

# DRAFT PLANNING PROPOSAL: MIALA HOUSE AND DAIRY COMPLEX

## To amend Wollongong LEP 2009

**LOCAL GOVERNMENT AREA:** Wollongong City Council

**NAME OF DRAFT LEP:** 'Miala' House and Dairy Complex including Fig Tree

**ADDRESS OF LAND:** 410 Marshall Mount Road, Marshall Mount

### Table of Contents

Part 1 – Statement of objectives or intended outcomes	2
Part 2 – Explanation of provisions	2
Part 3 – Justification	3
Section A – Need for the Planning Proposal	3
Section B – Relationship to strategic planning framework	4
Section C – Environmental, social and economic impact	4
Section D – State and Commonwealth interests	5
Part 4 – Mapping	5
Part 5 – Community Consultation	6
Part 6 – Projected Timeline	7
Table A – Checklist of State Environmental Planning Policies	8
Table B – Checklist of Section 9.1 Ministerial Directions	10

### Appendix – Supporting Documents submitted with the Planning Proposal Request:

1. Duck Creek Neighbourhood Plan Council Report and minutes dated 27 June 2022
2. Proposed LEP Heritage Map Curtilage and Minimum Lot Size Map
3. Advice of Wollongong Local Planning Panel dated 31 October 2022
4. "Miala" Heritage Significance Assessment Report, prepared by Wollongong City Council, dated February 2022.
5. Miala House and Dairy Complex Public Exhibition Council Report and minutes dated 20 March 2023.

## SCHEDULE 5 OF THE WOLLONGONG LEP 2009

### Part 1 – Statement of objectives or intended outcomes

The primary objective of this draft Planning Proposal is to list 1 additional local heritage item on Schedule 5 of the Wollongong Local Environmental Plan 2009 and the accompanying Heritage Map known as 'Miala' House and Dairy Complex including Figtree\*, - Lot 12 DP 790746 410 Marshall Mount Road Marshall Mount. The draft Planning Proposal also proposes to amend the Wollongong LEP 2009 Minimum Lot Size Map to increase the minimum lot size from 449m<sup>2</sup> to 4999m<sup>2</sup> to match the proposed heritage curtilage of the site as per the recommendation of the Wollongong Local Planning Panel.

### Part 2 – Explanation of provisions

Council at its meeting of 27 June 2022 considered a report in relation to a draft Neighbourhood Plan for the Duck Creek/Marshall Vale Precinct. This report provided discussion of a potential heritage site which was identified during the process. As part of its considerations, Council resolved that:

*The heritage significance of "Miala" House be referred to the Wollongong Local Planning Panel for advice on whether a draft Planning Proposal should be prepared and then reported to Council.*

The matter was reported to the Local Planning Panel considered on 31 October 2022 to obtain their advice on the Strategic Merit of the project, as required under the Environment Planning and Assessment Act 1979. The LPP and made the following decision:

- 1. The Panel supports the preparation of a draft Planning Proposal for the heritage listing of Miala House and dairy complex and supports Council's proposed mapping of the curtilage which incorporates the figtree.*
- 2. The Panel considers the figtree is significant in its own right, as a landscape feature, and should be retained. No evidence has been provided that the tree is unhealthy or at the end of its useful life.*
- 3. As part of the Neighbourhood Plan, Council officers need to consider whether there are alternate and feasible road alignments that achieve an appropriate collector road that don't impact on the Miala house and figtree.*
- 4. The Panel considers that the retention of Miala house and dairy complex provides future opportunity for other uses that will complement and enhance the future neighbourhood, similar to Coral Vale at Wongawilli.*
- 5. The Panel recommends that as part of the Planning Proposal the Minimum Lot Size for the site be increase to 2000m<sup>2</sup> or to match the proposed curtilage, to preclude subdivision of the site.*

The full Local Planning Panel advice is included as an attachment to this Planning proposal.

This draft planning proposal has been prepared to address the Planning Panel decision and add 'Miala' House and Dairy Complex including Fig Tree\* to Schedule 5 of the Wollongong LEP 2009 with a proposed curtilage that incorporates the significant fig tree on the site.

