

<b>DATE OF DEFERRAL</b>	7 May 2024
<b>DATE OF PANEL BRIEFING</b>	8 April 2024
<b>PANEL MEMBERS</b>	Justin Doyle (Chair), Louise Camenzuli, David Kitto, Blair Briggs
<b>APOLOGIES</b>	Matt Gould
<b>DECLARATIONS OF INTEREST</b>	None

Papers circulated electronically on 12 February 2024.

#### **MATTER DEFERRED**

**PPSSCC-301 – Wollondilly – DA/2022/1279/1** – 195 Fairway Drive, Wilton - Staged residential subdivision consisting of 318 residential lots, 4 superlots, 6 residue lots and associated works (Stages 2 & 3).

#### **REASONS FOR DEFERRAL**

In its report following a briefing of this DA held on 19 February 2024, the Panel provided detailed reasons as to why the development proposed in the DA is in the public interest and ought to be approved having regard to the considerations identified in section 4.15 of the EP&A Act 1979.

The report included the Panel's reasons as to why the objection made under '*Clause 5.21 Exceptions to development standards*' of SEPP (Precincts—Western Parkland City) 2021 to the strict application of Clause 4.3A Residential density of Appendix 8 to the North Wilton Precinct Plan in that SEPP should be upheld.

The Panel provided its preliminary views following the 19 February 2024 briefing in relation to disputed conditions, but indicated that it would hear further from the Council and the Applicant as to the final form of those conditions given the cost ramifications and potential precedent as the wider Wilton release progresses.

A further briefing was then convened on 8 April 2024 at which both the Applicant and Council were represented. Various matters were discussed in relation to the Conditions which are summarised below.

Then while the Panel was still deliberating following the 8 April 2024, it received a copy of a letter dated 10 April 2024 sent by Sydney Water to the Mayor of the Council.

The Sydney Water letter raises new important issues of potential delay in the supply of wastewater management for the site, and particularly major delays associated with the upgrade of Bingara Gorge Water Recycling Plant which at the earliest is now reported not to be expected to be available until 2027. Potentially, (the letter advises) new capacity for Wilton may be delayed substantially longer than that.

In relation to the Wilton Growth Area the advice from Sydney Water is that currently 400-500 new homes can be serviced by wastewater tankering, but the extent to which that available capacity is already exhausted by existing approvals is not discussed in the letter.

The Panel is concerned to ensure that arrangements for management of wastewater produced by the development proposed with this DA are sufficiently resolved prior to subdivision or occupation of the development, and prior to marketing of the individual dwelling lots to potential future land owners.

The Panel has to that end requested a response to the advice newly received from Sydney Water.

The Applicant and Council have also been asked to provide if possible a resolved set of recommended conditions of consent taking into the matters discussed below.

## CONDITIONS

In its 12 February reports in relation to this DA, and also in relation to PPSSWC-354 - DA/2023/707/1 in relation to Stage 4 of the Wilton development, the Panel provided its preliminary views in relation to disputed conditions, but indicated that it would hear further from the Council and the Applicant as to the final form of those conditions given the cost ramifications and potential precedent as the wider Wilton release progresses.

### A. Street Tree Protection Strategy

In its 12 February report, the Panel noted disagreement between the Council and the Applicant concerning Conditions 117, 122, 123 and 124 which propose street tree irrigation system infrastructure and street tree protection. Part of the measures in that regard 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 a period of 5 years from the date of subdivision registration. The Applicant's representatives argued for a shorter maintenance program.

The Panel's preliminary opinion on this issue following the 12 February 2024 meeting was:

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 [SIC]. A requirement [be imposed] 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 [SIC] and should not be unduly onerous.
5. Conditions 117, 122, 123 and 124 should be amended to replace references to a 5 year term with a 2 year term.

Following further representations by both Council and the Applicant, the Applicant has advised that it will agree to a maintenance period of 3 years, but the Council has responded pointing to other approvals for subdivisions where the maintenance period is 5 years. The Applicant says those approvals are for development which does not include the increased planting and irrigation measures adopted with this DA to increase canopy cover in the area consistent with the DCP.

Council drew the Panel's attention to other development consents issued for which street tree maintenance periods were imposed for 5 years, including DA/2018/339/1, for South East Wilton, along with other recent subdivisions in Wilton. The Applicant's response to these examples is that they did not require the significant work and costs associated with the installation of the irrigation measures it is required to install as part of this DA.

Having now weighed up the competing views on the matter, both in the interests of consistency, and also having regard to the fact that the street tree irrigation system would not be required but for the development, the Panel is of the view that Conditions 117, 122, 123 and 124 should retain the 5 year term recommended by Council staff.

