

Local Planning Panel

Agenda

Local Planning Panel notice of meeting and agenda

Thursday 28 June 2018

You are invited to attend the next meeting to be held in the Council Chambers
62-64 Menangle Street, Picton on Thursday 28 June 2018 commencing at 5.30pm.

OPENING

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ACKNOWLEDGEMENT OF COUNTRY

APOLOGIES AND LEAVE OF ABSENCE REQUESTS

DECLARATION OF INTEREST

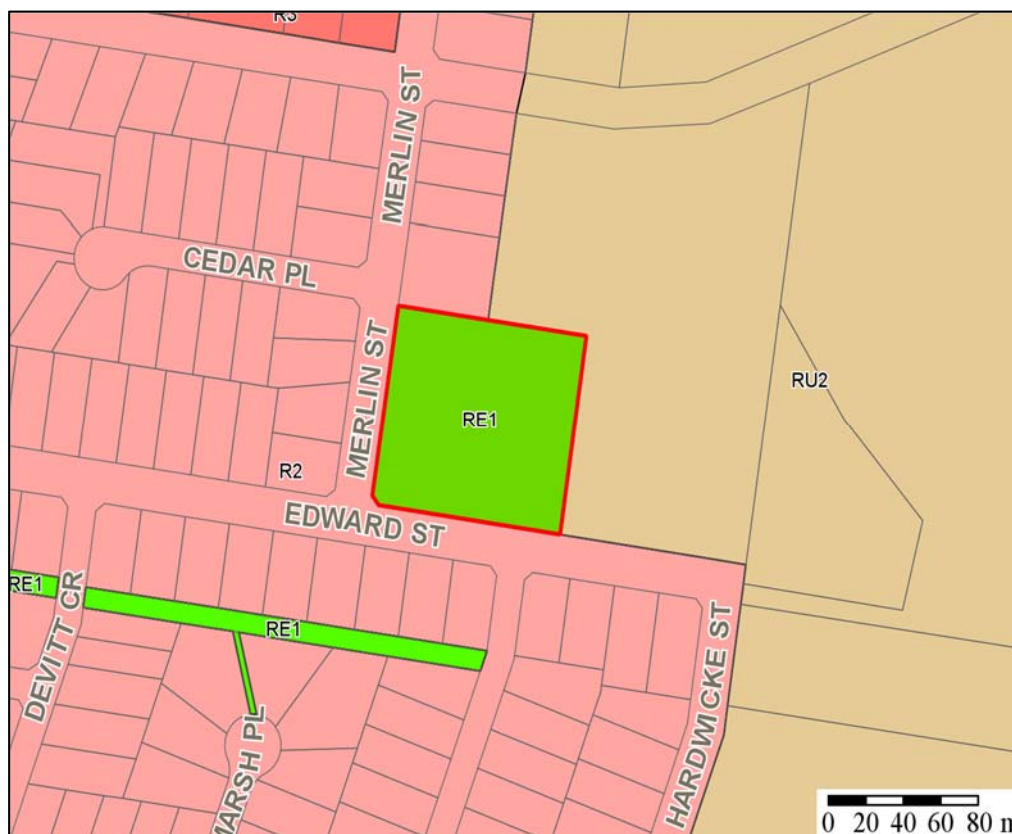
CONFIRMATION OF MINUTES

▪ Local Planning Panel meeting held on Thursday 31 May 2018

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1. **Development Application No. 010.2018.00000087.001 – 104 Merlin St, The Oaks – Historical Display Area**
274249 010.2018.00000087.001



LOCATION MAP N

DEVELOPMENT INFORMATION

Reason for LPP referral	Conflict of interest - the applicant and land owner is Wollondilly Shire Council
DA No:	010.2018.00000087.001
Subject Site	104 Merlin Street, The Oaks
Proposal	Ancillary Structure (Blacksmith Shed & Display Area)
Zoning	RE1 Public Recreation
Permissibility	Permissible with Consent
Cost of development	\$12,500
Applicant:	Wollondilly Shire Council
Owner:	Wollondilly Shire Council
Notification	Notification to adjoining owners 28 February 2018
Submissions	Nil
Variations	Nil
Site Inspection	4 May 2018, no issues identified
Recommendation	Approval subject to attached conditions

EXECUTIVE SUMMARY

- The application seeks approval for the construction of an ancillary structure for the purpose of a historical display area in an existing heritage centre.
- The land owner is Wollondilly Shire Council. Therefore the development application is referred to the Panel in accordance with the Ministerial direction for developments to be determined by local planning panel.
- Under Section 10.4 Disclosure of political donations and gifts of the *Environmental Planning & Assessment Act 1979* (EP&A Act), a person who makes a relevant planning application or public submission is required to disclose any reportable political donations. The disclosure requirements extends to any person with a financial interest in the application or any associate of the person making a public submission. No disclosure of political donation has been made in association with this application.
- The proposal complies with the Wollondilly Local Environmental Plan 2011 (WLEP) and Wollondilly Development Control Plan 2016 (DCP). Council did not receive any submissions objecting to the proposal.
- It is recommended that the application be approved subject to conditions.

REPORT

BACKGROUND

The Development Application was lodged with Council on 20 February 2018.

On 5 March 2018 amended plans were requested to provide a minimum of 3 metres separation between the proposed ancillary structure and any other structure/boundary. Amended site, floor, concrete slab and section plans complying with the request were received on 9 May 2018.

CONSULTATION

The application was notified for a period of 15 days from 28 February 2018. No submissions were received.

Referrals

Referral	Outcome
Building Surveyors	Approval subject to standard conditions

1.1 DESCRIPTION OF SITE AND SURROUNDING AREA

The subject site is known as Lot 43 DP 258664 No. 104 Merlin Street, The Oaks, situated at the corner of Merlin Street and Edward Street. It has a total site area of 9,893m² and is square in shape. It consists of a 93.31 metre frontage to Merlin Street, 98.03 metre frontage to Edward Street and a corner splay of 5.64 metres. There is a slight fall across the site to the south-west. There are existing trees on the site and they are situated between the Heritage Centre and Harold Noakes Reserve.

Existing improvements on the site include the Wollondilly Heritage Centre, the Burraborang Cottage and three associated outbuildings used for display and as a meeting room. There is also a BBQ area situated to the west of the Heritage Centre. These structures occupy the eastern portion of the site. The western portion of the site is an existing public reserve, Harold Noakes Reserve.

1.2 DESCRIPTION OF DEVELOPMENT

The application seeks approval for the construction of an ancillary structure for a blacksmith display and a wagon and tractor display located to the rear of the site (see Figure 1 – Site Plan). The blacksmith display section will be constructed of timber slab walls on three sides with a skillion roof. The wagon and tractor display section is open on three sides except for the common wall adjoining the blacksmith display and a roof over (see Figure 2 – Front Elevation and Figure 3 – Detail Plan).

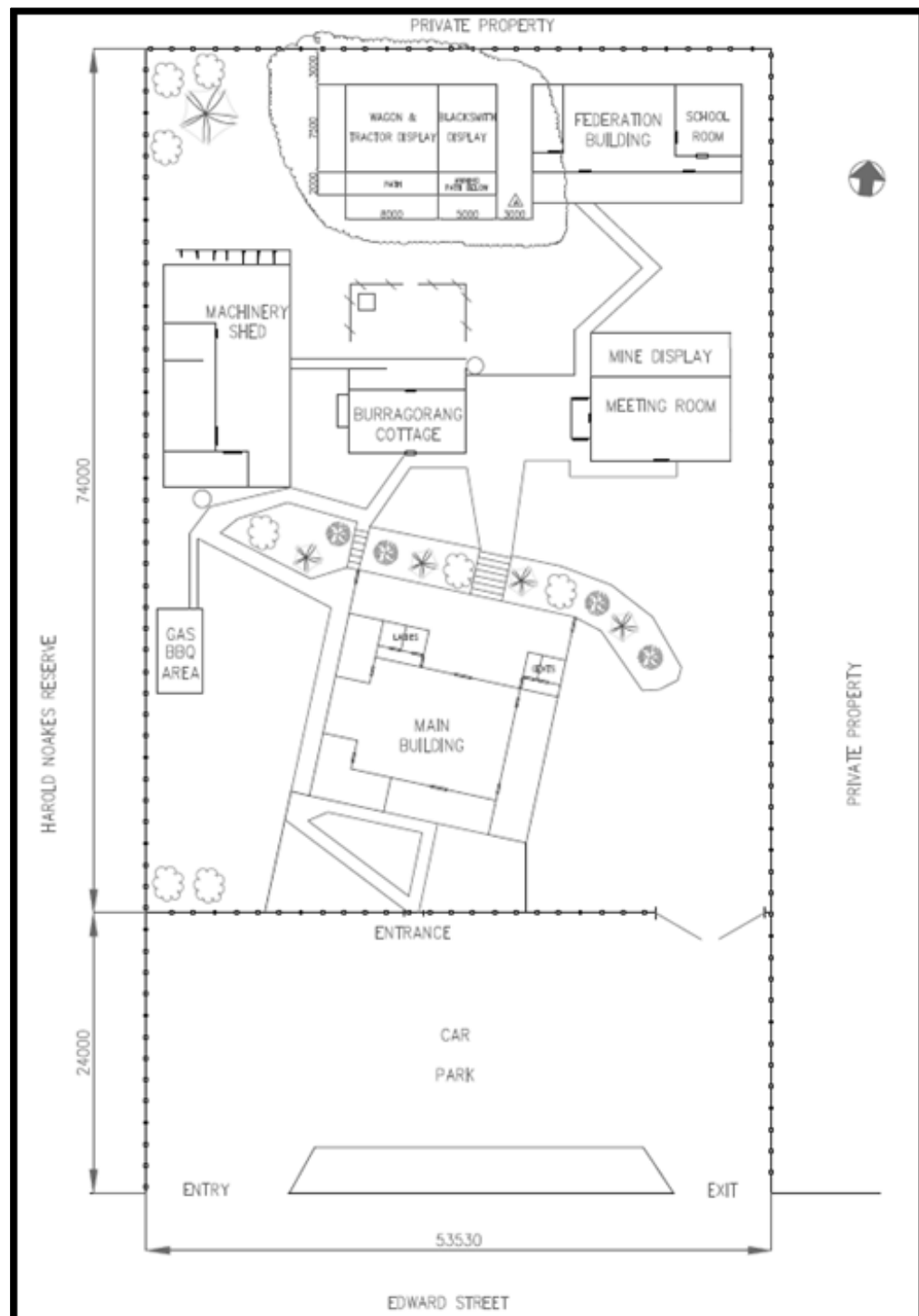


Figure 1 – Site Plan

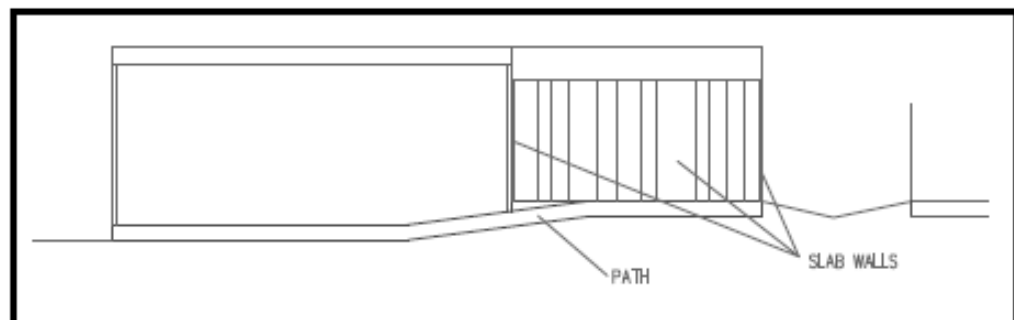


Figure 2 – Front Elevation (awning omitted for clarity)

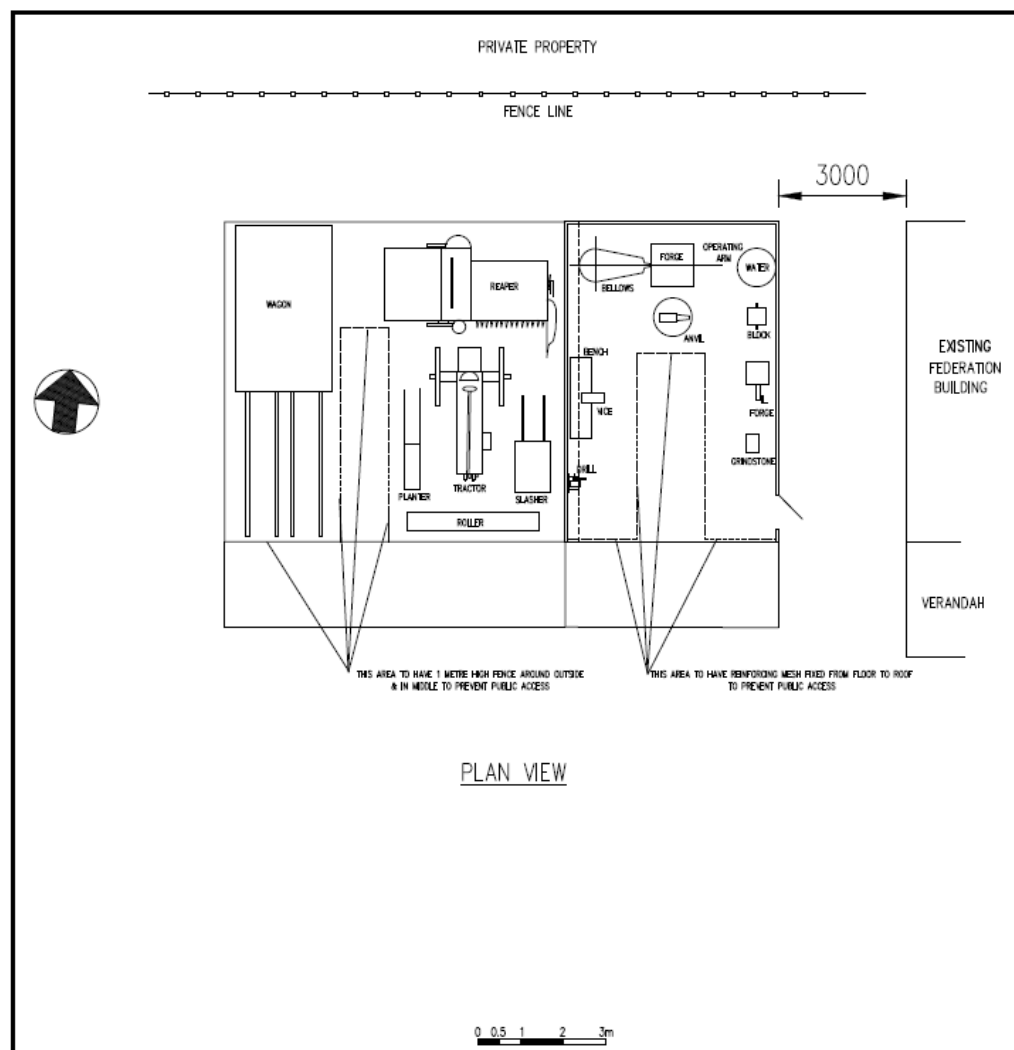


Figure 3 – Detail Plan

1.3 SECTION 4.15 EVALUATION

1.3.1 PROVISIONS OF RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS

Planning for Bushfire Protection 2006

It is acknowledged that the subject site is partially bushfire prone in the north-eastern corner. The proposed ancillary structure is a Class 8 non-habitable building.

The amended proposal complies with the BCA standards relating to fire safety for Class 8 buildings. It is not directly intersected by bushfire prone land as identified in Council's Bush Fire Maps and the site is serviced by town water. Therefore Council is satisfied that the development conforms to the specifications and requirements of Planning for Bushfire Protection (2006) produced by the NSW RFS.

State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

The subject site is located within the Sydney Water Catchment Area (Werri Berri Creek); however, as no wastewater will be produced by the development, a NorBE Assessment is not required.

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)

Historically, the subject site has been used for recreational purposes as the Wollondilly Heritage Centre. Perusal of Council and EPA records also indicate that the site has no history of contamination. The proposed structure will not be used for residential purposes and therefore further investigation and/or remediation is not warranted.