Suburb	Item Name	Address	Property Description	Significance	Item No.
Marshall Mount	'Miala' House and Dairy Complex	410 Marshall Mount Road	Lot 12 DP 790746	Local	61111

## SCHEDULE 5 OF THE WOLLONGONG LEP 2009

Suburb	Item Name	Address	Property Description	Significance	Item No.
	including Fig Tree*				

The additional item will also require an update to the LEP Heritage Maps to include a map of the proposed heritage curtilage.

The WLPP was also of the view that the House, Diary Complex and a significant fig tree on the site have heritage significance and should be included in a draft Planning Proposal for inclusion on Schedule 5 of the LEP with an appropriate curtilage that should not be reduced or subdivided as part of the future development of the site. The land size of the proposed heritage curtilage area is just over 5000m<sup>2</sup>.

To ensure the intent of the Local Planning Panel recommendation is captured, the minimum lot size is proposed to be increased 449m<sup>2</sup> to 4999m<sup>2</sup> for the area of the site corresponding to the proposed heritage listing.

This draft planning proposal supports a Report to Council to request Gateway Determination and progress the planning proposal.

### Part 3 – Justification

#### Section A – Need for the Planning Proposal

##### Q1: Is the planning proposal a result of a strategic study or report?

This amendment forms part of Council's ongoing review of the Wollongong Heritage Schedule.

In 2020 a draft Neighborhood Plan for the Duck Creek/Marshall Vale Precinct of the West Dapto Urban Release Area was lodged with Council for assessment and consideration. The supporting documentation provided with the proposal included a Historic Heritage assessment report prepared by AECOM. This report highlighted an unlisted, and previously unassessed building on the site known as "Miala", which it identified as having local heritage significance. The property is located in a remote location on 410 Marshall Mount Road, Marshall Mount.

Whilst the report acknowledged the significance of the property, it did not recommend the conservation of the building. This was justified on the basis that the building was not heritage listed and it was argued that the proposed residential subdivision could not accommodate the retention of the building. The proposed road layout in the draft Neighbourhood Plan shows a collector road going through the house, which is consistent with Council's Yallah Marshall Mount Road Structure Plan.

In response to the AECOM report, Council's Heritage staff undertook a preliminary assessment of the Heritage significance of the site and recommended that the site should be considered for heritage listing as an outcome of the Neighborhood Planning process.

The proponent subsequently provided:

- An amended version of the AECOM report dated May 2021
- Peer Review Heritage Assessment report prepared BY Ecological dated September 2021

## SCHEDULE 5 OF THE WOLLONGONG LEP 2009

Following receipt of these reports, Council's Heritage Staff prepared a detailed Heritage Significance Assessment. This report, provided as Attachment 4, included additional historic research, as well as an analysis of the two heritage reports submitted by Urbanco in support of the proposal.

This detailed Heritage Significance Assessment found that the Miala property, including the house, dairy, silo and other remnant farm structures, along with the enclosed garden have heritage significance relating to the history of dairying in the area, as well as direct connections to a number of early prominent land grantees and residents of the area. The report provides a detailed Statement of Significance as follows:

*Miala house and surviving dairy, along with the associated infrastructure including cattle ramp, drinking troughs and Silo provide evidence of a small scale, family run dairy complex established from the late Victorian period. The house, whilst modified, remains readily recognisable as a late Victorian farmhouse, whilst the dairy and associated infrastructure retain evidence of this significant historic occupation, which was a key industry at the core of the Illawarra's economy during the second half of the 19th, and much of the 20th century.*

*The property is associated with one of the first five land grants in the Illawarra, being part of "Macquarie Gift", which was granted to George Johnson of Rum Rebellion fame. The property remained in the ownership of the Johnston and Weston families, through descendants of George Johnston up until 1895. The house was most likely built during the 1880s, during the ownership of either Edward Henry Weston (pre-1884) or Frederick Weston Perry (1884 onward), though an earlier date of construction cannot be ruled out. Later owners of the property included Alderman James Stevenson who, whilst living on the property, played a central role in a wide range of community affairs as well as an important role in the progression of the Illawarra dairy industry through his roles with the Albion Park Dairy Factory, the Royal Agricultural and Horticultural Society as well as many other local community organisations and institutions.*