## **B. Koala fencing**

Proposed condition 41 remains in issue concerning the Council's proposal to require koala exclusion fencing for the development. A memorandum has been previously supplied by the Council assessment staff which presents the competing positions of the Council and the Applicant in table form.

Proposed Condition 41 would require Koala fencing in accordance with the *CPCP Koala Fencing Guidelines* (CPCP).

The CPCP Mitigation Measures do not apply to Wilton. Section 8.3.4.2.1 of the WGA DCP 2021 anticipates that koala fencing may not be appropriate in all locations and requires that:

*For all certified land adjacent to koala habitat where a koala exclusion fence is not installed, the following development controls apply:*

- 1. Manage roadside vegetation and landscaping adjacent to koala habitat to minimise the height of ground cover and increase the visibility of any roadside fauna.*
- 2. 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.*
- 3. Deliver dog containment fencing in accordance with the approved Neighbourhood Plan fencing strategy within open space and public recreation areas.*
- 4. Incorporate dog containment fencing in the design of each residential lot.*

Since the 19 February meeting, the Applicant has supplied a further letter from the Applicant's ecologist Dr Robertson of Cumberland Ecology dated 15 March 2024 which advises:

*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.*

*On this basis, we believe that the mitigation measures for Koalas proposed by Landcom for Stages 2-3 are sufficient and appropriate, and there would be no requirement for the installation of Koala exclusion fencing in the subject site.*

The Panel was also addressed at the 8 April briefing by Cecilia Eriksson Pinatacanan ecologist from Cumberland Ecology who presented information in relation to koalas detected in the surrounding area as recorded on the NSW BioNet repository for biodiversity data maintained by NSW Environment and Heritage in relation to geographical features such as Bingara Gorge.

As the panel understands it, Dr Robertson concludes that while koala exclusionary fencing should be employed to maintain a separation between koalas and threats, there is no koala population threatened by this subdivision that would warrant exclusionary fencing. Notably there are no roads adjacent to this part of the development which mean some parts of Section 8.3.4.2.1 of the WGA DCP 2021 are not immediately of critical concern.

The Panel cautiously accepts that advice and will not mandate koala exclusion fencing for this stage of the development, but is concerned that it is inappropriate to consider fencing and koala fencing strategies on a piecemeal basis for each stage of the development, when the relevant areas of bushland stretch around the Wilton growth area. It is inappropriate for the design of such fencing to be left to the Panel to consider for each DA which may lead to inconsistency, with individual decisions undermining a successful wholistic approach. A considered and resolved fencing strategy for all of the Wilton subdivision areas should be resolved in line with the directive of the CPCP that:

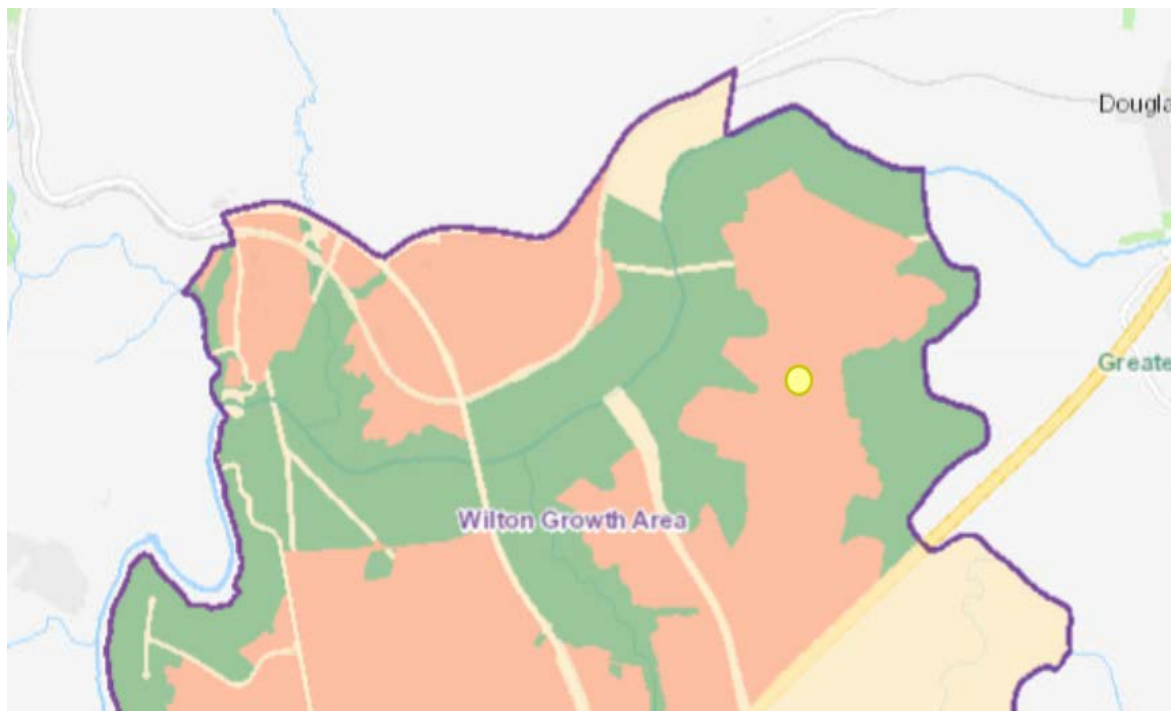
*“These controls will be applied through a state-led development control plan or mitigation measures guidelines for the area”*