Sydney Regional Environmental Plan No.20 – Hawkesbury-Nepean River

The aim of this plan is to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context. The proposal is considered to be consistent with the aims of the plan and complies with the relevant planning policies and recommended strategies in respect to water quality and water quantity, subject to compliance with conditions of consent.

Wollondilly Local Environmental Plan 2011 (WLEP)

Characterisation: Community Facility
Zone of land: RE1 Public Recreation
Permissibility: Permitted with Council's consent

Community facility means a building or place:

- (a) owned or controlled by a public authority or non-profit community organisation, and
- (b) used for the physical, social, cultural or intellectual development or welfare of the community,

but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation.

Clause 1.2 Aims of Plan	
Objective	Comment
(a) to provide for the management of natural resources and the protection of the natural landscape character	The subject site is not identified as sensitive land in the Natural Resources – Biodiversity Map or Natural Resources – Water Map of WLEP. The proposed development is not expected to impact the management and protection of natural resources and landscape character.
(b) to protect, conserve and enhance the built, landscape and Aboriginal cultural heritage	Subject allotment is not a listed item of heritage in accordance with Schedule 5 of WLEP 2011.
(c) to protect water quality in land that is situated within water supply catchments	The site is within a water supply catchment. However no additional wastewater will be generated as a result of this development. The additional roof water generated by the proposal is minimal. Any associated impact is considered negligible.
(d) to encourage development that provides for an integrated transport and infrastructure system and adequate facilities and service provision for future growth	Not relevant to RE1 Public Recreation zone.
(e) to recognise, manage and protect rural resource lands for sustainable agriculture and extractive industry practices	The proposal is not located on agricultural land and will not hinder its management and protection.
(f) to maintain the separation between towns and villages to retain their unique character and rural and natural settings.	The proposal will not affect the separation between towns and villages.

Zone objectives:

Objective	Comment
RE1	
<ul style="list-style-type: none"> To enable land to be used for public open space or recreational purposes. 	The proposal will not impact upon the use of the adjoining Harold Noakes Reserve for recreational purposes.
<ul style="list-style-type: none"> To provide a range of recreational settings and activities and compatible land uses. 	The proposal will provide an additional recreational feature for the subject site, enhancing the scope of compatible recreational activities available.
<ul style="list-style-type: none"> To provide and enhance the natural environment for recreational purposes. 	The proposed development is for the construction of a small ancillary structure to be located within a cleared area of the subject site. No adverse impacts to the natural environment are anticipated.

LEP Clauses

Clause	Comment
Part 2 Permitted or prohibited development	Not applicable.
Part 4 Principal development standards	
4.3 Height of buildings	The maximum permissible height of building is 9 metres. The highest point of the proposed structure is approximately 3.32 metres. Complies.
Part 5 Miscellaneous provisions	
5.3 Development near zone boundaries	Not applicable.
5.6 Architectural roof features	The proposal is compliant with the building height limit of WLEP and therefore this clause is not applicable.
Part 6 Urban release areas	Not applicable.
Part 7 Additional local provisions	
7.1 Essential services	Water, electricity and sewerage systems are available to support the proposed development if required.
7.2 Biodiversity protection	N/A.

Clause		Comment
7.3	Water protection	The site is located approximately 530 metres east of the nearest watercourse – a tributary of Werri Berri Creek. No adverse impacts anticipated.
7.4	Flood planning	Site has not been identified as flood prone land.
7.5	Earthworks	No significant earthworks is proposed.
7.6	Development within a designated buffer area	The site is not mapped on the odour buffer area map.

1.3.2 PROVISIONS OF RELEVANT DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

Nil

1.3.3 PROVISIONS OF RELEVANT DEVELOPMENT CONTROL PLANS

The development is subject to Wollondilly Development Control Plan 2016 Volume 1 – General, and Volume 5 – Commercial and Community Uses.

The proposed development satisfies all applicable controls of the DCP, Volumes 1 and 5.

A clause by clause assessment is provided in Attachment 4 (1.3.3 Assessment – 104 Merlin St THE OAKS) at folder location **DD010.2018.00000087.001#49**.

1.3.4 DRAFT AND/OR PLANNING AGREEMENTS ENTERED OR OFFERED TO ENTER INTO

Nil

1.4 IMPACT OF THE DEVELOPMENT

Natural Environment

The proposed shed, requiring minimal cut and fill and constructed in an area devoid of vegetation, will have minimal impact on the natural environment.

Built Environment

The built environment will not be compromised for the following reasons:

- The development is minor in nature (123.5 square metres in floor area and 3.32 metres in height);
- The design is in keeping with other existing structures currently on the site;
- The proposal is situated at the rear and screened by other structures on the site and there will be minimal visible impact when viewed from the surrounding street, public domain or adjoining private residences.

Social Impacts

The proposal provides an additional display feature for the Wollondilly Heritage Centre which will increase the viability of the site as popular tourist attraction in the region. No adverse social impacts are anticipated as a result of this development.

Economic Impacts

No adverse economic impacts are anticipated as a result of this development.

1.5 SUITABILITY OF THE SITE

The site is suitable for the proposed development as:

- The RE1 Public Recreation zone under the *Wollondilly Local Environmental Plan 2011* is suitable for the proposed development
- The site has been used for residential purposes and there are no records of contamination. The site is deemed suitable for the proposed development
- The site is suitable for the development as utilities and services such as water, electricity and sewerage are available to support the proposal.
- It satisfies the relevant clauses under the *Wollondilly Local Environmental Plan 2011*.
- No adverse social, economic or environmental impacts are anticipated.

1.6 SUBMISSIONS

No submissions received.

1.7 THE PUBLIC INTEREST

Public interest is considered to be served as the proposed development is minor in nature, and is not expected to have any adverse social, environmental or economic impacts.

FINANCIAL IMPLICATIONS

This matter has no financial impact on Council's adopted budget or forward estimates. Section 94A Contributions are not applicable as the Development Cost is below the \$100,000 threshold.

ATTACHMENTS IN SEPARATE BOOKLET

1. Site Plan
2. Floor Plan, Concrete Slab & Sections
3. Detail Plan
4. 1.3.3. DCP Assessment

RECOMMENDATION

That pursuant to Section 4.16 of the *Environmental Planning & Assessment Act 1979*, consent be granted to Development Application No. 010.2018.00000087.001 subject to the following conditions:

1. COMPLIANCE

These conditions are imposed to ensure that the development is carried out in accordance with the conditions of consent and the approved plans to Council's satisfaction.

- (1) Development Consent is granted for an Ancillary Structure (Blacksmith Shed & Display Area) at Lot: 43 DP: 258664, No. 104 Merlin Street THE OAKS.
- (2) Development shall take place in accordance with the following plans, submitted in respect of Development Application No. 010.2018.00000087.001:

Plan Name	Drawn By	No.	Date
Site Plan	Wollondilly Heritage Centre	REV A DISTANCE FROM FED BUILDING INCREASED AJS 5/3/2018	5/3/2018
Floor Plan, Concrete Slabs and Sections	Wollondilly Heritage Centre	REV B DISTANCE FROM FED BUILDING INCREASED AJS 5/3/2018	5/3/2018
Detail Plan	Wollondilly Heritage Centre	A DISTANCE FROM FED BUILDING INCREASED AJS 9/5/2018	9/5/2018

Except where varied by the following conditions.

- (3) Where any work associated with this consent has the potential to disturb neighbours through the generation of noise, dust, odour, vibration or through deliveries to the site the person with control over the works shall advise the occupants of all adjoining and potentially affected properties of the timing and duration of such works. The land owner has the ultimate responsibility for ensuring that anybody undertaking works under this development consent on their behalf is aware of this requirement and completes the task required by this condition.
- (4) All building work must be carried out in accordance with the provisions of the National Construction Code. This condition does not apply to the extent to which an exemption is in force under Clause 187 or 188 of the Environmental Planning & Assessment Regulations, 2000, subject to the terms of any condition or requirement referred to in Clause 187(6) or 188(4).

2. BUILDING DESIGN

These conditions have been imposed to ensure that the appearance/construction of building works complies with the aims and objectives of Council's relevant Development Control Plans, Policies and relevant Statutory Regulations.

- (1) All materials and colours to be used in the external construction of the proposed shed shall be consistent throughout the total development and/or match those of the existing development.

3. CONSTRUCTION GENERAL

These conditions have been imposed to ensure that all construction work is undertaken to an approved standard and related approvals.

- (1) Construction shall not commence on the site, including the placement of temporary buildings, site sheds, earthworks, site excavation, filling or other site preparation works (with the exception of site survey work), prior to the issue of a Construction Certificate by Council or a nominated Accredited Certifier.
- (2) All construction and building work shall be restricted to between 7:00am and 6:00pm Mondays to Fridays (inclusive), 8:00am and 1:00pm Saturdays and prohibited on Sundays and Public Holidays unless written approval to vary the hours of work is granted by Council.

- (3) Excavated area/s adjacent to the building shall be retained and drained to prevent the subsidence of the excavation and/or entry of surface water to the building. Where the retaining wall exceeds 600mm in height, plans and specifications of the retaining wall shall be submitted to Council or a nominated Accredited Certifier and approved before the issue of the Construction Certificate. Where the height exceeds 1m in height, a certificate prepared by a suitably qualified Structural Engineer shall be submitted with the plans and specifications.
- (4) An appropriate fence preventing public access to the site shall be erected for the duration of construction works.
- (5) A garbage receptacle must be provided at the work site before works begin and must be maintained until the works are completed. This receptacle must have a tight fitting lid and be suitable for the reception of food scraps, papers, etc.
- (6) Dust shall be controlled so that it will not leave the construction site.

4. DRAINAGE/STORMWATER

These conditions have been imposed to ensure drainage/stormwater is appropriately managed.

- (1) Stormwater runoff from and through the property is to be appropriately managed so as to control nuisance, damage and hazard during storm events.
- (2) Stormwater runoff shall be contained within Lot: 43 DP: 258664, No. 104 Merlin Street THE OAKS, and not burden adjoining properties.

5. EROSION AND SEDIMENT CONTROL

These conditions have been imposed to minimise the impact of the Development on the environment and on adjoining properties.

- (1) All disturbed areas are to be stabilised by turfing, mulching, paving or otherwise suitably stabilised within 30 days of completion.
- (2) Erosion and sediment control devices are to be installed prior to any construction activity on the site. These devices are to be maintained for the full period of construction and beyond this period where necessary.
- (3) Topsoil stripped from the construction site is to be stockpiled and protected from erosion until re-used during landscaping.

6. EARTH FILL

These conditions have been imposed to ensure the safe disposal of fill:

- (1) All filling on the site, including footpath areas, shall be compacted to not less than 95% Standard Compaction in accordance with Wollondilly Shire Council's Design & Construction Specifications.
- (2) Only fill characterised as VENM or ENM under the guidelines of the NSW Environmental Protection Authority may be used in this development. Copies of validation reports for all fill used shall be retained and presented to Council on request.

7. INSPECTIONS

These conditions have been imposed to ensure that construction works are undertaken to an approved standard.

- (1) Building works shall be inspected by the Principal Certifying Authority at critical stages of construction to ensure they comply with the Building Code of Australia and associated approvals. If the Principal Certifying Authority notifies the site manager or other contractor that a work or works are unsatisfactory for any reason all works on the site shall cease until the matter is resolved to the satisfaction of the PCA.

8. OCCUPATION & USE

These conditions have been imposed to ensure the development and associated activities/operation are acceptable in terms of the amenity of the neighbourhood and the public interest whilst maintaining its functional operation:

- (1) The ancillary structure shall not be occupied as a residence or domicile.
- (2) The disturbed areas surrounding the building work shall be reinstated to the satisfaction of the Principal Certifying Authority upon completion of the work.
- (3) The ancillary structure shall not be occupied or used until an Occupation Certificate is issued by the Principal Certifying Authority.

9. PRESCRIBED CONDITIONS

These conditions are imposed as they are mandatory under the Act.

- (1) COMPLIANCE WITH BUILDING CODE OF AUSTRALIA AND INSURANCE REQUIREMENTS UNDER THE HOME BUILDING ACT 1989
 - (a) For the purposes of [section 80A](#) (11) of [the Act](#), the following conditions are prescribed in relation to a development consent for development that involves any building work:
 - (i) that the work must be carried out in accordance with the requirements of the *Building Code of Australia*,
 - (ii) in the case of residential building work for which the [Home Building Act 1989](#) requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
 - (b) For the purposes of [section 80A](#) (11) of [the Act](#), it is prescribed as a condition of a development consent for a temporary structure that is used as an entertainment venue, that the temporary structure must comply with Part B1 and NSW Part H102 of Volume One of the *Building Code of Australia*.
 - (c) This [clause](#) does not apply:
 - (i) to the extent to which an exemption is in force under [clause](#) 187 or 188, subject to the terms of any condition or requirement referred to in [clause](#) 187 (6) or 188 (4), or
 - (ii) to the erection of a temporary building, other than a temporary structure to which subclause (b) applies.
 - (d) In this [clause](#), a reference to the *Building Code of Australia* is a reference to that Code as in force on the date the [application](#) is made for the relevant:
 - (i) development consent, in the case of a temporary structure that is an entertainment venue, or
 - (ii) construction certificate, in every other case.

Note: There are no [relevant provisions](#) in the *Building Code of Australia* in respect of temporary structures that are not entertainment venues.

(2) ERECTION OF SIGNS

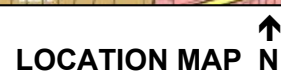
- (a) For the purposes of section 80A (11) of the Act, the requirements of subclauses (b) and (c) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.

- (b) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.
- (c) Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
- (e) This clause does not apply in relation to Crown building work that is certified, in accordance with section 109R of the Act, to comply with the technical provisions of the State's building laws.
- (f) This clause applies to a development consent granted before 1 July 2004 only if the building work, subdivision work or demolition work involved had not been commenced by that date.

Note. Principal Certifying Authorities and principal contractors must also ensure that signs required by this clause are erected and maintained (see clause 227A of the *Environmental Planning and Assessment Regulation 2000* which currently imposes a maximum penalty of \$1,100).

10. ADVICES

- (1) During the course of construction, care must be taken to prevent damage to any public utility or other service and the applicant will be held responsible for any damage caused by him or his agents, either directly or indirectly. Any mains, services, poles, surface fittings etc., which require alterations shall be altered at the applicants expense and to the satisfaction of Council and the authority concerned.
- (2) The developer and any contractor or sub-contractor used to carry out any work authorised by or out of this approval on Council owned or controlled land, is to carry the following insurance, copies of which are to be produced to Council upon request:
 - Motor Vehicle Insurance (comprehensive or property damage) for all self-propelled plant, as well as valid registration or RTA permit (Including CTP insurance). Primary producer's registration is not registration for use on Public Road construction work.
 - Workers Compensation Insurance.
 - Twenty Million Dollar Public Liability Insurance.



DEVELOPMENT INFORMATION

Reason for LPP referral	The Bingara Gorge Precinct has a Voluntary Planning Agreement entered into between the developer and Council.
DA No:	DD010.2015.00000213.002
Subject Site	Lot 5 DP 270536, Greenbridge Drive Wilton
Proposal	To increase the Environment Protection and Riparian Land, modify the location of the APZ, increase the lot yield from 77 to 79 lots, change the lot numbers to reflect the increased yield and change the internal road alignment.
Zoning	R2 Low Density Residential
Permissibility	Permissible with consent
Cost of development	The original cost of the development (application for a 77 lot subdivision and associated works) is \$4, 235, 000.
Applicant:	Lendlease Communities (Wilton)
Owner:	Bradcorp Wilton Park Pty Ltd
Notification	Notified to adjoining landowners
Submissions	Nil
Variations	None
Recommendation	Approval subject to conditions

EXECUTIVE SUMMARY

- The purpose of this report is to assess an application to modify a development consent lodged under Section 4.55(1A) of the *Environmental Planning & Assessment Act 1979* (EP&A Act) and other relevant planning instruments.
- The development originally consented to, involves a Voluntary Planning Agreement and therefore the proposed modification to the consent is referred to the Panel in accordance with the Ministerial direction for developments to be determined by local planning panel.
- Under Section 10.4 Disclosure of political donations and gifts of the EP&A Act, a person who makes a relevant planning application or public submission is required to disclose any reportable political donations. The disclosure requirements extends to any person with a financial interest in the application or any associate of the person making a public submission. No disclosure of political donation has been made in association with this application.
- Is it recommended that the proposed modification be approved.