*The remote agricultural setting of the Miala complex, and its established gardens, including two large established Figs, and backdrop of the Illawarra Escarpment are aesthetically significant. The 500m long driveway including ford crossing provides a dramatic arrival to the complex with the soaring escarpment slopes and cliffs to the north and west of the site adding to the aesthetic significance of the site.*

*The site is likely to retain archaeological evidence relating to the historic development of the homestead complex and to earlier outbuildings and farm structures. Given the length of tenure from the earliest (post invasion) settlement in the Illawarra, and the evidence in the historic records for tenant farms on the estate from early in its history, the presence of earlier farm buildings that may reveal important historic evidence of tenant-based farming activities cannot be ruled out. Archaeological research has the potential to reveal evidence that may assist with dating and adding to the chronology of development on the site and to close gaps in the available historic record.*

*The Miala complex is representative of a family run dairy farm, established from the late Victorian period with building and structures that provide evidence of this significant economic activity and occupation.*

*Surviving dairy complexes are growing increasingly rare in the Illawarra and West Dapto precinct, with few sites providing intact dairy complexes dating from the 1880's surviving throughout the area, with house, dairy and associated facilities and structures intact (albeit modified).*

The report recommended listing of the property on the Wollongong Local Environmental Plan 2009 as a local heritage item.

In May 2022, the applicant agreed to amend the draft Neighbourhood Plan to retain Miala house and proposed a heritage curtilage, which did not include a large figtree located on site. The figtree was proposed to be removed to facilitate the identified collector road.

## SCHEDULE 5 OF THE WOLLONGONG LEP 2009

The draft Neighbourhood Plan was subsequently reported to Council for public exhibition in June 2022. Council resolved to refer the matter of the potential heritage significance of “Miala” House and Diary Complex and associated curtilage to the Wollongong Local Planning Panel for advice on whether a draft Planning Proposal should be prepared. The LPP was of the view that the House, Diary Complex and Figtree on the site have heritage significance and should be included in a separate draft planning proposal for inclusion on Schedule 5 of the LEP. This will require the alignment of the collector road to be reconsidered as part of the Neighbourhood Planning process.

This draft planning proposal supports a Report to Council on the potential amendment to the Wollongong LEP 2009 to include this site as a local heritage item.

### Strategic Context

The Duck Creek/Marshall Mount precinct is within Stage 5 of the West Dapto Urban Release Area. It was previously proposed to be rezoned in 2006-8, but Stages 3, 4 and 5 of the West Dapto Urban Release Area were deferred following a review by the Growth Centres Commission in 2008, which raised concerns over the viability and affordability of the release area, cost and timing of infrastructure, staging, access, flooding and riparian issues. Stage 5 was rezoned for urban purposes in June 2018.

The draft Planning Proposal is consistent with:

- Illawarra Shoalhaven Regional Plan 2041 (2021)
- Wollongong Local Strategic Planning Statement 2020
- Council’s Planning Proposal Policy (2022)
- Council’s West Dapto Vision 2018
- Yallah-Marshall Mount Vision 2015
- Wollongong Heritage Strategy 2021-2022

The proposed heritage listing provides for the conservation of an important site in the history of the Marshall Mount precinct and will provide for the conservation of these heritage values as part of the development of the West Dapto Urban Release Area. The proposed heritage listing has been accounted for in the revised Neighbourhood Plan and is able to be conserved in a key location adjacent to a significant road link within the proposed Neighbourhood Plan as drafted.

### 2: Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The Planning Proposal is the only means available to Council of achieving the intended outcome of updating and correcting the Heritage Schedule of the Wollongong LEP 2009 to include the additional heritage item and amending the LEP Heritage and Minimum Lot Size maps.

## Section B – Relationship to strategic planning framework

### Q3: Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy?

The Planning Proposal is consistent with the Illawarra *Shoalhaven Regional Plan 2041* as it will assist in the identification, conservation and promotion of Cultural Heritage Values. The Planning Proposal directly delivers on the plan by responding to:

**Objective 23: Celebrate, conserve and reuse cultural heritage,**

and by implementing:

***Strategy 23.1: Identify, conserve and enhance cultural heritage values.***

**Q4: Is the Planning Proposal consistent with a Council's local strategy or other local strategic document (e.g.: Wollongong Community Strategic Plan)?**

**Community Strategic Plan Wollongong 2022**

The Planning Proposal is consistent with the overall vision contained in the Wollongong Community Strategic Plan 2032. The Planning Proposal will meet the delivery of "Goal 1 - We value and protect our environment." It specifically delivers on core business activities, including promote and protect heritage, as detailed in the Land Use Planning service.

