

DATE OF DETERMINATION	26 March 2024
DATE OF PANEL DECISION	26 March 2024
DATE OF PANEL BRIEFING	19 February 2024
PANEL MEMBERS	Justin Doyle (Chair), Louise Camenzuli, David Kitto, Blair Briggs, Matt Gould
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 12 February 2024.

MATTER DEFERRED

PPSSCC-301 – Wollondilly – DA/2022/1279/1 – 195 Fairways Drive, Wilton - Staged residential subdivision consisting of 318 residential lots, 4 superlots, 6 residue lots and associated works.

PANEL CONSIDERATION AND DECISION

The panel has considered: the matters listed at item 6, the material listed at item 7 and the material presented at briefings and the matters listed at item 8 in Schedule 1.

The proposed development does not comply with the development standard set by Clause 4.3A Residential density of Appendix 8 to the North Wilton Precinct Plan in the WPC SEPP, which provides relevantly:

- (2) The consent authority must not grant development consent to development on land if the development will result in the density of—
 - (a) dwelling houses and dual occupancies being 15 or fewer dwellings per hectare of the land or exceeding 25 dwellings per hectare of the land ...

The Panel agrees with the Applicant’s statement of the objectives of the control (noting no aim is explicitly stated in the SEPP) being:

- (a) To ensure that residential development makes efficient use of land and infrastructure, and contributes to the availability of new housing,
- (b) Ensure that the scale of residential development is compatible with the character of the precinct and adjoining land.

In this case the density proposed is 14.54 dwellings per hectare (refer to Figure 1)

- a) Following consideration of the written request from the applicant addressing the non compliance, made under Clause 4.6 Exceptions to Development Standards of Appendix 8 North Wilton Precinct Plan, the Panel is satisfied that the applicant’s written request has demonstrated that:
 - b) compliance with cl. 4.3A is unreasonable or unnecessary in the circumstances; and
 - c) there are sufficient environmental planning grounds to justify contravening the development standard

such that the matters requirements of cl 4.6 (3) of the LEP are met.

The Panel accepts that the development is in the public interest because it will provide a substantial contribution to available housing in the region.

The concurrence of the Secretary is assumed.

Development application

The panel determined that the development application should be approved pursuant to section 4.16 of the Environmental Planning and Assessment Act 1979, but reserved its position as to the final form of the conditions as discussed below.

The decision was unanimous.

REASONS FOR THE DECISION

The panel determined to uphold the Clause 4.6 variation to building height; and resolved that the DA should be approved for the reasons outlined in the council assessment report.

The Council assessment report on the DA concluded that the DA proposal is consistent with State and local legislation and, subject to the proposed consent conditions is recommended for approval. There were no public submissions.

The Panel accepts the advice contained in the assessment report in relation to the considerations under s 4.15 Environmental Planning & Assessment Act, and particularly that:

- a) The development will comply sufficiently with the Neighbourhood Plan, Wilton Growth Area Development Control Plan 2021 (WGA DCP 2021), State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (Growth Centres SEPP) and Wilton 2040: A Plan for the Wilton Growth Area (The applicable Land Use and Infrastructure Implementation Plan (LUIIP)).
- b) The Panel accepts the Council's consideration of some departures from the strict requirements of the Wilton DCP, given that Stage 4 was practically an extension of Stage 1 of the development the design for which was developed prior to the introduction of the WGA DCP 2021 and the fact that the civil works for Stage 1 are substantially advanced. It is reasonable in those circumstances to maintain consistency with Stage 1 in the implementation of Stage 4. Specifically, the design does not comply with Council's Design and Construction Specifications for WSUD (relying on end-of-line treatment rather than an integrated approach), but Council has appropriately found that to be reasonable in context. Cycle and pedestrian paths provided are reported to have been considered appropriate.
- c) The issue of bushfire risk has been sufficiently considered. The development has been found to be acceptable subject to the imposition of conditions including those recommended by the RFS through its General Terms of Approval issued with reference to section 100B of the Rural Fires Act 1997 in response to Council's referral, including the requirement for the provision of asset protection zones.
- d) The Stage 1 DA included conditions for vegetation removal and earthworks this part of the development. Those conditions required remediation of contamination at the site which has been completed and validated.
- e) Issues noted during the Panel's site inspection concerning Engineering Design Specification and compliance with the WGA DCP 2021 have been resolved. A variation to road widths requested due to steepness of site was accepted by Council's engineers, having regard to an appropriate transition from the Stage 1 road hierarchy. The Panel notes the Council's advice that all future road widths moving forward should nonetheless be consistent with WGA DCP 2021 requirements.