REPORT

BACKGROUND

Council determined DD010.2015.00000213.001 on 23 December 2015 by granting development consent for a two-stage subdivision (Stage 4C and 4D) of Greenbridge Drive, Wilton, creating 77 residential lots and associated works subject to conditions (see Figure 1 – Stamped approved plan of subdivision stage 4C).



Figure 1 – Stamped approved plan of subdivision stage 4C



An order was made by the Court on 28 September 2016 with the Appeal being upheld and consent was granted for a maximum of 1800 residential allotments.

CONSULTATION

Internal

Referral	Comment
Development engineer	The proposal is acceptable, subject to all other previous engineering conditions remaining the same as the original consent.
Environment officer	<p>No objection is raised considering the following.</p> <p><u>Suitability of a Section 4.55 (1A) application</u></p> <p>The proposed modification to the boundary of Environment Protection and Riparian Lands, the sub-division layout including two additional lots and the road layout will have minimal impact and is considered appropriate.</p> <p>The modification will increase the Environment Protection and Riparian Land (EP&R land). The footprint of the development will not encroach in to the EP&R land. .</p> <p><u>Management of the Environment Protection and Riparian Corridor Lands</u></p> <p>This matter has been dealt with in the Class 1 Appeal.</p> <p><u>Comments on environmentally related proposed amendments to conditions</u></p> <p>No objection is raised to the proposed modification to the conditions.</p>

External

Referral	Comment
Department of Planning	Satisfactory arrangements provided DD010.2015.00000213.001p2#60
National Parks	No response received
RFS (Head Office)	Approval subject to General Terms of Approval DD010.2015.00000213.001p2#58

1.2 DESCRIPTION OF PROPOSED MODIFICATION

The applicant seeks approval to modify the following aspects of the development originally consented to.

- increase Environment Protection and Riparian land
- modify the location of the Asset Protection Zone
- reduce the lot size to Lots 144, 145, 198, 197, 186
- increase the lot size to Lots 179
- increase the lot yield from 77 to 79 lots
- change the lot numbers to reflect the increased yield
- change the internal road alignment.

1.3 SECTION 4.55 EVALUATION

The applicant seeks to modify the development consent under section 4.55(1A) Modifications involving minimal environmental impact of the EP&A Act. Assessment of the proposed modification under Section 4.55 (1A) of the EP&A Act is summarised below.

- a) The development as modified will have minimal environmental impact considering the development footprint remains substantially the same and the environment Protection and Riparian land will be increased.
- b) The development as modified is substantially the same development for which the consent was originally granted for a subdivision noting the additional lots will not exceed the approved maximum 1800 residential allotments and the subdivision layout remain largely unaltered.
- c) The Department of Planning & Environment (DoPE), NSW Rural Fire Services (RFS) and Office of Environment & Heritage (OEH) were consulted with regard to the proposed modification. No objections were raised by DoPE and Satisfactory Arrangement Certificate was issued on 18 February 2018. RFS issued a Bushfire Safety Authority for the proposed modification under Section 100B of the Rural Fires Act 1997 (ref D17/3791 DA17102309876 DD) dated 14 November 2017 subject to conditions. Council has not received any comments from OEH.
- d) Objectors to the development originally consented to, were notified of the proposed modification and no submissions were received.

An assessment of the modification against the relevant conditions of DA-010.2015.213.001 is provided below, in summary, Conditions 1, 2, 17 and 22 are proposed to be modified, with all remaining conditions proposed to be unaltered.

Condition 1(1)

Development Consent is granted for a two (2) staged, seventy-seven (77) lot residential subdivision and associated works at Lot 5 DP 270536, Condell Park Road, Wilton.

Comment

Condition 1 will be amended to reflect an increase of four lots in Stage 4C of the Greenbridge East Development.

Condition 1(2)

The staging of the development is as follows:

Stage	Description
4C	<i>The creation of fifty nine (59) residential allotments</i>
4D	<i>The creation of eighteen (18) residential allotments</i>

Comment

Condition 2 will be amended to reflect an increase of four lots in Stage 4C of the Greenbridge East Development.

Condition 7(17)

Access to the following lots shall be provided in accordance with those locations specified below:

- *Access to Lot 176: shall be provided from Road 09 and located one metre from the common property boundary with Lot 177*
- *Access to Lot 167: shall be provided from Road 09 and located one metre from the common property boundary with Lot 168 or Lot 166*
- *Access to Lot 160: shall be provided from Road 09 and located one metre from the common property boundary with Lot 161 or Lot 159*
- *Access to Lot 159: shall be provided from Road 09 and located one metre from the common property boundary with Lot 160 or Lot 158*
- *Access to Lot 179: shall be provided from Road 09 and located one metre from the common property boundary with Lot 180 or Lot 188*
- *Access to Lot 188: shall be provided from Road 09 and located one metre from the common property boundary with Lot 179 or Lot 187*
- *Access to Lot 189: shall be provided from Road 09 and located one metre from the common property boundary with Lot 190 or Lot 200*
- *Access to Lot 200: shall be provided from Road 09 2nd located one metre from the common property boundary with Lot 199 or Lot 189*
- *Access to Lot 154: shall be provided from Road 09 and located one metre from the common property boundary with Lot 155 or Lot 153*
- *Access to Lot 151: shall be provided from Road 09 and located one metre from the common property boundary with Lot 152*
- *Access to Lot 150: shall be provided from Road 09 and located one metre from the common property boundary with Lot 149*
- *Access to Lot 149: shall be provided from Road 09 and located one metre from the common property boundary with Lot 148*
- *Access to Lot 218: shall be provided from Road 09 and located one metre from the common property boundary with Lot 217*
- *Access to Lot 217: shall be provided from Road 09 and located one metre from the common property boundary with Lot 216*

- *Access to Lot 216: shall be provided from Road 09 and located one metre from the common property boundary with Lot 215*
- *Access to Lot 205: shall be provided from Road 09 and located one metre from the common property boundary with Lot 204*

Comment

Modifications to DA-010.2015.213.001 involve an increase in lot yield for Stage 4C from 59 lots to 61 lots. Consequently, lot numbers throughout Stage 4C have been modified (as shown in the revised Stage 4C Layout Plan attached). Amendments to *Condition 17* reflect changes to the lot numbers throughout the site, as well as the proposed access points to these Lots.

Condition 22(9) - Subdivision Plans

(9) A Section 88B Instrument shall be prepared which provides for the following restrictions of the subject land:

- *Building envelopes shall be created for Lots 178, 179, 180, 181, 182, 183, 184, 194, 195, 145, 144, 219, 202 and 207 inclusive: in accordance with the plan titled "Figure 3: Hazard Management showing resulting Asset Protection Zones" from the report titled "Bushfire Protection Assessment proposed Subdivisions: Greenbridge East Phase 2, Bingara Gorge" prepared by ecological Australia, dated 27 March 2015 (Project No. 15GOS_1413)*
- *For Lots 178, 179, 180, 181, 182, 183, 184, 194, 195, 145, 144, 219, 202 to 207: residential development shall be constructed to a minimum bushfire attack level of BAL29*
- *Asset Protection Zones for Lots 178, 179, 180, 181, 182, 183, 184, 194, 195, 145, 144, 219, 202 to 207 inclusive shall not encroach into any area of land that is mapped as being environmentally sensitive defined by the Wollondilly Local Environment Plan 2011 Natural Resources Biodiversity Map (sheet NRB_11), any parkland and/or community parkland*
- *Lots 176, 167, 160, 159, 179, 188, 189, 200, 154, 151, 150, 149, 218, 217, 216, 205: prohibiting direct vehicular access to and from the roads except at the locations defined in Condition 7(17).*

Comment

Amendments to *Condition 22* reflect changes in lot numbers in accordance with the revised Stage 4C Layout Plan. This change does not impact direct vehicular access to and from the roads defined in Condition 7(17).

1.3.1 PROVISIONS OF RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS

- 4.1AA Minimum subdivision lot size for community title schemes of Wollondilly Local Environment Plan 2011 applies to the site. According to the Lot Size Map, a minimum lot size of 250m² is applicable. The lot size as modified range from 549m² to 2565m² is compliant.

1.3.2 PROVISIONS OF RELEVANT DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

None applicable

1.3.3 PROVISIONS OF RELEVANT DEVELOPMENT CONTROL PLANS

Volume 2 – Urban Release Area		
1.2 Objectives		
1) To satisfy the requirements of Clause 6.3 of Wollondilly Local Environmental Plan. 2) To achieve the objectives of Clause 6.3 of Wollondilly Local Environmental Plan.		
1.3 Parts of this Volume		
This volume has two parts. The first being this introductory part and the second being the provisions relating to each Urban Release Area.		
2.1 Wilton Park, Wilton (Bingara Gorge)		
Objectives (refer to DCP for further details of objectives)		
Controls		
1.	The development is to be generally undertaken in accordance with Map 1: Master Plan.	The proposed modifications have been generally developed in accordance with Map 1: Master Plan.
2.	<p>Prior to determining any application for subdivision the consent authority must be satisfied that the ultimate development of each precinct is carried out in accordance with the indicative yield outlined in Table 1.</p> <p>Table 1 is to be used for indicative purposes only. The distribution of residential allotments across the Development Precincts shall be on a progressive cumulative basis such that the overall lot yield will not exceed 1800 within all precincts.</p>	Approval has been granted for the creation of 1,758 lots over various precincts. This leaves a balance of 42 lots from the ultimate 1800 lots approved by the Land & Environment Court. Two additional lots will not result in exceedance of the 1800 lots.
3.	Prior to determining any application for subdivision the consent authority must be satisfied that the ultimate development of this Urban Release Area will not result in more than 1,800 residential allotments.	The ultimate development of this urban release area will not exceed 1800 lots.

Volume 2 – Urban Release Area		
4.	In controls 2 and 3 a residential allotment means any lot that is intended to contain one or more dwellings	Noted
5.	The consent authority must have regard to the impact of a development on the potential future mining of the site prior to granting consent for that development. It must not grant such a consent unless it is satisfied that the surface development will not unreasonably impact on potential future or current underground mining.	Subsidence Advisory approval has been granted on 23 November 2017.
6.	Cycleways and footpaths shall be provided generally in accordance with map 4 contained in this volume.	Noted, complies
7.	Prior to the issue of a relevant Construction Certificate for fire trails, detailed plans showing the location of all threatened species (state and federal) shall be provided.	Condition to be provided
8.	Transport infrastructure shall be provided in accordance with table 2 contained in this volume.	Noted, road 09 was modified as part of this consent and is classified as a B1 minor collector road. The standards associated with this control have been applied.
9.	Prior to granting development consent for any subdivision of land within the urban release area the consent authority must be satisfied that all reasonable efforts have been made to ensure that:	
a)	The views of the parkland setting are maximised. This includes the open spaces, golf course, environmental lands and the Razorback Range.	Noted, this stage borders environmental land and has good outlook onto this land.
b)	The visual impact of the development on Picton Road and the Hume Highway have been minimised.	The development is located more than 1km away from Picton Road, 2kms from the Hume Highway. The development as modified will not have any visual impact on Hume Highway or Picton Road.

Volume 2 – Urban Release Area		
c)	Where practical, existing high amenity features of the site will be protected, retained and incorporated into the development to maximise the amenity benefit of those features.	
10.	Development consent must not be granted for the development of any school, childcare centre, seniors living, health care facility or similar sensitive land use within 750 metres of the gas pipeline within the urban release area unless the consent authority is satisfied that the risks of that pipeline to human safety have been adequately mitigated.	N/A

Volume 3 – Subdivision of Land		
Part 2 – General Requirements for all Development		
2.1 Traffic and Transport		
Objectives		
1.	To ensure that new allotments created by the subdivision of land are provided with adequate public roads.	
2.	To ensure that the subdivision of land is only undertaken in locations where the road network is able to provide, or be made capable of providing adequate servicing.	
3.	To ensure new roads are safe and efficient.	
4.	To ensure access points for rural subdivisions are located at safe locations within the road network.	
5.	To ensure pedestrian and cycle paths are provided where required to maximise the uptake of healthy and sustainable transport options.	
6.	To ensure splay corners are dedicated at intersections so that intersections can be maintained to maximise sight distances and to maximise flexibility to upgrade intersections in the long term.	
Controls		
1.	All new public roads must comply with Council's design specifications including kerb and guttering, drainage pedestrian paths and street lighting.	Noted, roads have been previously approved as part of the first development application. Modification is proposed to the alignment of road 09, which will result in compliance with this control

Volume 3 – Subdivision of Land		
2.	All access handles must comply with the following minimum widths: (refer to the DCP for further details)	All lots have direct street access, no access handles are proposed.
3.	In the case of an access handle servicing one allotment the access handle must wholly be part of the allotment it is serving.	N/A
4.	In the case of an access handle servicing more than one allotment the access handle must be part of each of the allotments it is serving with reciprocal rights of carriageway provided.	N/A
5.	Road infrastructure enhancement shall be provided to existing roads in accordance with the following table unless the improvements are already present: (see DCP for further details)	N/A new roads are proposed.
6.	All intersections and new vehicular access points to public and/or private roads must have the relevant safe intersection sight distance for the relevant speed environment.	Noted, no engineering issues were raised.
7.	New street lighting must use only LED type lights.	Noted.
8.	Access handles servicing more than 1 allotment in a rural, residential or environmental zone must be provided with a streetlight within a reasonable proximity (to be determined by Council and imposed as a condition of development consent) to the point where the access handle connects to the public road. Where existing street lighting in the vicinity of the site is deemed to be adequate by Council this condition does not apply.	N/A
9.	Splay corners shall be provided for newly created corner lots with the following sizes: Residential zones = 4m by 4m	Noted, all corners comply with this control.
2.4 Lot Size and Shape		
Objectives		
1.	To ensure regular and practical allotments that will encourage the orderly and economic use of land.	
Controls		
1.	Lots (other than lots in residential zones) shall have the following minimum dimensions:	N/A

Volume 3 – Subdivision of Land				
2.	Lots in residential zones shall have the following minimum dimensions:			All newly proposed lots comply with these controls
	Area	Minimum lot width	Minimum lot width corner allotment	
	Less than 450 square metres	12m	15m	
	Between 450 and 650 square metres	13m	15m	
	Between 650 and 1500 square metres	15m	20m	
	1500 square metres or greater	20m	30m	
3.	These controls do not apply to subdivision that places each dwelling on its own allotment in the following cases: a. The subdivision of a dual occupancy or medium density development that is existing and lawful; or b. The subdivision of a proposed dual occupancy or medium density development that complies with all other relevant controls in Wollondilly Development Control Plan, 2015.			N/A
4.	These controls do not apply to land to be dedicated to Council for roads, environmental reserves or for public open space.			Noted
5.	Lots that are irregularly shaped because of their location in the road network and/or because of constraints of the site may proceed in spite of a non-compliance with controls 1 and 2 if the consent authority is satisfied that the lots, when developed, will be capable of supporting:			Noted
i)	a dwelling with a footprint of at least 150m ² ; and			
ii)	Any required APZ wholly within the proposed lot boundaries			
iii)	If the subdivision occurs on unsewered land that the site can adequately accommodate any effluent disposal area that is required; and the resulting character of that development would be consistent with the character of the area.			N/A land is sewer

