

DATE OF DEFERRAL	7 May 2024
DATE OF PANEL BRIEFING	8 April 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

PPSSWC-354 - Wollondilly - DA/2023/707/1 - Lot: 101 DP:1293737, 195A Fairway Drive Wilton, and Lot: 104 DP: 1293737, 195D Fairway Drive Wilton (Stage 4) - Torrens title subdivision comprising 105 residential lots and associated earthworks, utilities and infrastructure works, stormwater drainage works, and street tree planting.

REASONS FOR DEFERRAL

In its deferral report following a briefing held on 12 February 2024, the Panel noted its general concurrence with the Council assessment report on the DA which concluded that the DA proposal is consistent with State and local legislation such that (subject to the proposed consent conditions) the proposed development should proceed and the DA should be approved. The Panel set out in that earlier report its reasons for coming to that opinion having regard to the considerations required by s 4.15 of the EP&A Act.

In forming that opinion, the Panel considered the matters listed at item 6, the material listed at item 7 and the material presented at briefings and the items listed at item 8 in Schedule 1. There were no public submissions.

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 PPSSCC-301 – DA/2022/1279/1 in relation to Stages 2 & 3 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 reports, the Panel noted disagreement between the Council and the Applicant concerning Conditions which propose street tree irrigation system infrastructure and street tree protection. Specifically, 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.

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 ultimately decided that Conditions 117, 122, 123 and 124 should retain the 5 year term recommended by Council staff.

B. 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 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."

PANEL MEMBERS	
Justin Doyle (Chair) 	Louise Camenzuli 
David Kitto 	Blair Briggs 

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-354 - Wollondilly - DA/2023/707/1
2	PROPOSED DEVELOPMENT	Torrens title subdivision comprising 105 residential lots and associated earthworks, utilities and infrastructure works, stormwater drainage works, and street tree planting.
3	STREET ADDRESS	Lot: 101 DP:1293737, 195A Fairway Drive Wilton, and Lot: 104 DP: 1293737, 195D Fairway Drive Wilton
4	APPLICANT/OWNER	Applicant: Landcom Owner: Landcom and Bradcorp
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 The public interest, including the principles of ecologically sustainable development
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: 25 October 2023 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), David Kitto, Louise Camenzuli, Matt Gould <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 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

		<ul style="list-style-type: none"> • Final briefing to discuss council's recommendation: 4 March 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 • Final briefing to discuss council's recommendation: 8 April 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