- f) Acoustic concerns in relation to the proposed on-ramp have been satisfactorily addressed with the provision of an expert acoustic report which examines those impacts in the context of the existing highway noise which is said will dominate. Acoustic barriers were found not to be required.
- g) Concurrence was provided by TfNSW on 4 December 2023, subject to its general terms of approval which are imposed through the recommended conditions. General terms of approval have also been received with reference to s 22 of the Coal Mine Subsidence Compensation Act 2017.
- h) A Satisfactory Arrangements Certificate in relation to designated State public infrastructure has been obtained from the Department of Planning, Housing and Infrastructure under Appendix 8 of SEPP (PWCP) 2021.
- i) Council's concerns about the sufficiency of the area and configuration of the proposed playing field have been resolved with the double playing field originally anticipated in Neighbourhood Plan No.1 now to be provided instead within Neighbourhood Plan No.2
- j) Concerns about the availability of water supply and sewerage are addressed by conditions requiring connection of water and reticulated sewer prior the issue of a subdivision certificate.

CONDITIONS

For the reasons stated above, the DA should be approved subject to the separate matters discussed below.

A. Koala fencing

The issue of koala protection is a significant one for the larger Wilton area. In relation to this DA Council proposes various measures for the protection of koalas to be required by condition and particularly:

- a) Management of roadside vegetation and landscaping adjacent to koala habitat to minimise the height of ground cover and increase the visibility of any roadside fauna.
- b) Install road design structures such as underpasses, fauna bridges and overpasses for the protection of koalas and maintain by the proponent for a time period consistent with any approval conditions. Reference RMS Biodiversity Guidelines.
- c) Deliver dog containment fencing in accordance with the approved Neighbourhood Plan fencing strategy within open space and public recreation areas.
- d) Incorporate dog containment fencing in the design of each residential lot.

In reply the Applicant has supplied a additional advice from Dr David Robertson of Cumberland Ecology who reports:

"No Koalas were found in the subject site or wider North Wilton site during these targeted field surveys, and none have historically been recorded in the subject site or wider North Wilton site based on the records held in the NSW Government BioNet Atlas. However, scattered records occur along the border of the wider North Wilton site, including a recent record from the drone surveys which recorded one Koala just south of the North Wilton site, bordering the future conservation area.

Based on the results from recent field surveys and historical records held in the Bionet Atlas, it is unlikely that a resident Koala population occurs or regularly uses the North Wilton site. However, the areas of the site that are earmarked for conservation, which comprises the intact shale bushland along the periphery of the site, may be used periodically by Koalas as supporting habitat as they contain Koala feed tree species."

The Panel is presently minded to accept Dr Robertson's advice that koala exclusion fencing is not required for this particular stage of the development.

The Panel requests however additional specific advice from Dr Robertson as to whether dog containment measures are appropriate given his reporting "... *intact shale bushland along the periphery*

of the site, may be used periodically by Koalas as supporting habitat as they contain Koala feed tree species.” Such potential measures are not discussed in Dr Robertson’s letter. The Applicant’s response refers to such measures, but the Panel seeks to understand how that commitment is picked up in the conditions. It seems that there is potential for unrestrained dogs to encounter the koalas he refers to.

The Panel also notes that the Cumberland Plain Conservation Plan (CPCP) records a commitment of the Government to roll out around 40 km of koala fencing in locations where koalas are more likely to occur.

B. Street tree maintenance and maintenance period

An issue arises between the Council and the Applicant as to the period of maintenance to be required by the conditions in relation to street tree irrigation system infrastructure and street tree protection. The conditions propose to require maintenance under a proposed Street Tree Protection Strategy including measures to protect street trees and associated irrigation systems from damage which the developer would be required to comply with for period of 5 years from the date of subdivision registration.

The Applicant’s representatives had argued that a one year maintenance program was sufficient.

At the invitation of the Panel, conferral occurred between the developer and the Council in an attempt to resolve disagreement in relation to those matters. The result was an updated memorandum presenting the respective positions of the Council and the Applicant. Having considered the arguments in that document, the Panel is of the preliminary opinion that:

1. Establishment of the street tree planting is an important part of the development. Particularly due to the reliance upon such planting to achieve the canopy cover and street tree planting encouraged by Section 3.5 Retention and Planting of Street Trees and Landscaping of the WGA DCP. That Section adopted by the Deputy Secretary of Planning includes as an objective:

“Provide for new trees and where practical retain existing trees as landscape elements to ensure the community benefits from urban amenity, cooler neighbourhoods, improved air and water quality and to enhance biodiversity on the site.”

2. While the Panel accepts that the long term maintenance of the street trees should fall on the Council as the owner of the street infrastructure, the developer ought to be responsible for maintenance to ensure establishment of the planted vegetation. As the entity which engaged the subcontractors who will install the irrigation system the developer is best placed to attend to maintenance during that period of establishment. It should include watering and replacement of failed plantings.
3. One year is insufficient to ensure that street trees are properly established. A period of two years is however sufficient. From that time the maintenance obligation might reasonably be passed to the Council.
4. For clarity in the maintenance obligations, it is appropriate for a maintenance plan to be resolved prior to the issuing of a subdivision certificate, and the subdivided lots are sold. A requirement that the maintenance plan include a strategy to ensure purchasers of the lots understand that street trees are not to be damaged or removed, and the benefits of street trees is reasonable and should not be unduly onerous.

C. Additional WSUD measures

The North Wilton Precinct Schedule 2 – Neighbourhood Plan No.1 requires that Water Sensitive Urban Design (WSUD) for the project is to be consistent with Section 3.3 of the DCP with the aim of sustainably managing stormwater. Additional information and justification is to be provided if variations are sought, which should demonstrate that the development can still achieve the objectives of Section 3.3.