Volume 3 – Subdivision of Land		
	Council may require the submission of specialist studies to justify development carried out under this control.	N/A
6.	For the purposes of calculating minimum lot size for land within an R1, R2 or R3 zone, the area of the battle-axe handle is not included in the calculation of the area of a lot which it services. This is shown in the diagram below: (see DCP for further details)	No battle-axe handles are proposed
7.	Proposed lots which face onto a cul-de-sac head shall achieve a minimum “chord” width of 10 metres. The area considered to be the chord of the cul-de-sac is demonstrated in the diagram below. (see DCP for further details) The width of any lot at the front building line shall be in accordance with the table above in control 2.	Proposed lot 202 (facing onto a cul-de-sac) complies with this control. Lot 219 can gain access at any point along road 4 that it fronts (the cul-de-sac road).
2.5 Landscape and Character		
Objectives		
1.	To ensure subdivisions are designed in a way that maintains or enhances the landscape character of the surrounding area.	
Controls		
1.	The subdivision of land in environmental and rural zones must demonstrate, to the satisfaction of the consent authority that the location of all building envelopes and access driveways will not result in degradation of the landscape character of the surrounding area.	N/A
2.	The subdivision of land in residential zones must ensure that there are no two access handles along the same property boundary.	No access handles proposed
3.	Access handles to lots in residential zones (excluding R5 Large Lot Residential zones) must be provided with landscaping between the edge of the driveway pavement and the property boundary. The minimum width of such landscaping shall be 1m at all points. Formal landscaping is not required for those parts of access handles where driveways connect the access handle to vehicle parking or manoeuvring areas.	N/A
4.	Landscaping required by control 2.5(3) shall be provided with:	N/A
a)	An automatic watering system; and	
b)	A mix of ground covers and shrubs that are appropriate for the width of the handle; and	

Volume 3 – Subdivision of Land		
c)	A mulched or rocked garden bed with permanent edging.	
5.	Landscaping for access handles shall not obscure the buildings at the rear of the handle.	N/A
6.	The subdivision of land that proposes the opening of a new public road must include embellishment of the new road verges in accordance with Council's Street Tree Risk Plan.	Noted, street tree planting was approved as part of the development originally consented to.
2.6 Corner Allotments		
Objectives		
1.	To plan corner allotments at the subdivision stage to ensure safe vehicular access and maximum amenity for the streetscape.	
Controls		
1.	Corner allotments in residential zones shall be provided with a building envelope to identify the primary and secondary setbacks.	Previously approved corner allotments have not been provided with building envelopes
2.	Corner allotments in residential zones shall nominate a vehicular access point to allow the safety of the access point to be assessed with reference to any nearby intersection.	Vehicle access points are nominated for all corner allotments in condition 7(17).
3.	These controls do not apply to proposed corner allotments on which a dwelling is already constructed.	Noted
2.8 Environmental Protection		
Objectives		
1.	To ensure significant native vegetation and other environmental assets are not lost in the provision of Asset Protection Zones.	
Controls		
1.	The subdivision of land that comprises significant stands of native vegetation must provide for Asset Protection Zones for all future development outside of that vegetation. The allotment size and layout must facilitate this provision.	Noted, complies – the road reserve will serve as inner protection zone in accordance with RFS General Terms of Approval

Volume 3 – Subdivision of Land		
2.	The layout of any proposed subdivision must be designed to limit or avoid any adverse impacts on watercourses and vegetation and prevent future development occurring on steep and constrained lands.	Noted, the subdivision design limits adverse impact on native vegetation.

1.3.4 DRAFT AND/OR PLANNING AGREEMENTS ENTERED OR OFFERED TO ENTER INTO

A current Voluntary Planning Agreement (VPA) is in place for the entire site known as 'Bingara Gorge'. A condition has been imposed in the original development consent to ensure the applicants observe their obligation under the VPA.

1.6 SUBMISSIONS

No submissions were received.

FINANCIAL IMPLICATIONS

The development as modified will not alter the VPA and has no financial impact on Council's adopted budget or forward estimates subject to the applicants observing their obligation under the VPA.

ATTACHMENTS IN SEPARATE BOOKLET

1. Development Consent and approved plans
2. Proposed plan of subdivision Stage 4C

RECOMMENDATION

That Pursuant to Section 4.55(1A) of the *Environmental Planning & Assessment Act 1979*, approval be granted to the Modification Application No 010.2015.00000213.002 subject to the following conditions:

Condition 1(1) be amended to read:

Development Consent is granted for a two (2) staged seventy-nine (79) lot residential subdivision and associated works at Lot 5 DP 270536, Condell Park Road, Wilton.

Condition 1(2) be amended to read:

Stage	Description
4C	The creation of sixty one (61) residential allotments
4D	The creation of eighteen (18) residential allotments

Condition 7(17) be amended to read:

- Access to Lot 177: shall be provided from Road 09 and located one metre from the common property boundary with Lot 178
- Access to Lot 167: shall be provided from Road 09 or Road 05 and located one metre from the common property boundary with Lot 168 or Lot 166
- Access to Lot 160: shall be provided from Road 09 or Road 05 and located one metre from the common property boundary with Lot 159 or Lot 161
- Access to Lot 159: shall be provided from Road 09 or Road 13 and located one metre from the common property boundary with Lot 160 or Lot 158
- Access to Lot 180: shall be provided from Road 09 or Road 13 and located one metre from the common property boundary with Lot 181 or Lot 191
- Access to Lot 191: shall be provided from Road 11 or Road 13 and located one metre from the common property boundary with Lot 190 or Lot 180
- Access to Lot 192: shall be provided from Road 11 or Road 13 and located one metre from the common property boundary with Lot 193 or Lot 202
- Access to Lot 202: shall be provided from Road 10 or Road 13 and located one metre from the common property boundary with Lot 201 or Lot 192
- Access to Lot 154: shall be provided from Road 10 or Road 13 and located one metre from the common property boundary with Lot 153 or Lot 155
- Access to Lot 151: shall be provided from Road 10 and located one metre from the common property boundary with Lot 152
- Access to Lot 150: shall be provided from Road 10 and located one metre from the common property boundary with Lot 149

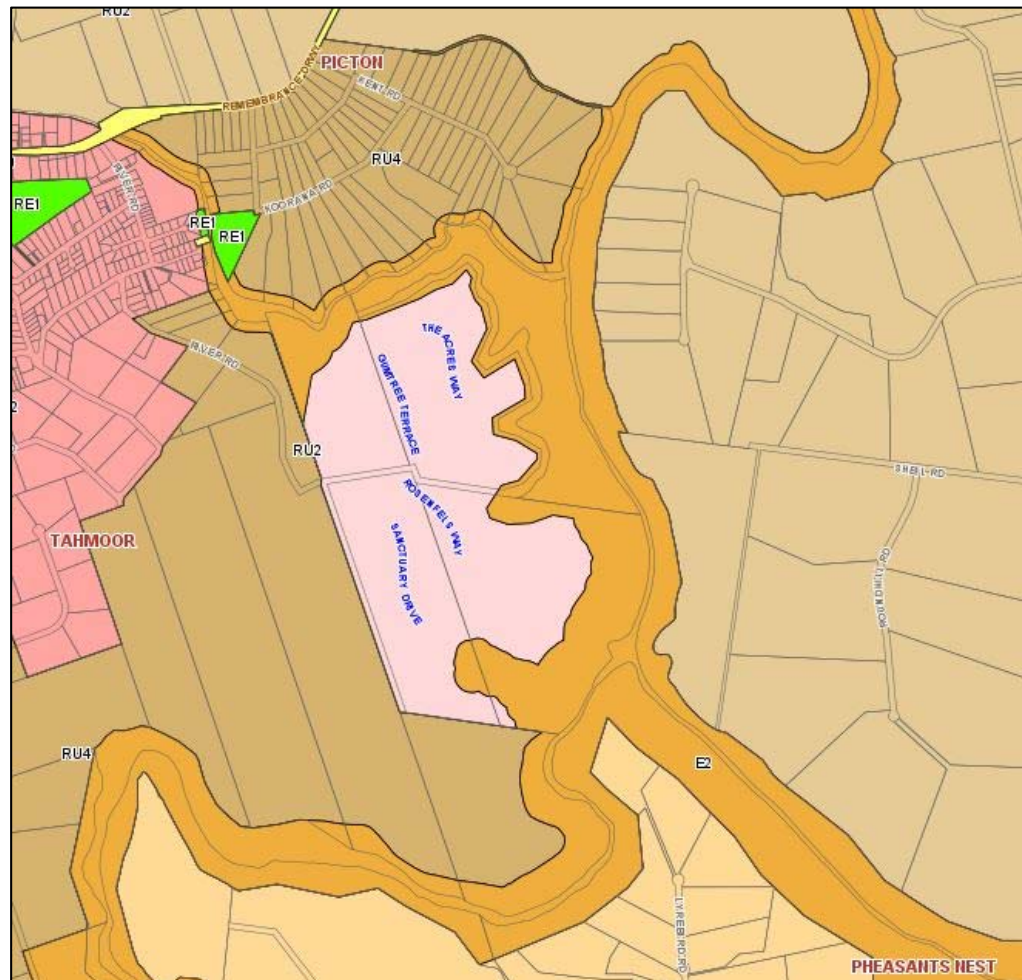
- Access to Lot 149: shall be provided from Road 10 and located one metre from the common property boundary with Lot 148
- Access to Lot 216: shall be provided from Road 04 and located one metre from the common property boundary with Lot 215
- Access to Lot 218: shall be provided from Road 03 and located one metre from the common property boundary with Lot 217
- Access to Lot 217: shall be provided from Road 03 and located one metre from the common property boundary with Lot 216
- Access to Lot 205: shall be provided from Road 04 and located one metre from the common property boundary with Lot 204

Condition 22(9) - Subdivision Plans be amended to read:

(9) A Section 88B Instrument shall be prepared which provides for the following restrictions of the subject land:

- Building envelopes shall be created for Lots 179, 180, 181, 182, 183, 184, 185, 186, 197, 198, 145, 144, 219, 202 and 207 inclusive: in accordance with the plan titled "Figure 3: Hazard Management showing resulting Asset Protection Zones" from tile report titled "Bushfire Protection Assessment proposed Subdivisions: Greenbridge East Phase 2, Bingara Gorge" prepared by ecological Australia, dated 27 March 2015 (Project No. 15GOS_1413)
- For Lots 179, 180, 181, 182, 183, 184, 185, 186, 197, 198, 145, 144, 219, 202 to 207: residential development shall be constructed to a minimum bushfire attack level of BAL 29
- Asset Protection Zones for Lots 179, 180, 181, 182, 183, 184, 185, 186, 197, 198, 145, 144, 219, 202 to 207 inclusive shall not encroach into any area of land that is mapped as being environmentally sensitive defined by the Wollondilly Local Environmental Plan 2011 Natural Resources Biodiversity Map (sheet NRB_11), any parkland and/or community parkland
- Lots 177, 167, 160, 159, 180, 191, 192, 202, 154, 151, 150, 149, 216, 218, 217, 205: prohibiting direct vehicular access to and from the roads except at the locations defined in Condition 7(17).

3. **Development Application No. 010.2014.00000588.003 – 165, 175, 185 & 195 River Road, Tahmoor – Modify Conditions of Consent granted by NSW Land & Environment Court**
277050 010.2014.00000588.003



LOCATION MAP N

DEVELOPMENT INFORMATION

Reason for LPP referral	The original development approval for the subject site has a Voluntary Planning Agreement attached to it, entered into by the developer and Council.
DA No:	DD010.2014.00000588.003
Subject Site	Lot A DP 369710, Lot B DP 369710, Lot 85 DP 751270, Lot 1 DP 1210433, Lot 2 DP 1210433, 165 River Road Tahmoor, 185 River Road Tahmoor, 195 River Road Tahmoor, 175 River Road Tahmoor
Proposal	To modify condition 21(4)(b) of the development consent granted by NSW Land and Environment Court under s4.56 of the <i>Environmental Planning & Assessment Act 1979 (EP&A Act)</i>
Zoning	R5 Large Lot Residential and E2 Environmental Conservation
Permissibility	Permissible with consent
Cost of development	\$0
Applicant:	Trustee for River Roads Developments Unit Trust
Owner:	Mary Camilleri
Notification	Notified to previous objectors and adjoining landowners
Submissions	Four submissions
Variations	Nil
Recommendation	Approval subject to conditions

EXECUTIVE SUMMARY

- The purpose of this report is to assess the application to modify condition 21(4)(b) of the development consent for the 125-lot Torrens Title subdivision approved by the NSW Land and Environment Court on 14 December 2016.
- The development originally consented to, involves a Voluntary Planning Agreement and therefore the proposed modification to the consent is referred to the Panel in accordance with the Ministerial direction for developments to be determined by local planning panel
- Under Section 10.4 Disclosure of political donations and gifts of the EP&A Act, a person who makes a relevant planning application or public submission is required to disclose any reportable political donations. The disclosure requirements extend to any person with a financial interest in the application or any associate of the person making a public submission. No disclosure of political donation has been made in association with this application
- The proposed modification is recommended for approval subject to condition.

REPORT

BACKGROUND

At its meeting of 16 November 2015, Council granted conditional approval to Development Application 010.2014.00000588.001 (DA) for a subdivision to create one hundred and seventeen (117) lots rural residential subdivision and one open space lot in six stages on the subject site. The applicant filed a Class 1 Appeal with the NSW Land and Environment Court (the Court) against some of the conditions (*Camilleri v Wollondilly Shire Council [2016] NSWLEC 1538*).

The Court, in November 2016, made directions ordering the applicant to amend the Vegetation Management Plan and plans of subdivision. The conditions of consent were amended to reflect the findings of the Commissioner.

The Court made a final order on 14 December 2016 with the Appeal being upheld and the DA was approved subject to conditions.

The modification seeks to amend this condition to allow for three-strand plain wire fencing or rural post and rail fencing to be installed along the lot boundaries of the new subdivision.

CONSULTATION

The modification of development consent was referred internally to Council's Environment section. No external referrals were required.

Referral	Comment
Environment Officer	<p>No objection is raised to the proposed fencing as it will not have any adverse environmental impact and it is consistent with the approved Environmental Management Plan which references construction and maintenance of boundary fencing.</p> <p>Condition 21(4)(b) can be amended to read:</p> <p><i>"Fences that are three strand plain wire fence with the bottom strand at 800mm and the top strand at 1200mm with a third wire between or rural post and rail fence"</i></p> <p>Further discussions with Council's Environment Officer have confirmed that plain wire fencing is preferred over post and rail fencing, given the advice from Ecological submitted with this development application supported only the plain wire fencing.</p>

1.1 DESCRIPTION OF SITE AND SURROUNDING AREA

The subject site is comprised of four allotments that are the subject of an existing approved 125-lot residential subdivision to be undertaken in six stages. The site is located at the end of River Road, on the outskirts of the existing and newly subdivided residential area in Tahmoor. The site is accessed via River Road, which connects to the nearest sub-arterial classified road, Remembrance Driveway, approximately 1km to the north-west of the site.

The site is part zoned R5 Large Lot Residential and part E2 Environment Conservation. The site is located on the edge of the Nepean River Gorge, in an area considered to have high scenic and ecological value for the Wollondilly region.

1.2 DESCRIPTION OF PROPOSED MODIFICATION

The modification is sought to allow plain wire fencing or rural post and rail fencing within the E2 zoned portion of the relevant subject allotments in order for the future landowners to be able to delineate lot boundaries and potentially assist with keeping feral animals (i.e. goats) out of the environmentally sensitive land.

1.3 SECTION 4.15 EVALUATION

1.3.1 PROVISIONS OF RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS

The Wollondilly Local Environment Plan 2011 contains the following objectives for E2 zoned land:

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic value*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*

The applicant has submitted that the proposed modification will not result in inconsistency with the objectives of the E2 zone. The applicant states that the erection of fencing along property boundaries as proposed under the modification will not prevent the attainment of the protection and restoration of the E2 zoned portion of the site. Additionally, the applicant states that the fencing will assist in limiting unrestricted human and feral animal access to the E2 zoned land.

It is agreed that one of the fencing types proposed, being plain wire fencing, is consistent with the objectives of the E2 zone. The applicant has sought technical advice from an environmental consultant with regard to the type of fencing. The consultant recommended five- strand plain wire fencing to be constructed along the rear and side boundaries of the E2 zoned land. Barbed wire will not be used. No mention was made post and rail fencing.

Council's Environment Officer has confirmed that three-strand plain wire fencing, as requested in the cover letter accompanying this application, with an 800mm height clearance from the ground is preferred as this type of fencing will provide for flora and fauna movements through the E2 zoned land.