Further, while the Cumberland Ecology letter specifically discusses the issue of koala exclusion fencing (which the panel understands to be a specifically designed type of steel mesh cyclone fencing) it does not discuss the appropriateness of dog containment fencing, and what would be required to meet the requirements of Section 8.3.4.2.1 of the WGA DCP 2021.

Below is an extract from the CPCP Viewer, which shows the site in the context of the wider Wilton Growth Area and clearly identifies why a resolved fencing strategy is required for this area. Isolated fencing will do little to achieve any intended conservation purpose.

In this regard, the CPCP states at page 19:

*“A feasibility study will determine the suitability of location and design for koala exclusion fencing in the Greater Macarthur and Wilton growth areas including along Appin Road and in the Georges River Koala Reserve. The fencing will be delivered in stages as development progresses.”*



During the Panel briefing, the Panel was advised by both the Applicant and the Council that they were likely to be able to agree a specification for containment fencing for the proposal. That should be pursued.

The policy in resolving that condition should consider the part it is to play within a wider consistent strategy for the Wilton area noting that with the conservation initiatives proposed in the area and exclusion of agriculture from treed areas, bushland adjacent to the new residential subdivisions which has not been frequented by koalas in the past may potentially offer good habitat for the intended recovery of koalas in future. The importance of effective recovery strategies for koala populations listed nationally as endangered should be kept in mind.

### C. Additional WSUD measures

The Panel has not altered its opinions on this issue as recorded in its report from the 19 February 2024 briefing, including critically:

*“Ultimately, while the issue may warrant further investigation, the Panel was not persuaded that at the time of the determination of this DA will [SIC] there is sufficient certainty [of the benefits] that [SIC] [of] 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

- E. The Panel remains of the opinion explained in the report from its 19 February briefing that the Council's preferred width of 3 metres for bike paths on the sub arterial road (Road 108) as per Council's proposed condition 49 is justified, primarily because the Council is to take ownership of, and regulatory responsibility for, the bike paths and landscaping upon registration of the approved subdivision.

The Panel reserves its final position in relation to the final form of the conditions to take into account any further matters which arise, as it must defer its decision until the advice concerning the waste water management issues discussed above are resolved.

### 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 

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"> <li>Environmental planning instruments: <ul style="list-style-type: none"> <li>State Environmental Planning Policy (Planning Systems) 2021</li> <li>State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>State Environmental Planning Policy (Precincts- Western Parklands City) 2021</li> </ul> </li> <li>Draft environmental planning instruments: Nil</li> <li>Development control plans: <ul style="list-style-type: none"> <li>Wilton Growth Area Development Control Plan 2021</li> </ul> </li> <li>Planning agreements: Nil</li> <li>Provisions of the <i>Environmental Planning and Assessment Regulation 2021</i>: Nil</li> <li>Coastal zone management plan: Nil</li> <li>The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>The suitability of the site for the development</li> <li>Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> </ul> <p>The public interest, including the principles of ecologically sustainable development</p>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>Council assessment report: 28 February 2024</li> <li>List any council memo or supplementary report received: 1 March 2024</li> <li>Written submissions during public exhibition: Nil</li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>Preliminary Briefing: 8 May 2023 <ul style="list-style-type: none"> <li><u>Panel members</u>: Justin Doyle (Chair), David Kitto, Brian Kirk, Matt Gould</li> <li><u>Council assessment staff</u>: Bridie Riordan, Aimee Lee, Connie Swanepoels</li> <li><u>Applicant representatives</u>: Emily Hou, Ben Gibbons, Jeff Williams, Steve Martion, Nigel McAndrew, Peter Naidovski, Craig Hood</li> </ul> </li> <li>Site inspection: 6 November 2023 <ul style="list-style-type: none"> <li><u>Panel members</u>: Justin Doyle (Chair), David Kitto, Matt Gould, Blair Briggs</li> <li><u>Council assessment staff</u>: Bridie Riordan</li> </ul> </li> <li>Final briefing to discuss council's recommendation: 19 February 2024</li> </ul>

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