To that end Council proposes condition 33 which reads:

33. Street Tree Irrigation

Provision must be made of a recycled water irrigation system providing irrigation to all street trees and other landscaping within Public Roads and Public open space.

Condition reason: To ensure compliance with Wilton Growth Area Development Control Plan 2021 (WGA DCP 2021) and Wollondilly WSUD Guidelines.

The Panel accepts that the objective of Council to adopt volume reduction targets for residential subdivision developments is appropriate, and notes that the development includes a number of measures directed to that end including (a) grass lined swales alternating in streets on both sides for infiltration, (b) castellated kerbs for passive irrigation, (c) limited tree pits and (d) an adopted soil infiltration rate of 100mm/hr.

The Panel also notes that the site is constrained, with the development unable to provide for rainwater tanks on individual lots due to the recycled water connection (thus limiting the potential of the development to retain large volumes of water through that means).

Ultimately, while the issue may warrant further investigation, the Panel was not persuaded that at the time of the determination of this DA will there is sufficient certainty that the substantial expense involved in the additional irrigation measures to justify the expense. The Panel cannot see sufficient evidence that the water captured through the irrigation measures will not return to the drainage system, and there is insufficient information available as to the likely maintenance costs during the life of the irrigation measures.

While the Panel is mindful that there is likely to be a shortfall in the water capture targets adopted to preserve the integrity of the Upper Nepean River. There is insufficient evidence that the measures proposed will substantially alter the outcome in that regard at this stage.

The Panel does not therefore agree to impose the condition in the determination of this DA.

Further modelling and investigation may lead to a different position in that regard for the remainder of the Wilton development, and this approval is not intended to create a precedent for further approvals.

D. Cycle path widths

Proposed condition 49 would require the bicycle paths to be increased to 3 metres wide on the sub arterial road (Road 108). The Applicant opposes the condition on the basis that the proposed 2.5 metre wide paths allow for additional landscaping.

The Panel notes that the Council is to take ownership of, and regulatory responsibility for, the bike paths and landscaping and considers it reasonable therefore for the Council to nominate the appropriate width of the cycleways. However, the 3 metre wide requirement should only apply to the limited section of road indicated in the Council's response (marked in dark green). The Panel takes into account the relevant provisions of NSW Bicycle Guidelines and Austroads Part 6A in that regard which provide generally for path minimums to be between 2.5 and 3 metres depending on context. The WGA DCP figures refer to a 3m bike path.

The increased bike path width will have limited ramifications for the water absorption, but is guided by Council in that regard.

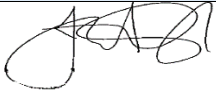
The Applicant has requested a final briefing to discuss the conditions to be imposed on the development due to the cost ramifications for the issues raised across the wider Wilton release. The Panel would be assisted by a final draft of the conditions adopting the position indicated above.

The Panel reserves its final position in relation to the final form of the conditions to take into account discussions at that briefing at which time the final determination of the DA will be made.

CONSIDERATION OF COMMUNITY VIEWS

No submissions were received in relation to notification of the DA.

PANEL MEMBERS



Justin Doyle (Chair)



Louise Camenzuli



David Kitto



Blair Briggs



Matt Gould

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSCC-301 – Wollondilly – DA/2022/1279/1
2	PROPOSED DEVELOPMENT	Staged residential subdivision consisting of 318 residential lots, 4 superlots, 6 residue lots and associated works.
3	STREET ADDRESS	195 Fairways Drive, Wilton
4	APPLICANT/OWNER	Applicant: Landcom Owner: Bradcorp Wilton Park Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Crown development over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Precincts- Western Parklands City) 2021 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Wilton Growth Area Development Control Plan 2021 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2021</i>: Nil Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations <p>The public interest, including the principles of ecologically sustainable development</p>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council assessment report: 28 February 2024 List any council memo or supplementary report received: 1 March 2024 Written submissions during public exhibition: Nil
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Preliminary Briefing: 8 May 2023 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), David Kitto, Brian Kirk, Matt Gould <u>Council assessment staff</u>: Bridie Riordan, Aimee Lee, Connie Swanepoels <u>Applicant representatives</u>: Emily Hou, Ben Gibbons, Jeff Williams, Steve Martion, Nigel McAndrew, Peter Naidovski, Craig Hood Site inspection: 6 November 2023 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), David Kitto, Matt Gould, Blair Briggs <u>Council assessment staff</u>: Bridie Riordan Final briefing to discuss council's recommendation: 19 February 2024

		<ul style="list-style-type: none">○ <u>Panel members</u>: Justin Doyle (Chair), David Kitto, Louise Camenzuli, Matt Gould, Blair Briggs○ <u>Council assessment staff</u>: Bridie Riordan, Aimee lee, Corrie Swanepoel○ <u>Applicant representatives</u>: Emily Hou, Ben Gibbons, Jeff Williams, Steve Martion, Nigel McAndrew, Peter Naidovski, Craig Hood
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report