1.3.2 PROVISIONS OF RELEVANT DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

No draft environmental planning instruments are applicable

1.3.3 PROVISIONS OF RELEVANT DEVELOPMENT CONTROL PLANS

Part 9 – Environmental protection		
9.1 Objectives		
1.	To improve and maintain environmental outcomes for the areas mapped as natural resources biodiversity and natural resources water under Wollondilly Local Environmental Plan, 2011.	
2.	To improve and maintain environmental outcomes for unmapped areas of biodiversity and/or riparian value.	
3.	To maintain links between identified environmentally sensitive land and provide habitat and riparian corridors and appropriate buffer zones to these areas.	
9.2 Interpretation (refer to DCP for further details)		
9.3 Controls		
1.	Development carried out on areas mapped as 'sensitive land' on the Natural Resources – Biodiversity Map and the Natural Resources Water Map under Wollondilly Local Environmental Plan, 2011 shall occur so as to either avoid, minimise or mitigate any adverse impact as detailed in Clause 7.2 and 7.3 of Wollondilly Local Environmental Plan 2011.	<p>Noted – the E2 zoned land is partially mapped as 'Natural Resources – Biodiversity'. The proposed fencing through the E2 zoned land and natural resources – biodiversity land is designed to have the lowest possible environmental impact, and does not require vegetation removal.</p> <p>The fencing is conditioned to allow for maximum flora and fauna movement so as not to disrupt the regeneration of the environmentally sensitive land.</p>

Part 9 – Environmental protection		
2.	If a development is not able to avoid, minimise or mitigate an adverse impact on sensitive land mapped on the Natural Resources Biodiversity Map, the vegetation shall not be cleared or otherwise disturbed unless the impacts are offset through bio-banking or a similar conservation arrangement.	No clearance is proposed as part of the modification application.
3.	The consent authority shall not grant consent to any development that would result in the clearing or other disturbance of an environmental asset unless it is satisfied that any adverse impacts will be offset through bio banking or a similar environmental conservation arrangement.	No clearing or disturbance is proposed to the E2 zoned land.
Note: Compliance with the above controls does not guarantee that consent would be granted for the development; the requirements of the Threatened Species Act, 1995, Native Vegetation Act, 2003 and the Environmental Protection and Biodiversity Conservation Act, 1999 would need to be satisfied if approval is required under those acts of legislation.		

Volume 3 – Subdivision has been addressed as part of the original development application and is not relevant to the proposed modification.

1.4 SECTION 4.56 EVALUATION

The applicant seeks to modify the development consent under section 4.56 Modification by consent authorities of consents granted by the Court of the *Environmental Planning & Assessment Act 1979* (EP&A Act). Assessment of the proposed modification under S4.56 of the EP&A Act is summarised below.

- a) The development as modified is substantially the same with the lot yield and subdivision layout remain unaltered.
- b) Owners and occupiers of adjoining properties and previous objectors were notified of the proposed modification and four submissions were received.
- c) Issues raised in the submissions addressed below and it is concluded that they do not warrant refusal of the modification.

1.5 SUBMISSIONS

Concern	Comment
Submitter No. 1	
Full submission at TRIM DD010.2014.00000588.003#35	
<ul style="list-style-type: none"> The LEC ruling should stand and no modifications be allowed 	<p>This request is contrary to planning legislation, as the right to modify a court ordered consent is given under S4.56 of the EP&A Act.</p>
<ul style="list-style-type: none"> Three strand plain wire fencing will not be effective in keeping feral goats in or out of the E2 land 	<p>Council notes the argument in relation to the control of native fauna (especially feral goats). Notwithstanding, Council staff support the fencing as proposed for the following reasons:</p> <ul style="list-style-type: none"> Consistent with other low visual impact boundary fencing in this locality Will help delineate the E2 zoned portion of the site's lot boundaries, and prevent inadvertent "private property creep". The land if left unfenced could be used for things such as storage, structures and rubbish which could ultimately degrade the E2 zoned land.
<ul style="list-style-type: none"> The plans for the development shall be altered such that no lots encroach on the E2 zone 	<p>There are no legislative provisions for the consent authority to make retrospective changes to a consent</p>
Submitter No. 2	
Full submission at TRIM DD010.2014.00000588.003#36	
<u>Zone objectives</u>	
<ul style="list-style-type: none"> The aims of the E2 zoned land and the proposal will lead to the fragmentation of that aim / the vegetation 	<p>Council's Environment Section did not raise any concerns regarding aims of the E2 zone not being met as a result of this development.</p>

Concern	Comment
<p><u>Fencing</u></p> <p>Contention 1</p> <ul style="list-style-type: none"> ▪ The installation of the fence will necessitate kilometres of clearing <p>Contention 1</p> <ul style="list-style-type: none"> ▪ It is disputable that the lack of fencing in the E2 zone creates no man's land, and that people can't ride motorbikes through the property as suggested. <p>Contention 3</p> <ul style="list-style-type: none"> ▪ Based on personal experience, the fence will not create a barrier to feral animals and will not work. <p>Contention 4</p> <ul style="list-style-type: none"> ▪ The installation of a fence along the gorge will not eliminate all safety issues. It is suggested that fencing is installed around the building envelope to ensure the safety of children and pets <p>Contention 5</p> <ul style="list-style-type: none"> ▪ Disagrees with the planning consultant Urbis's contention that the fencing prohibition creates a safety risk <p>Contention 6</p> <ul style="list-style-type: none"> ▪ The fencing will disturb the habitat through removal of vegetation for a presumably straight fence line, through workers carrying weed seeds on their shoes and clothes while installing fencing and allow for more foot traffic within the E2 zoned land along the fence line. 	<p>The installation of fencing within the E2 zoned land will not necessitate kilometres of vegetation clearing as suggested, given there are no provisions for exempt clearing under the current State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017. Therefore, all proposed clearing will be required to obtain prior approval from Council.</p>

Concern	Comment
<p><u>Public interest</u></p> <p>Contention 1</p> <ul style="list-style-type: none"> The only people to benefit from the modification are the developers and the future landowners. <p>Contention 2</p> <ul style="list-style-type: none"> The request for a modification is only beneficial to a few owners, not everyone. The request for a modification should be denied. <p>Contention 3</p> <ul style="list-style-type: none"> One third of the lots are affected by the zoning, and it is questionable that the genuine public interest should be made to suffer because of some potential hypothetical inconvenience to a few individuals. <p>Contention 4</p> <ul style="list-style-type: none"> Locals have worked for years to defend the local environment / forest, and there is a proposal for it to be included in a future national park <p>Contention 5</p> <ul style="list-style-type: none"> The proposal would undermine the work of the concerned locals 	<p>The land in question is on private land, and not available for public access. While land can be enjoyed from a scenic perspective by all, and the protection of vegetation is an issue for the public interest, these considerations can be balanced against the property owners' interests in this instance in a reasonable manner.</p> <p>The proposal for a future national park has not proceeded as far as Council is aware, and the land is currently in private ownership as it has always been in the past. This means the acquisition of land by a public authority for recreational purposes of any description appears to be unlikely to occur in the future, and thus cannot be considered as the approved subdivision application progresses.</p>

<p>Submitter No. 3</p> <p>Full submission at TRIM DD010.2014.00000588.003#37</p>	
<p>Tree removal</p> <ul style="list-style-type: none"> It is arguable that the proposed modification to condition 21(4)(b) to permit installation fencing and does not necessitate the removal of any native vegetation 	<p>In accordance with the ecological information submitted with this modification application, no vegetation clearance is required.</p>
<p>Fencing</p> <ul style="list-style-type: none"> The three-strand plain wire fencing will not keep out feral goats Fencing is not necessary and the justification put forward by the applicant's planning consultant shall be rejected To maximise the potential to achieve the realisation of a Bargo-Nepean National Park, as unanimously endorsed by Council on at least two occasions, a publicly-owned buffer above the cliff tops should be maintained beside this and any other development along the gorges/river valleys. 	<p>The function of the three-strand plain wire fencing has been addressed earlier in the report.</p> <p>Council has not been advised of any proposal for a future national park, and the land is still in private ownership as it has always been in the past.</p> <p>This means the acquisition of the subject site or part of it by a public authority for recreational purposes appears to be unlikely to occur in the immediate future, and therefore it was not considered during assessment of the subject application.</p>

<p>Submitter No. 4</p> <p>Full submission at: DD010.2014.00000588.003#39</p>	
<p><u>Abstract</u></p> <ul style="list-style-type: none"> Widen the E2 component of 12 lots closet to the Junction Pool via rezoning <p><u>E2 land and other zones</u></p> <ul style="list-style-type: none"> All of the existing E2 land, and more, should become E1 land with the critically endangered Shale Sandstone Transition Forest (SSTF) shall be enhanced or re-instated where possible. <p>The whole estate should be rezoned to E4.</p>	<p>The enhancement and ongoing management of SSTF was considered at the subdivision stage. The critically endangered species was identified and included in "Vegetation Management Plan: The Acres, Tahmoor" approved as part of the appeal (refer condition 1(6) of the consent order.</p> <p>To rezone the 'estate', a planning proposal application is required in accordance with the EP&A Act.</p>
<p><u>The case for a national park</u></p> <ul style="list-style-type: none"> The National Parks Association (NPA) has put together a proposal for the Bargo-Nepean national park, and submitted it to the NPWS <p><u>The Asset Protection Zone and "Transition Zone"</u></p> <ul style="list-style-type: none"> The location of the APZ may be incorrect given its location away from the houses (i.e. building envelopes). The "transition zone" provided on the subdivision plan is not a genuine transition zone, as the APZ should have no trees, and contained instead large areas of lawn. 	<p>It is Council's understanding that National Parks and Wildlife Services do not have the funding to purchase and maintain the land.</p> <p>The location of the APZ was nominated in the "Bushfire Protection Assessment" – <i>Proposed Rural Residential Subdivision, prepared by Travers Bushfire and Ecology dated August 2014 Ref A14091B) except where superseded by the addendum reports dated October 2014 (Ref: A14091B), March 2015 (Ref: A14091B2), July 2015 (Ref: A14091B3)</i> that accompanied the subdivision application. This document was approved by the Land and Environment Court and all parties are bound by this decision.</p>

<p><u>A source of joy and sorrow</u></p> <ul style="list-style-type: none"> ▪ Council in 2015 voted unanimously for a 150 m wide, publicly owned buffer above the cliff-tops of the Bargo and Nepean Rivers. However, the applicant then lodged an appeal with the Land and Environment Court. <p><u>Concluding comments</u></p> <ul style="list-style-type: none"> ▪ it is requested that the development is re-designed by the submitter (a qualified planner) and the NPA. ▪ Focus on the 12 lots closest to the Junction Pool <p><u>Appendix one: Towards resurrecting the buffer idea</u></p> <ul style="list-style-type: none"> ▪ Advocating for 100-150 metre wide publicly owned buffers along the best of the rivers in Wollondilly. ▪ Provide a buffer along the Bargo, Nepean, Cataract and Georges River ▪ The NPA, the 2000 people who responded to the change.org petition and other community should exist to: <ul style="list-style-type: none"> Protect wildlife corridors ▪ Protect native vegetation below the cliffs ▪ Provide space for the reinstatement of the critically endangered Shale Sandstone Transition forest ▪ Provide space for bushwalkers, and allow access to the cliff-top views and the pools <p>Suggestions have been made regarding mechanisms for the creation of publicly and/or privately-owned buffers :</p> <ul style="list-style-type: none"> ▪ Clauses requiring buffers in Council's LEP for the Shire ▪ Voluntary Planning Agreements <ul style="list-style-type: none"> ▪ Potential to convince developers that setting aside land for nature raises the value of nearby land. 	<p>Noted by Council, however again the plans were approved by the Court, and all parties are bound by this decision.</p> <p>The Council's decision is unable to be enacted now the development has been determined through the Court process.</p> <p>Further input into the design of the subdivision is not feasible given there is a Court ordered consent for the subject site.</p> <p>The proposal for a national park has not proceeded and the land is currently in private ownership as it has always been in the past. This means the acquisition of land by a public authority for recreational purposes of any description appears to be unlikely to occur in the immediate future, and thus cannot be considered as the approved subdivision application progresses.</p> <p>The options listed may be viable however, the subdivision application has been determined by the Court.</p> <p>There is limited scope for Council to actively enact any of the options proposed, noting re-zoning and subdivision approvals. Furthermore, the options could be outside Council's jurisdiction with</p>
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<ul style="list-style-type: none"> ▪ Community Title development with communally owned vegetation ▪ Section 94 contributions <ul style="list-style-type: none"> ▪ Some of the money raised by 94 contributions can go towards the acquisition of land ▪ The creation of Homeowners Associations incorporating protection and enhancement of biodiversity as part of the constitution ▪ Possible improvements to Council's dedicated land policy ▪ REP 20 ▪ Extra funding for the NPWS to own the land and undertake maintenance <ul style="list-style-type: none"> ▪ Notes the NWPS cannot take on the land at the moment, however NPA and Council can lobby the Government to increase funding for the NPWS ▪ A percentage of the money raised by rates can pay for acquisition and bush regeneration. ▪ If publicly-owned buffers are not possible, the privately-owned lots beside the Gorges need to be at least one hectare – not one acre (for a variety of reasons) ▪ Any other available options. 	<p>respect to development and the protection of the natural environment.</p>
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1.6 DRAFT AND /OR PLANNING AGREEMENTS ENTERED OR OFFERED TO ENTER INTO

There is a current Voluntary Planning Agreement (VPA) applies to the subject site. A condition has been imposed in the original development consent to ensure the applicants observe their obligation.

FINANCIAL IMPLICATIONS

The proposed modification will not alter the applicants' obligation under the VPA and therefore has no financial impact on Council's adopted budget or forward estimates.

ATTACHMENTS IN SEPARATE BOOKLET

1. Consent granted by NSW Land & Environment Court

RECOMMENDATION

That pursuant to Section 4.56 of the *Environmental Planning & Assessment Act 1979*, approval be granted to the Modification Application No 010.2014.00000588.003 subject to the following condition:

Condition 21(4)(b) be amended to read:

- (4) Submission of the appropriate instruments under the Conveyancing Act (e.g. Section 88B) with the linen plan to create the following restrictions as to User on the lots and responsibilities on future owners:
- a) For each lot: all future residential development must contain a concrete slab using Class 32 (N32) concrete or sulphate resistant type SR cement with a cement ration of 0.5 unless a salinity assessment report has been submitted with a future development application to demonstrate the land is not saline.
 - b) *For Lots 209, 210, 211, 311, 312, 313, 314, 315, 316, 317, 318, 319-320, 321, 322- 323, 324-325,326, 327, 520, 505-507, 508-509. 510, 511, and 606 to 615 inclusive the following things are prohibited on that part of the Lot zoned E2 Environmental Conservation:*
 - *the construction of a dwelling or any other structures (excluding fences that are three strand plain wire fences with the bottom strand at 800mm and the top strand at 1200mm with a third wire between),*
 - *removal of vegetation (other than weeds),*
 - *grazing of animals,*
 - *the construction of earth dams,*
 - *the creation/establishment of an Asset Protection Zones*
 - c) For the following lots, the restriction on title is to name Council as the authority permitted to release or vary the restriction. Dwellings are to be restricted as follows:
 - Lots 106 to 108: Dwellings must be built to the east of the "R5 Transition zone" as marked on Figure 1 "VMP Area" of the "Vegetation Management Plan: The Acres, Tahmoor" prepared by Eco Logical Australia dated 24 November 2016 (version 1.1), being at least 30 metres from the boundary of land zoned E2;

- Lots 315 to 327, 511, 520 to 521, 606 to 607, 610 to 615: : Dwellings must be built to the west of the "R5 Transition zone" as marked on Figure 1 "VMP Area" of the "Vegetation Management Plan: The Acres, Tahmoor" prepared by Eco Logical Australia dated 24 November 2016 (version 1.1), being at least 30 metres from the boundary of land zoned E2;
 - Lots 209 to 211, 311 to 314, 507 to 510: Dwellings must be built to the south of the "R5 Transition zone" as marked on Figure 1 "VMP Area" of the "Vegetation Management Plan: The Acres, Tahmoor" prepared by Eco Logical Australia dated 24 November 2016 (version 1.1), being at least 30 metres from the boundary of land zoned E2; and
 - Lots 608 to 609: Dwellings must be built to the north of the "R5 Transition zone" as marked on Figure 1 "VMP Area" of the "Vegetation Management Plan: The Acres, Tahmoor" prepared by Eco Logical Australia dated 24 November 2016 (version 1.1)), being at least 30 metres from the boundary of land zoned E2
- d) For all allotments: each lot shall only be serviced by one driveway access.
- e) For each corner allotment: a building envelope shall be delineated on the linen plan identifying the primary and secondary setbacks in accordance with the setback controls from Section 4.5 Single Dwelling Houses (Rural Lifestyle Lots) from Wollondilly Development Control Plan 2011 Volume 3 Residential Development or subsequently amending plan.
- f) For each corner allotment: a driveway access location is to be shown on the linen plan and where practical, access shall be from a secondary road so as to limit any conflict upon the operation of the public system.
- g) For every allotment: upon an owner of a lot keeping a dog on the lot, the owner will erect and maintain dog-proof fencing enclosing the boundaries of the building envelope. Dogs may only be permitted outside the building envelope if they are on a leash and suitably controlled under the supervision of a responsible person.
- h) For every allotment: the prohibition of keeping of cats within all lots unless cats are confined to suitable enclosures at all times.

