.
4. Given the nature of the proposal, Council should not be authorised to be the local plan-making authority.

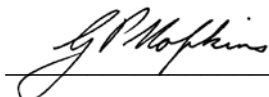


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