**Wollongong Local Strategic Planning Statement 2020**

The Wollongong Local Strategic Planning Statement 2020 outlines Council's approach and commitments to strategic planning. This document identifies the importance of heritage management within this framework and in Section 4.1.5 discusses in detail the Wollongong Heritage Strategy and accompanying Implementation Plan as the mechanism for delivery of key outcomes in heritage management. This discussion identifies the review and updating of the Wollongong Heritage Schedule as a key project deliverable from the Heritage Strategy. The Wollongong Heritage Strategy is discussed in additional detail below.

This draft Planning Proposal delivers on a key commitment outlined within the Wollongong Local Strategic Planning Statement and is therefore consistent with this document.

**Wollongong Heritage Strategy 2019-2022**

The Wollongong Heritage Strategy sets out a framework for the Management of Heritage by Wollongong City Council and identifies key strategies and actions to deliver Heritage Conservation Outcomes. Strategy 2 within the document includes "Maintain an up to date list of Heritage Items".

This draft Planning Proposal delivers on this Strategy, by ensuring that as heritage items are identified through Neighbourhood Planning or other strategic processes are included on Schedule 5 of the LEP.

**Q5: Is the planning proposal consistent with applicable State Environmental Planning Policies?**

Yes. Refer to Table A – Checklist of State Environmental Planning Policies.

**Q6: Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?**

Yes. Refer to Table B – Checklist of Ministerial Directions.

**Section C – Environmental, social and economic impact**

**Q7: Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?**

The Planning proposal will not cause any ecological impact, as the proposal is only to list additional an additional heritage item on the heritage schedule. The listing will have a positive ecological impact by requiring the retention of a significant fig tree as part of the Neighbourhood Plan.

**Q8: Are there any likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

## SCHEDULE 5 OF THE WOLLONGONG LEP 2009

The Planning proposal will ensure appropriate identification and management of the City's Environmental Heritage. It is not anticipated that it will result in any negative environmental effects.

### **Q9: Has the planning proposal adequately addressed any social and economic effects?**

The proposed heritage listings may have some social and economic impacts, particularly with regard to affected property owner (West DL Pty Ltd - Modern Group). This matter has been subject to extensive consideration as part of the Neighbourhood Planning process and the subsequent public exhibition process and will be further considered in the post exhibition report to Council. The affected property owner is aware of the progression of the draft Planning Proposal and will be further invited to have formal input to the formal exhibition process.

### **Section D – State and Commonwealth interests**

### **Q10: Is there adequate public infrastructure for the planning proposal?**

Not applicable.

### **Q11: What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?**

The proposal does not affect any properties owned by State or Commonwealth authorities.

Heritage NSW has been notified of the proposed addition to the Wollongong Local Environmental Plan Heritage Schedule and will again be invited to comment during the public exhibition process.

### **Part 4 – Mapping**

#### **MAPS, WHERE RELEVANT, TO IDENTIFY THE INTENT OF THE PLANNING PROPOSAL AND THE AREA TO WHICH IT APPLIES**

A map showing the proposed mapping change to the Wollongong Local Environmental Plan Heritage Map and Minimum Lot Size Map has been included as an attachment to this draft Planning Proposal.

### **Part 5 – Community Consultation**

The Duck Creek/Marshall Vale Neighbourhood Plan was exhibited from 27 July to 31 August 2022. A range of additional heritage information, including Aboriginal Heritage Assessment is still required to be provided by the proponent. Heritage NSW was referred the heritage documents during the consultation period. No comments have been received.

On 1 December 2022, a report was provided to the Wollongong Heritage Reference Group on the proposed listing. The Group was supportive of 'the preparation and exhibition of a draft planning proposal to add Miala House, Dairy Complex and fig tree to Schedule 5 of the Wollongong LEP 2009 and adopt the proposed curtilage recommended within this report along with the other recommendations of the Wollongong Local Planning Panel and that the ongoing use of the site as a dwelling should be explored'.