The Section 88B Instrument shall contain a provision that it may not be extinguished or altered except with the Consent of Wollondilly Shire Council. Details of the Restriction as to User shall be indicated on the Subdivision Certificate and on the Certificate of Title for the land.

The restriction shall also contain a provision that it may not be released, varied or modified without the consent of Council.

- i) A covenant on the title of Lot 606 which requires the owner of the Lot to sell all land located east of the land marked "Line of Escarpment (By Survey)" on the Subdivision Plan by Urbis Pty Ltd 1770P L07 Rev D (Amendment 10) dated 24.11.16, to the National Parks and Wildlife Service at market rate, should National Parks and Wildlife Service confirm that they wish to purchase that land at market rate. The covenant should further require that if the parties are unable to agree on market rate, a binding determination of market rate is to be made by a mutually agreed Certified Practising Valuer.
- j) For lots 105 to 108, 209 to 211, 311 to 327, 507 to 511, 520 to 521, and 605 to 615, the "Vegetation Management Plan: The Acres, Tahmoor" prepared by Eco Logical Australia dated 24 November 2016 (version 1.1) must be implemented by carrying out the VMP Works listed below, and complying with the permissible land uses:

Zone (as marked in Figure 1 of the VMP)	Lots	Permissible Land use	VMP Works (actions required)
E2 Vegetation	510, 511, 609-615	Weed Management	1, Weed Management -Developer's initial Works: Primary weeding -Developer's 2 year maintenance: Secondary Weeding -Landowner's long term maintenance: Maintenance Weeding
E2 Vegetation Buffer	106-108, 209- 211, 311-327, 507-511, 520, 521, 607-615	-Weed Management -Canopy planting consistent with the vegetation community in the E2 Zone.	1, Weed Management -Developer's initial Works: Primary weeding -Developer's 2 year maintenance: Secondary Weeding -Landowner's long term maintenance: Maintenance Weeding 2, Revegetation -Developer's Initial works: Tree planting

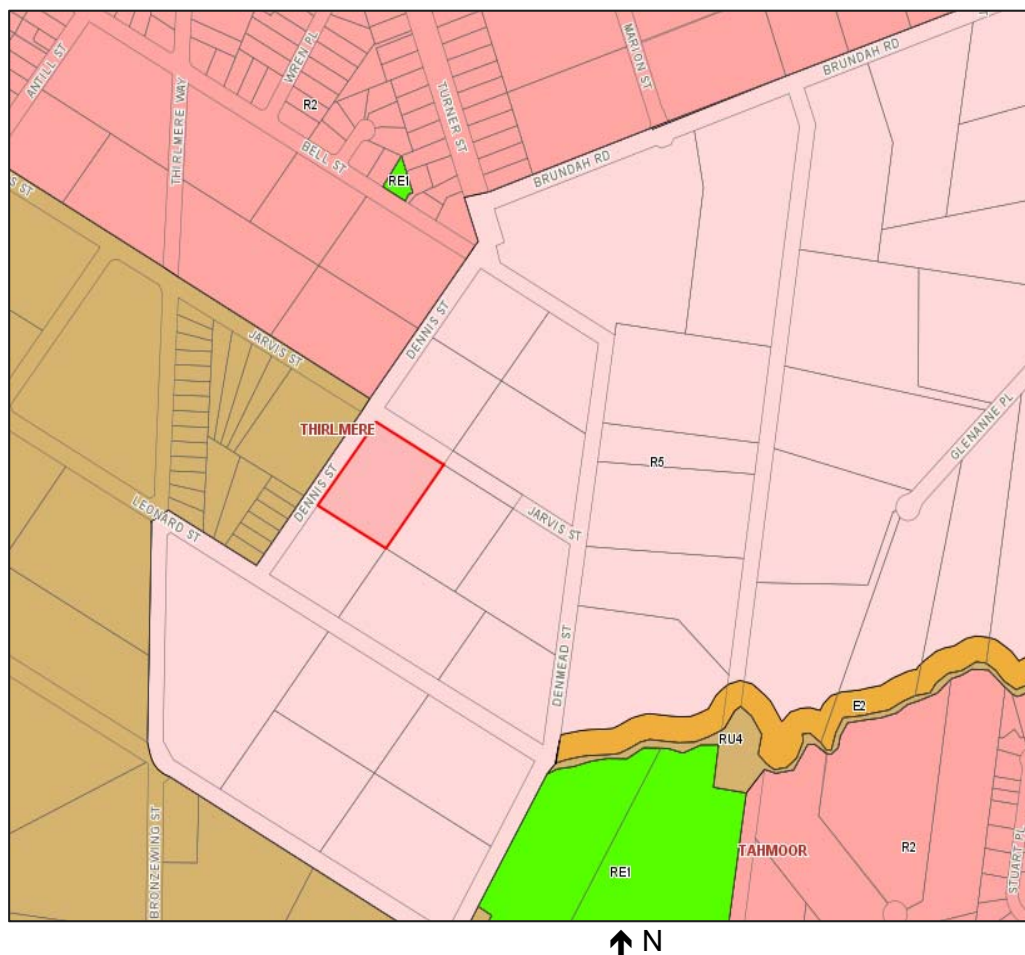
Zone (as marked in Figure 1 of the VMP)	Lots	Permissible Land use	VMP Works (actions required)
R5 Transition Zone (being 30m from the boundary of the E2 zoned land)	105-108, 209-211, 311-322, 507-511, 520, 521, 605- 615	-Weed Management -Basins -Bushfire APZ -Canopy planting that is APZ compliant -Effluent disposal fields (minimum 3m uphill and 6m downhill setback from E2 zone)	1, Weed Management -Developer's initial Works: Primary weeding -Developer's 2 year maintenance: Secondary Weeding -Landowner's long term maintenance: Maintenance Weeding 2, Revegetation -Developer's Initial works: Tree planting 3. APZ Establishment and Management -Developer's 2 year maintenance: APZ Management -Landowner's long term maintenance: APZ Management

The terms used in the above table have the following meanings:

- Primary Weeding: the treatment/removal of bulk weed biomass across all management units. This stage reduces the weed coverage at the site.
- Secondary Weeding: a high level of follow-up weeding targeting regrowth areas and undertaken in a manner that seeks to exhaust the weed seedbank on the site. This stage reduces the re-establishment of weeds.
- Maintenance Weeding: an ongoing lower level of treatment that is commensurate with a low level of weed seed now available in the soil. This stage maintains the site.
Weeding should be undertaken by hand pulling and spot spraying of weeds. This should be undertaken on a 3 monthly basis.
- Tree Planting: Tree planting will only entail the planting of canopy species that are consistent with the Shale Sandstone Transition Forest community and will be undertaken at a density that is bushfire Asset Protection Zone compliant.
Planting will be undertaken at a density of one tree per 400m² with an even mix of the following species: *Angophora bakeri*, *Eucalyptus punctata*, *Eucalyptus tereticornis*, *Eucalyptus crebra*, *Eucalyptus fibrosa*.

- Asset Protection Zone Management: These lands should be maintained as pasture with vegetation (except for canopy trees) managed to a maximum height of 100mm during the bushfire danger season (generally October to March). This is likely to entail monthly maintenance during the bushfire danger period. Outside of these periods Asset Protection Zone maintenance is likely to be required on a 3 monthly basis. Additional Asset Protection Zone requirements include that no tree or tree canopy is to occur within 2m of dwelling rooflines, shrubs and trees are only acceptable if they are well spread and do not form a continuous canopy, are not species that retain dead material or excessive ground fuel, and are located far enough away from buildings that they will not ignite buildings by direct flame contact or radiant heat emission. Landscaping should be endemic mesic species or other low flammability species.

4. **Development Application No 010.2015.00000731.001 25 Dennis Street Thirlmere – Three Lot Subdivision**
277050 010.2015.00000731.001



LOCATION MAP

DEVELOPMENT INFORMATION

Reason for LPP referral	The site is subject to Satisfactory Arrangements with the State Government as per clause 6.1 of the Wollondilly Local Environment Plan 2011.
DA No:	010.2015.00000731.001
Subject Site	Lot: 153 DP: 751270, 25 Dennis Street Thirlmere
Proposal	3 Lot Torrens Title Subdivision
Zoning	R5 Large Lot Residential
Permissibility	Permissible with consent
Applicant:	Rein Warry & Co. Pty. Limited
Owner:	M & R Muzevic
Notification	Notification to adjoining landowners
Submissions	No submissions were received
Variations	None
Recommendation	Approval subject to conditions

EXECUTIVE SUMMARY

- The purpose of this report is to present an assessment of the application for a proposed three lot Torrens title subdivision.
- The proposed subdivision is being reported to the Local Planning Panel (LPP) because the Development Application (DA) incorporates a planning agreement between the applicant and the NSW Department of Planning and Environment (DP&E) that has been executed to ensure satisfactory arrangements are in place for provision of State public infrastructure. and therefore is 'Sensitive Development' under 'Schedule 1' of the 'Local Planning Panels Direction-Development Applications'
- Under S10.4 Disclosure of political donations and gifts of the Environmental Planning & Assessment Act, 1979, a person who makes a relevant planning application or public submission is required to disclose any reportable political donations. The disclosure requirements extend to any person with a financial interest in the application or any associate of the person making a public submission. No disclosure of political donation has been made in association with this application.
- The Phase 1 Environmental Site Assessment report submitted by the applicant recommended a Phase 2 detailed site investigation be carried out.
- To satisfy the requirements of Clause 7(1) of State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55), it is recommended that the application be determined by granting a deferred commencement consent.

REPORT

BACKGROUND

Lodgement of the Application occurred on 2 October 2015. Correspondence to the applicant requesting additional information took place on 28 October 2015, 4 November 2015 and 19 October 2017.

The additional information submitted has satisfactorily addressed all the issues identified during assessment of the proposal. No further concern is raised.

CONSULTATION

Integrated Development Considerations

Authority	Outcome
NSW Rural Fire Service (RFS)	A bushfire safety authority as required under section 100B of the Rural Fires Act 1997 was issued subject to conditions on 13 November 2015.
Mines Subsidence Board (MSB) now Subsidence Advisory NSW (SANSW)	<p>Mine Subsidence Board granted conditional approval on 23 October 2014. The approval was for two years and therefore expired.</p> <p>The applicant was advised to obtain updated approval accordingly.</p> <p>Subsequently, the SANSW advised by letter dated 17 January 2018 that approval for five years has been granted subject to conditions.</p>

Referrals

Referral	Outcome
Development Engineer	<p>No objection. Conditions of consent concerning engineering and construction specifications, drainage/stormwater, public roads, erosion and sediment control, earth fill and inspections have been provided on 27 April 2018.</p> <p>Further, the Development Engineer requires the notation on the 'Drainage Concept Plan' that states 'Open Swale to Detail Discharging To Road Reserve' be altered to read 'Open Swale to Detail.' The drainage concept plan will be marked up accordingly.</p>
Health Officer	Advice received on 24 November 2015. No objection subject to wastewater generated on the sites to be managed by an aerated wastewater treatment system.

Referral	Outcome
Environment Officer	<p>A memo dated 15 October 2015 identified a number of issues and requested additional information be submitted.</p> <p>A. Issues identified:</p> <p>a) Reports/supporting documents</p> <p>All the reports provided are generalisations for the Picton Tahmoor and Thirlmere urban release area (PTAG), no site-specific data is captured succinctly and therefore there may be errors in some of the assessments provided.</p> <p>b) Tree removal</p> <p>There appears to be a number of trees that have been removed from the site. No approvals were found on file unless the trees met an exemption under the DCP.</p> <p>c) Contamination</p> <p>The contamination report supplied by Harvest Scientific is not a comprehensive site assessment for the site. It is an overview for many sites within the PTAG area. It appears that there is a motorbike or BMX track on the site. It is recommended that some testing of the track be undertaken to ensure that no contaminated fill was brought to site. Alternatively, the applicant can provide information demonstrating that there are no buried items on site and no imported fill has been brought to site without a validation certificate.</p> <p>Visually it appears that the site has no impact however some contamination is not visible and should be appropriately outlined. It is recommended that an addendum report that tests the location of the track be provided to council to ensure that there has been no contaminated fill brought to site.</p> <p>B. Recommendations:</p> <p>That landscaping be imposed that reinstates the cleared trees on the sites. No less than</p>

Referral	Outcome
	<p>20 species must be planted in accordance with an approved plan.</p> <p>Submit additional information regarding the soil disturbance around the motor cross track.</p> <p>Submit a contamination assessment or validation certificates or other evidence to demonstrate that there is no contaminated fill brought to site as part of the cross track.</p> <p>C. Conditions:</p> <p>Conditions relating to landscaping, erosion/sediment control, earth fill, drainage/stormwater and car parking/loading/access are recommended.</p> <p>Further advice dated 4 November 2015 was received which noted that trees could have been removed off this site without consent and requested additional information be submitted in this regard.</p> <p>Soil disturbance to the northern boundary of the property was also noted. The disturbance appears to be a bike jump or motorbike track which has since been filled. Additional information is to be requested. Testing, if applicable, shall be requested, to ensure the site is free from contamination.'</p> <p>D. Planning Comment</p> <p>On 4 November 2015, Council wrote to the applicant requesting amongst other things.</p> <p>'Written explanation of previous tree removal (i.e. type and condition). Council's mapping indicates that a number of trees have been removed since October 2013.</p> <p>Written clarification that no fill has been brought to the site as it appears that there has been soil disturbance along the northern property boundary of proposed Lot 1532. If so, a Phase 1 assessment against State Environmental Planning Policy No 55 – Remediation of Land is required.'</p> <p>A reply from the applicant dated 1 December</p>

Referral	Outcome
	<p>2015 was received. The reply was accompanied by two letters prepared by the owner.</p> <p>One of the letters included a copy of a completed TR10 request for permission to remove dead, dying or dangerous trees. Due to the nature of the trees being Pine and dying, the TR10 request was not required for the removal of the said trees.</p> <p>The second letter from the owner clarified that no fill material has been brought onto the site.</p> <p>Given the applicant has demonstrated that there are no unauthorised removal of trees, replacement trees as recommended above are not required however, it is recommended that one (1) street tree be planted in the road verge for each lot.</p>
Property Officer	<p>It is noted in an email dated 29 October 2015 that:</p> <p>a) Dennis Street is Crown Road Reserve.</p> <p>b) There is a proposed road splay within the subdivision on the unformed Crown Road Reserve (Jarvis Street).</p> <p>c) Should Council requires the applicant to construct the unformed Jarvis Street as public road, an application will be required to transfer the road status (e.g. from Crown Road to Public Road). A fee is payable for the request to transfer the road.</p> <p>On 4 November 2015, Council wrote to the applicant requesting amongst other things:</p> <p>'Written consent from NSW Department of Primary Industries – Lands to transfer Dennis Street and part of Jarvis Street to public road as they are identified as Crown road.'</p> <p>Planning Comment</p> <p>Subsequent investigation concludes that Dennis Street is not Crown road. Jarvis</p>

Referral	Outcome
	<p>Street adjacent to the site is Crown land. Immediately to the east a section of Jarvis Street is privately owned. It currently has a private road over it serving access to a dwelling to the east and the existing shed on the subject land.</p> <p>It appears that the subdivision could proceed without utilising Jarvis Street for any additional access or drainage associated with the proposed subdivision. Therefore the application can be determined as the transfer of Crown road is not required.</p>
Department of Planning & Environment (DP&E)	<p>A letter dated 4 April 2018 advised that a planning agreement had been executed and satisfactory arrangements are in place for provision of State public infrastructure.</p>
Cubbitch Barta	<p>Correspondence dated 19 October 2015 requested an Aboriginal Heritage Assessment and Due Diligence Assessment to facilitate assessment.</p> <p>On 28 October 2015, Council wrote to the applicant requesting the additional information accordingly.</p> <p>Council received the report on 4 November 2015. The assessment did not locate any Aboriginal sites within the study area, with the exception of one scared tree which does not affect the subject land. The report further noted that the study area has "low archaeological potential" and has "low archaeological significance".</p> <p>Based on these findings, the assessment recommended that "no further archaeological work is required within the area.</p>
Tharawal	<p>Tharawal Local Aboriginal Land Council wrote to the applicant stating that :</p> <p>An Aboriginal Heritage Assessment Report for a wider area of approximately 232 hectares, situated between the township areas of Picton, Tahmoor and Thirlmere, Wollondilly Shire, NSW has been undertaken.</p> <p>The Assessment report included the subject land as one of the properties examined. The recommendations of the Assessment report are as follows:</p>

Referral	Outcome
	<ul style="list-style-type: none"> • 'No further archaeological work is required within the area of impact. • If Aboriginal objects are located during works the archaeologist, Aboriginal stakeholders and the Office of Environment and Heritage should be notified and further archaeological work, Aboriginal consultation, and/or an Aboriginal Heritage Impact Permit (Section 90) may be necessary. • If human skeletal remains are encountered during excavation, work must cease immediately and the NSW Police, and the OEH must be notified. If the skeletal remains are found to be Aboriginal a process of consultation and investigation in accordance with the OEH guidelines must be implemented.' <p>The requirement to contact OEH and other relevant authorities when Aboriginal objects or skeletal remains are encountered will be conditioned accordingly.</p>

1.1 DESCRIPTION OF SITE AND SURROUNDING AREA

A site description is included in the Statement of Environmental Effects (SoEE) as follows:

'The subject land is known as No.25 Dennis Street, Thirlmere being Lot 153 in DP 751270. The site is contained on the south-eastern side of Dennis Street and comprises the southern corner allotment at the intersection of Dennis Street and Jarvis Street. The site contains a total area of 1.225ha, with a frontage of 121.707m to Dennis Street.

Current improvements at the site comprise a single-storey residential dwelling and shed in the northern part of the land. The land contains a small number of scattered trees, however is largely clear of vegetation (see Figure 1 - Aerial Photo).



Figure 1 - Aerial Photo

The site is relatively flat with little variation in topography, with a minor fall west to east across the site of 0-5%. Access to the dwelling is made from the eastern side of Dennis Street via an existing site driveway.

Access to the existing shed is made via the north-eastern property boundary from the private extension of Jarvis Street which provides access to No.15 Jarvis Street (Lot 154 DP751270) adjoining the subject land to the south-east.

Dennis Street is a rural road of low traffic volume and low vehicle speeds, with adequate sight distance available in both directions. Dennis Street is bitumen sealed with no constructed kerb and gutter.

The site is currently serviced by town water supply, as well as overhead electricity and underground telephone services which will need to be extended to additional allotments created in this proposal. The land is not serviced by reticulated sewage with wastewater management to be undertaken on-site as part of future development.

The surrounding road network is well established and will have the capacity to accommodate anticipated traffic movements resulting from this proposal.

The subject site is located approximately 1 km to the south west of Thirlmere Town Centre which offers some essential services and facilities to meet the requirements of current and future residents. The site is also located only 2.7km (approx.) to the north west of Tahmoor Town centre which offers a wider range of commercial, social, community and transport services and facilities for the local community.'

1.2 DESCRIPTION OF DEVELOPMENT

This application seeks approval for a three lot Torrens Title subdivision of the subject land. Proposed allotment details are as follows:

Lot	Area (m2)	Frontage (m)
1531	4,085	40.569m
1532	4,085	40.569m
1533	4,085	40.569m

Proposed Lot 1531 will contain the northern portion of the site and will include the existing dwelling and garage. It will have a 40.569m frontage to the eastern side of Dennis Street on the western boundary. Vehicle access to the existing dwelling will be maintained via the existing driveway on Dennis Street. Vehicle access to the existing shed will be maintained from the private extension of Jarvis street on the northern boundary.

Proposed Lot 1532 will contain the central portion of the land and will become a vacant regular-shaped allotment, apart from a small number of trees in its western part. It will have a 40.569m frontage to Dennis Street on its western boundary from which future vehicle access will be made.

Proposed Lot 1533 will contain the southern portion of the land and will become a vacant rural allotment apart from a small number of trees in the eastern part. It will also have a 40.569m frontage to Dennis Street from which future vehicle access would be made (see Figure 2 - Proposed subdivision plan).

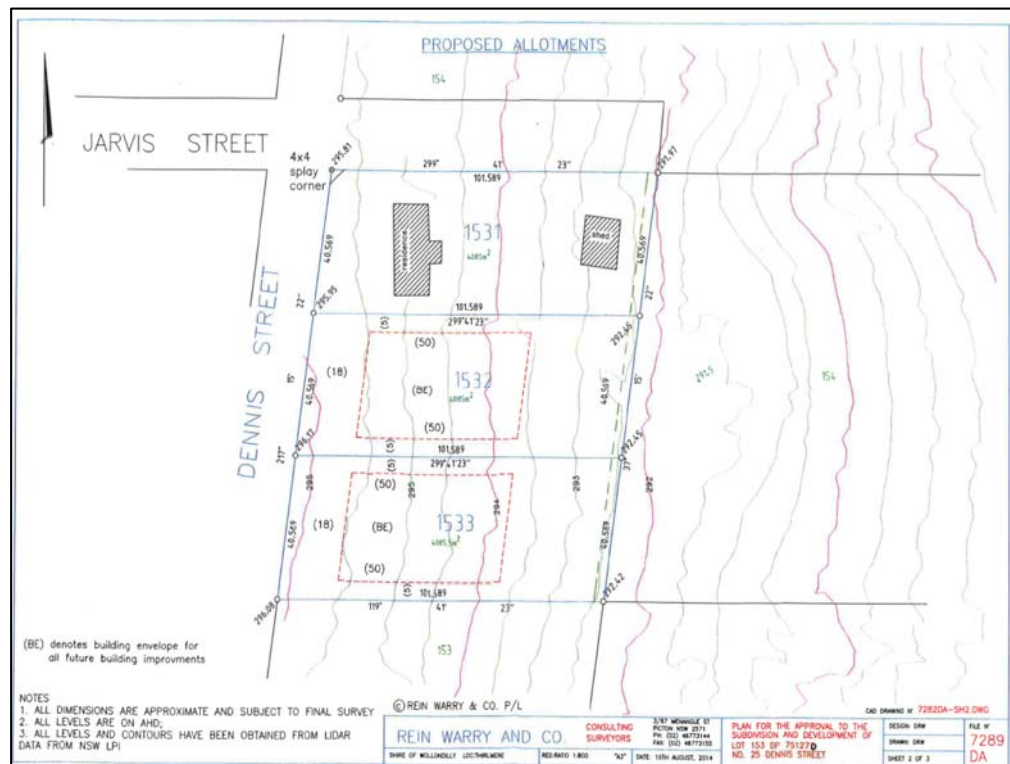


Figure 2 - Proposed Subdivision Plan

An open rock lined swale will be created along the eastern boundary of the proposed allotments to allow drainage of water from the land. The swale will be 3m wide and 400m deep (see Figure 3 - Drainage Concept Plan).

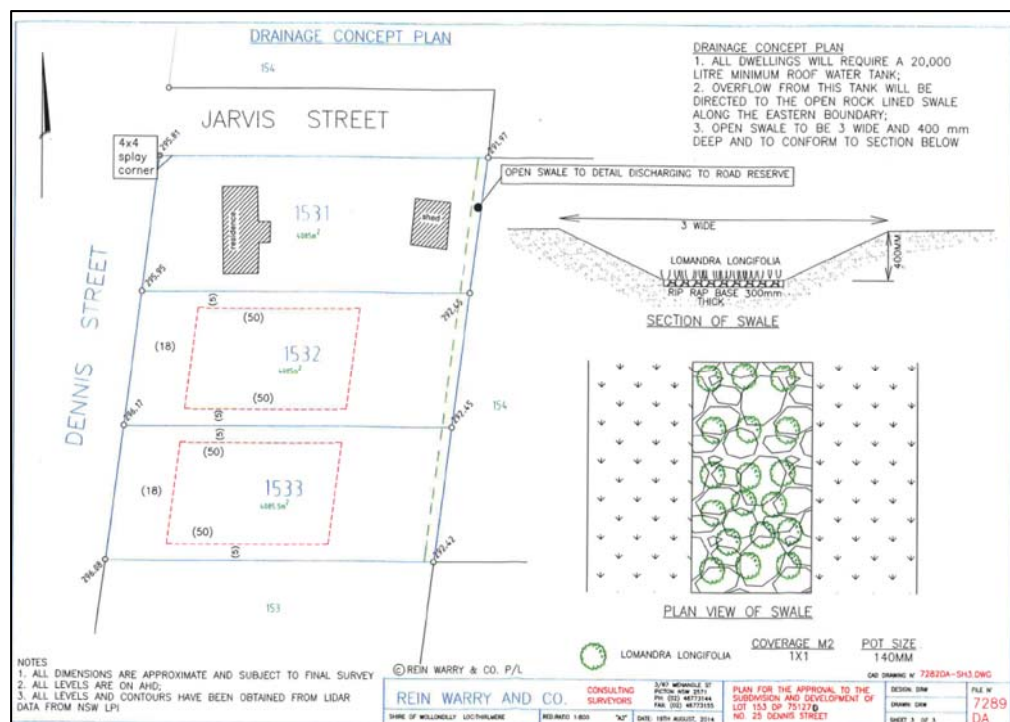


Figure 3 - Drainage Concept Plan

Correspondence provided by the applicant received by Council on 4 April 2018 provided an altered and more complete description of the approach to drainage:

1. The open swale shown across the rear boundary of the subdivision site on DA plans is not intended to be a drainage easement;
2. Each proposed allotment in the subdivision design will have a 20,000-litre tank onsite to collect stormwater. Only stormwater overflow from these tanks will be discharged to the proposed open swale along the rear site boundary;
3. All proposed allotments are of sufficient size/area to allow onsite absorption of stormwater. Inter-allotment drainage lines are not necessary;
4. The Wastewater Site Assessment (ref.no.201431 - dated 131h January 2015) prepared by Harvest Scientific Services Pty Ltd and submitted with the DA states that the top 1000mm of the site surface soil layer is sandy loam and clayey-sand which has a high water absorption rate. This further provides appropriate conditions for effective on-site stormwater absorption which will again reduce the amount of stormwater runoff to the open swale provided on the rear site boundary;
5. The Wastewater Site Assessment also states that each proposed allotment will only require a 930m² wastewater irrigation area (for a four-bedroom home). This indicates a high soil absorption rate and will provide conditions for effective stormwater management, particularly on proposed allotments which all have areas above 4000m²;
6. The proposed open swale along the rear boundary of the subject site will act to protect land adjoining to the east (No.15 Jarvis Street) from stormwater flow from the proposed subdivision development;
7. The proposed open swale along the rear site boundary can be converted to an absorption trench if necessary by replacing the subgrade with clean river sand and a geotextile fabric.

As such, stormwater drainage easement arrangements are not required over adjoining land and owners' consent are not necessary.

1.3 SECTION 4.15 EVALUATION

1.3.1 PROVISIONS OF RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS

Instrument	Relevance	Instrument	Relevance
Wollondilly LEP 2011	X	Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No. 2 – 1997)	X
State Environmental Planning Policy No 55 - Remediation of Land			X

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)

Question	YES	NO
1. Is the proposal for residential subdivision or a listed purpose (the list provided in Table 1 of the contaminated land assessment guidelines)?	X Proceed to Question 3	Proceed to Question 2
2. Does the proposal result in a change of use (that is the establishment of a new use)?	X Proceed to Question 3	Assessment under SEPP 55 and DCP not required.
3. Does the application proposed a new: Child care facility Educational use Recreational use Health care use Place of public worship Residential use in a commercial or industrial zone	Proceed to Question 5	X Proceed to Question 4
4. Review the property file and conduct a site inspection of the site and surrounding lands. Is there any evidence that the land has been used for a listed purpose?	X Proceed to Question 5	Proposal satisfactory under SEPP 55 and DCP.
5. Is the proposed land use likely to have any exposure path to contaminants that might be present in soil or groundwater?	X Request contaminated site assessment	Proposal satisfactory under SEPP 55 and DCP.

Comments:

Harvest Scientific Services Pty Ltd was commissioned by the PTTAG group to undertake a Contaminated Land Study (CLS) (ref. no. 201334 — dated 8 June 2012) over the PTTAG area. The CLS identifies a number of potential Areas of Environmental Concern (AEC's) with the subject land identified as affected by two AEC's (71 and 73 on Figure 5 in CLS). This was based upon aerial photography analysis which revealed a potential for previous orchard activities at the site.

No site in the PTTAG area is currently listed on the Contaminated Site Register held by NSW EPA under Section 58 of the *Contaminated Land Management Act 1997*. No study of Council records via a GIPAA application regarding PTTAG Land revealed any contamination issues or events of significance across the PTTAG site.

The report states that confirmation of contamination at any one of the properties, a Phase 2 Contamination Assessment is required. If actual contamination is identified, a future Remediation Action Plan (RAP) be prepared and implemented.

The applicant requested that requirements regarding additional contamination assessment including specific management of contamination and undertaking of future Phase 2 Contamination Studies and RAP be imposed as a condition of consent for future development applications for development of any allotments created in this DA.

The Harvest Study included the following map that describes the subject land as being an 'Area of Environmental Concern' (71 & 73 on the map) (see Figure 4 - Area of Environmental Concern).