## SCHEDULE 5 OF THE WOLLONGONG LEP 2009

If the Planning Proposal is progressed, additional amendments will be required to the draft Neighbourhood Plan and associated documents, that indicate retention of Miala House, dairy complex and fig tree. In May 2022, the applicant agreed to amend the draft Neighbourhood Plan to retain Miala house and proposed a heritage curtilage. Although the proponent's proposed curtilage is not supported, the outcome of this report has been subject to lengthy negotiations and discussions with the landowner and proponent.

Council has now endorsed the draft Planning Proposal to be publicly exhibited and all documents will be forwarded to the NSW Department of Planning and Environment for a Gateway Determination to enable public exhibition. If endorsed, it is proposed that the draft Planning Proposal will be exhibited for a minimum period of 28 days to enable landowner and community comment.

Should a Gateway Determination be issued, the Planning proposal will be exhibited for a minimum period of 28 days and include:

- *Hard copies at Council's Administration building and relevant Libraries;*
- *Electronic copy on Council's website;*
- *Notification letters to affected property owners;*
- *Notification letters to relevant State agencies and other authorities.*



## SCHEDULE 5 OF THE WOLLONGONG LEP 2009

Following the conclusion of the exhibition period, a report on submissions will be prepared and reported to Council for determination as to whether the draft Planning Proposal for the listing of the item on Schedule 5 of the Wollongong LEP and amendments to the Minimum lot size map should be amended and/or finalised.

### Part 6 – Projected Timeline

A primary goal of the plan making process is to reduce the overall time taken to produce LEPs. This timeline tentatively sets out expected timelines for major steps in the process. These timeframes are subject to change and are to be used as a guide only. The Minister may consider taking action to finalise the LEP if timeframes approved for the completion of the Planning Proposal are significantly or unreasonably delayed.

#	Action	Estimated Timeframe	Responsibility
1	Anticipated date of Gateway determination	May 2023	Department of Planning and Environment
2	Government agency consultation	21 days	Council
3	Public exhibition period	May 2023	Council
4	Date of Public Hearing ( <i>if applicable</i> )	NA	NA
5	Consideration of submissions	2 weeks	Council
6	Assessment of proposal post-exhibition	4 weeks	Council
7	Report to Council	August 2023	Council
8	Final maps and Planning Proposal prepared	September 2023	Council
9	Submission to Department for finalisation of LEP	September 2023	Council
10	Anticipated date RPA will make the LEP	November 2023	Council (if under delegation)
11	Anticipated date LEP will be notified	November 2023	Department of Planning and Environment

SCHEDULE 5 OF THE WOLLONGONG LEP 2009

**Table A - Checklist of State Environmental Planning Policies**

State Environmental Planning Policy		Compliance	Comment
SEPP	(Biodiversity and Conservation) 2021	Not Applicable	
SEPP	(Building Sustainability Index: BASIX) 2004	Not Applicable	
SEPP	(Exempt and Complying Development Codes) 2008	Not Applicable	
SEPP	(Housing) 2021	Not Applicable	
SEPP	(Industry and Employment) 2021	Not Applicable	
SEPP	No 65—Design Quality of Residential Apartment Development	Not Applicable	
SEPP	(Planning Systems) 2021	Not Applicable	
SEPP	(Precincts—Central River City) 2021	Not Applicable	
SEPP	(Precincts—Eastern Harbour City) 2021	Not Applicable	
SEPP	(Precincts—Regional) 2021	Not Applicable	
SEPP	(Precincts—Western Parkland City) 2021	Not Applicable	
SEPP	(Primary Production) 2021	Not Applicable	
SEPP	(Resilience and Hazards) 2021	Not Applicable	
SEPP	(Resources and Energy) 2021	Not Applicable	
SEPP	(Sustainable Buildings) 2022	Not Applicable	
SEPP	(Transport and Infrastructure) 2021	Not Applicable	

SCHEDULE 5 OF THE WOLLONGONG LEP 2009

**Table B - Checklist of Section 9.1 Ministerial Directions**

	Comment
<b>Focus Area 1: Planning Systems</b>	
1.1 Implementation of Regional Plans	Consistent – will enable protection of region’s cultural heritage in accordance with the Illawarra Shoalhaven Regional Plan 2041. See Q 3. above
1.2 Development of Aboriginal Land Council land	Not Applicable.
1.3 Approval and Referral Requirements	Not Applicable
1.4 Site Specific Provisions	Not Applicable
<b>Focus area 1: Planning Systems – Place based</b>	
1.5 Parramatta Road Corridor Urban Transformation Strategy	Not Applicable
1.6 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	Not Applicable
1.7 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Not Applicable
1.8 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Not Applicable
1.9 Implementation of Glenfield to Macarthur Urban Renewal Corridor	Not Applicable
1.10 Implementation of the Western Sydney Aerotropolis Plan	Not Applicable
1.11 Implementation of Bayside West Precincts 2036 Plan	Not Applicable
1.12 Implementation of Planning Principles for the Cooks Cove Precinct	Not Applicable
1.13 Implementation of St Leonards and Crows Nest 2036 Plan	Not Applicable
1.14 Implementation of Greater Macarthur 2040	Not Applicable
1.15 Implementation of the Pyrmont Peninsula Place Strategy	Not applicable to Wollongong
1.16 North West Rail Link Corridor Strategy	Not applicable to Wollongong
1.17 Implementation of the Bays West Place Strategy	Not applicable to Wollongong
1.18 Implementation of the Macquarie Park Innovation Precinct	Not applicable to Wollongong
1.19 Implementation of the Westmead Place Strategy	Not applicable to Wollongong
<b>Focus area 2: Design and Place</b>	
<b>Focus area 3: Biodiversity and Conservation</b>	
3.1 Conservation Zones	Not Applicable

## SCHEDULE 5 OF THE WOLLONGONG LEP 2009

3.2 Heritage Conservation	Consistent – Addition to Schedule 5 and Heritage Map to ensure heritage is protected
3.3 Sydney Drinking Water Catchments	Not Applicable
3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs	Not Applicable
3.5 Recreation Vehicle Areas	Not Applicable
3.6 Strategic Conservation Planning	Not Applicable
3.7 Public Bushland	Not Applicable
3.8 Willandra Lakes Region	Not applicable to Wollongong
3.9 Sydney Harbour Foreshores and Waterways Area	Not applicable to Wollongong
3.10 Water Catchment Protection	Not Applicable
<b>Focus area 4: Resilience and Hazards</b>	
4.1 Flooding	Not Applicable
4.2 Coastal Management	Not Applicable
4.3 Planning for Bushfire Protection	Not Applicable
4.4 Remediation of Contaminated Land	Not Applicable
4.5 Acid Sulfate Soils	Not Applicable
4.6 Mine Subsidence and Unstable Land	Not Applicable
<b>Focus area 5 Transport and Infrastructure</b>	
5.1 Integrating Land Use and Transport	Not Applicable
5.2 Reserving Land for Public Purposes	Not Applicable
5.3 Development Near Regulated Airports and Defence Airfields	Not Applicable
5.4 Shooting Ranges	Not Applicable
<b>Focus area 6: Housing</b>	
6.1 Residential Zones	Not Applicable
6.2 Caravan Parks and Manufactured Home Estates	Not Applicable
<b>Focus area 7: Industry and Employment</b>	
7.1 Business and Industrial Zones	Not Applicable
7.2 Reduction in non-hosted short-term rental accommodation period	Not Applicable
7.3 Commercial and Retail Development along the Pacific Highway, North Coast	Not applicable to Wollongong
<b>Focus area 8: Resources and Energy</b>	
8.1 Mining, Petroleum Production and Extractive Industries	Not Applicable
<b>Focus area 9: Primary Production</b>	
9.1 Rural Zones	Not Applicable
9.2 Rural Lands	Not Applicable
9.3 Oyster Aquaculture	Not Applicable

SCHEDULE 5 OF THE WOLLONGONG LEP 2009

9.4 Farmland of State and Regional Significance on the NSW Far North Coast	Not applicable to Wollongong
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