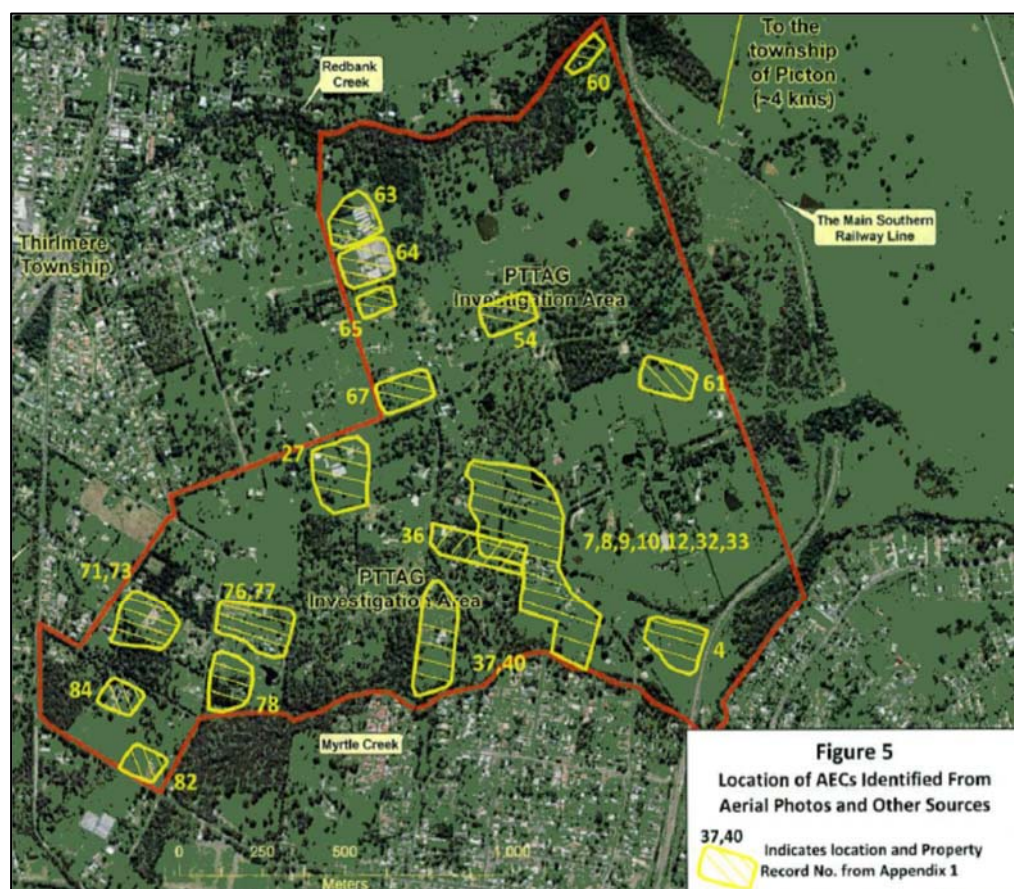


Figure 4 - Area of Environmental Concern

A description of the concerns is articulated in the report:

AEC 71	Possible orchard?	Part of -25,000m ² area	Heavy metals OC/OPs
AEC 73	Possible orchard?	Part of -25,000m ² area	Heavy metals OC/OPs
AEC 71	Building debris from demolished building	Unknown part of lot	Heavy metals OC/OPs, Asbestos, TPH, BTEX

Harvest Scientific Services concluded in the report:

'As a result of this contaminated land study, it is concluded that:

- Due to past agricultural practices there may be potential for contaminants to occur within the Study Area;
- No properties within the Study Area are listed on the EPA website as contaminated or have been reported for contamination events;
- The individual identification of sources of contamination are more appropriately dealt with at the development application stage. The level

of these potential contaminants, need to be assessed in relation to future development proposals including the positioning of access, building envelopes and effluent management areas;

- This study has not revealed any broad-based contamination issue that would preclude the rezoning of the land for greater residential density;
- This study does not remove any of the assessment provisions that would normally apply at the development application stage, which will require an appropriate subdivision layout and the placement of effluent management areas;
- There is no one major or large contamination source that would preclude the rezoning of the Study Area as a whole; and
- An inspection of the 87 Study Area property files at Council under a GIPA application did not reveal any contamination issues or events of significance.'

Relevant recommendations of the report are:

'6.2 Phase 1 Contamination Assessment

A Phase 1 contamination assessment is to be undertaken on all new development proposals and is to include the following:

- This report and supporting documentation is to be made available to all entities proposing to undertake a development within the study area;
- Review and summarise WSC and NSW Office of Environment and Heritage (OEH) Contaminated Lands Register and historical aerial photos;
- Review existing soil landscape and geological maps;
- Review Section 149 certificates for each property;
- Conduct a detailed search of Wollondilly Shire Council's files for each property;
- Review and summarise individual property histories;
- Assess each property owner subject to the development proposal regarding any potential contaminating activities, either by interview or questionnaire;
- Carry out a visual site inspection of each property affected by the development proposal;
- Undertake judgemental sampling where appropriate;
- Identify the location and extent of AECs; and

- Recommend development controls for the management and assessment of any identified potential contaminated sites.

As a result of this study, the following additional measures are to be undertaken:

- All drainage lines are to be inspected for old refuse and characterized. Where contaminants are suspected, an appropriate area is to be identified as an AEC;
- Land hosting market gardens and other horticultural pursuits currently or in the past are to be designated as AEC's;
- All AEC's (other than those where only orcharding activities have taken place) are to be tested for asbestos as a matter of course;

It was considered that the applicant's request to defer contamination matters would be inappropriate in view of the findings and recommendations of the Harvest Scientific Report as the provisions of SEPP 55 Clause 7(1) could not be met without additional work being undertaken in association with this application

The applicant was advised by letter dated 19 October 2017.

In response, a 'Phase 1 Environmental Site Assessment' dated 28 February 2018 was submitted. Conclusions and recommendations contained in the report are:


- 'A Phase 2 contamination assessment is recommended which would initially entail a near surface and subsurface investigation;
- The investigation would inter-alia, focus on a sub-soil assessment, soil sampling and laboratory analysis;
- The need for a groundwater investigation would be subject to the results of this Phase 2 assessment and furthermore, whether groundwater was encountered during the Phase 2 investigation;
- The main tool for a subsurface investigation would entail the use of a small backhoe, capable of retrieving adequate soil samples in a controlled manner.'

The Assessment also states:

- 7.2 'Potential Risks to Onsite Receptors
Exposure risk to contaminants is currently considered Low to Moderate as the Property is well grassed and stable.
- 7.3 Potential for Migration of Contaminants
The potential for contaminants to migrate from the site is currently considered Low.'

The matter was further discussed with Council's Contamination Planner who advised that it would be reasonable to condition for the submission of a Phase 2 Contamination Assessment prior to the determination of the Development Application. Therefore it is recommended that the DA be determined by way of a deferred commencement consent.

Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River

Relevant Provisions	Comment
6. Planning Policies and Recommended Strategies	
(1) Total catchment management	The proposed development is located within an urban release area on land currently zoned for large lot residential purposes. Whilst the application could result in a minimum of an additional two dwellings on the site strategically there would not be a concern in terms of potential cumulative impacts.
(2) Environmentally sensitive areas	<p>The site is not within an environmentally sensitive location as mapped for LEP 2011 although some biodiversity land is located nearby.</p> 

Relevant Provisions	Comment
(3) Water quality	<p>A 'Drainage Concept Plan' has been submitted with the application that incorporates the following components:</p> <ol style="list-style-type: none"> 1. All dwellings to have a minimum 20,000 litre rainwater tank. 2. Tank water overflow would be directed to an open drainage swale running along the eastern boundary of the land and having a width of 3m and a depth of 400mm as shown in the following diagram: <div data-bbox="699 784 1386 1393" data-label="Image"> <p>The diagram consists of two parts. The top part is a cross-section labeled 'SECTION OF SWALE' showing a V-shaped ditch. The top width is marked as '3 WIDE'. The depth is marked as '400mm'. The layers are labeled from top to bottom: 'LOMANDRA LONGIFOLIA', '100mm RAINPIT', and '300mm RCP BASE'. The bottom part is a plan view labeled 'PLAN VIEW OF SWALE' showing a rectangular area with a grid of plants and arrows indicating flow direction.</p> </div> <ol style="list-style-type: none"> 3. The proposed open swale along the rear boundary of the subject site will act to protect land adjoining to the east (No.15 Jarvis Street) from cross country stormwater flow from the proposed subdivision development. <p>Reticulated sewerage is not available. A 'Wastewater Site Assessment' report concludes:</p>

Relevant Provisions	Comment
	<p>'The site has the capacity to satisfactorily treat and dispose of wastewater generated by the proposed development. In total, 930 m² of irrigation area is required to sustainably dispose the wastewater generated from a four-bedroom residence after secondary treatment in an AWTs or similar treatment system. Providing that the recommendations made in this assessment are implemented the proposed on-site wastewater management system will not negatively impact upon downstream receiving waters.'</p> <p>Impacts on water quality would be acceptable.</p>
(4) Water quantity	See comments immediately above in '(3) Water quality'.
(5) Cultural heritage	<p>Councils Geographical Information System (GIS) mapping does not include any cultural heritage items being located on the land.</p> <p>With regard to Aboriginal heritage see 'Cubbitch Barta' and 'Tharawal' under the 'Referrals' section earlier in the report.</p>
(6) Flora and fauna	No Cumberland Plain Woodland or other Endangered Ecological Community is mapped as occurring on the subject land. The site is predominantly cleared.
11. Development controls	
(17) Sewerage systems or works	Details of the on-site waste disposal system are provided as part of the development application.

Wollondilly Local Environmental Plan, 2011

Characterisation: Subdivision
 Zone of land: R5 Large Lot Residential
 Permissibility: Permitted with Council's consent

Zone objectives:

Objective	Comment
R5	
<ul style="list-style-type: none"> To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality. 	<p>The proposal is consistent with this objective as an opportunity for a minimum two additional future dwellings would be created on large lots with minimal impacts on scenic quality in the area. The site has not been land identified as "sensitive land" on either the Natural Resources—Biodiversity Map or the Natural Resources—Water Map.</p>

Objective	Comment
<ul style="list-style-type: none"> To ensure that large residential allotments do not hinder the proper and orderly development of urban areas in the future. 	The land is within an urban release area and has been specifically zoned R5 Large Lot Residential. It is considered that the proposal allows the proper and orderly development of the site.
<ul style="list-style-type: none"> To ensure that development in the area does not unreasonably increase the demand for public services or public facilities. 	The development would result in two additional allotments in an existing large lot residential area and is not anticipated to unreasonably increase the demand on public services or facilities. The proposal has been referred to the DP&E to seek certification that satisfactory arrangements for designated State public infrastructure are in place. That certification has been provided.
<ul style="list-style-type: none"> To minimise conflict between land uses within the zone and land uses within adjoining zones. 	The development would create three lots having areas of 4085m ² to be used for future residential purposes. The lot sizes and layout would not cause conflict with immediately adjoining small and large lot residential areas and primary production small lots locality.

LEP clauses:

Relevant Clause	Comment
Part 2 Permitted or prohibited development	
2.6 Subdivision—consent requirements	Consent has been sought for the proposed subdivision of land and therefore satisfies the requirements of the clause.
Part 4 Principal development standards	
4.1 Minimum subdivision lot size	The Minimum Lot Size Map prescribes a minimum lot size of 4000m ² . All proposed lots are in excess of 4000m ² and thus comply.
Part 6 Urban release areas	
6.1 Arrangements for designated State public infrastructure	The proposal has been referred to DP&E and certification that satisfactory arrangements for designated State public infrastructure are in place has been received.

Relevant Clause		Comment
6.2	Public utility infrastructure	Public utility infrastructure that is essential for the proposed development is available. Reticulated sewerage is not available to the site thus the applicant proposes to provide on-site wastewater treatment systems. The Wastewater Site Assessment report that accompanies the DA has demonstrated that the site is capable of supporting the proposed development.
6.3	Development control plan	Volume 2 – Urban Release Areas of Development Control Plan 2016 (DCP 2016) applies to the Tahmoor new urban lands.
Part 7 Additional local provisions		
7.1	Essential services	<p>A 'Wastewater Site Assessment' report was submitted in respect of the development as it would be carried out on land that does not have access to reticulated sewerage. The site assessment satisfactorily demonstrates that the lots could accommodate future wastewater disposal areas.</p> <p>Each lot is capable of being serviced with reticulated water, electrical, gas and telecommunications services.</p>

Relevant Clause		Comment
7.5	Earthworks	<p>Minor earthworks required as part of this application (construction of the drainage swale) would be unlikely to significantly:</p> <ul style="list-style-type: none"> - disrupt or have any detrimental effect on existing drainage patterns and soil stability in the locality - adversely affect the likely future use or redevelopment of the land - unreasonably affect the existing and likely amenity of adjoining properties - disturb relics - have adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area

1.3.2 PROVISIONS OF RELEVANT DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

Not applicable.

1.3.3 PROVISIONS OF RELEVANT DEVELOPMENT CONTROL PLANS (DCP)

DCP 2016 Relevant Volume
Volume 1 – General
Volume 2 – Urban Release Areas
Volume 3 – Subdivision of Land

Volume 1 – General		
Relevant Provisions		Comment
Part 2 - General considerations for all development		
2.2 Controls		
1	The consent authority shall consider the following safety and human health risks in assessing a development application under this volume	
a)	Road and traffic hazards	<p>Traffic and access issues are addressed in the SoEE and they are summarised below:</p> <p>The proposed development will not cause a significant impact on traffic conditions in the locality of the site.</p> <p>The additional traffic generated by the proposed subdivision and future residential developments can be accommodated by the surrounding road network.'</p> <p>A Parking Traffic and Transport Study (PUS) (ref. 12-001 dated July 2012) was prepared for the PTTAG rezoning by Thompson Stanbury & Associates which covers the subject land.</p> <p>The PUS makes specific reference to the intersection of Thirlmere and Bell Street and the intersection of Denmead Street and Thirlmere Way, both of which are in proximity to the subject land and likely to be used by potential residential development on allotments created in this proposal.</p> <p>The PUS states that these intersections can provide a satisfactory level of service with or without the PTTAG rezoning until 2026 and at which time, upgrade works may be warranted to address afternoon peak periods.</p>

Volume 1 – General		
Relevant Provisions	Comment	
		<p>The report also identifies that more positive intersection control may be required to safely govern existing off-set junctions of Bell Street and Dennis Street, as well as Turner Street and Bell Street.</p> <p>The costs relating to these works should be dealt with as part of Section 94 Contributions.</p> <p>The subject proposal will create only two additional allotments and will make appropriate contributions in-line with the nature of significance of this proposal.</p> <p>The travel demand created by this development will be met by car usage of the future owners, however the site is located only a short travelling distance from local centres of Thirlmere and Tahmoor which offer a range of necessary services and facilities for local residents.</p> <p>Access to all proposed allotments would be from Dennis Street. This is a rural road of low traffic volume and low vehicle speed, with adequate sight distance available for all allotments.'</p> <p>The ancillary shed on proposed Lot 1531 (that also contains the existing dwelling) currently is accessed via the private extension of an existing driveway servicing No.15 Jarvis Street (Lot 154 DP751270) situated to the south-east.</p>
b)	Bushfire threat	<p>A bushfire safety authority as required under section 100B of the Rural Fires Act 1997 was issued subject to conditions on 13 November 2015.</p>

Volume 1 – General		
Relevant Provisions		Comment
d)	Noise, vibration, pollution, odour, radiation or waste from surrounding land uses	Low density and large lot residential and rural residential development adjoin the land. It is not anticipated that the existing surrounding developments will give rise to any of these impacts.
i)	Hazard from potential contamination of the land	See section on SEPP 55 earlier in this report.
Part 3 - Variation		
No variations have been applied for or are required.		
Part 4 – Community Engagement		
4.1 Development applications to be notified		
	Subdivision creating less than 5 lots and nominated integrated development	Neighbour notification occurred from 14 – 29 October 2015. No submissions from the public were received.
Part 7 – Aboriginal Heritage		
7.2 Controls		
4.	Ensure that all works cease in the vicinity of any previously unidentified Aboriginal objects or places identified during excavation and construction and that the following be notified	This matter could be conditioned if the application were to be approved.
a)	The Office of Environment and Heritage NSW (OEH)	
b)	A qualified archaeologist	
c)	Aboriginal stakeholders.	
5.	Ensure that should human skeletal remains be discovered that the following process will be undertaken:	This matter could be conditioned if the application were to be approved.
a)	The remains will be reported to the police and the state coroner.	
b)	Wollondilly Shire Council and the land owner will be notified of the find.	
c)	Aboriginal stakeholders will be notified of the find.	
d)	OEH NSW will be notified.	
6.	If the skeletal remains are of Aboriginal ancestral origin an appropriate management strategy will be developed in consultation with the Aboriginal stakeholders.	This matter could be conditioned if the application were to be approved.

Volume 1 – General		
Relevant Provisions	Comment	
7.	The find will be recorded in accordance with the National Parks and Wildlife Act 1974 (NSW) and the NSW NPWS Aboriginal Cultural Heritage Standards and Guidelines Kit.	This matter could be conditioned if the application were to be approved.
8.	The findings will be incorporated into any proposed Aboriginal Heritage Plan's management regime.	This matter could be conditioned if the application were to be approved.
Part 9 – Environmental protection		
9.3 Controls		
5.	All stormwater generated from any development shall be treated to an acceptable standard to maintain water quality. In determining the “acceptable standard” the consent authority shall be mindful of the relevant guidelines of the State and Federal Governments. This treatment must be undertaken outside any areas mapped as sensitive land in the Natural Resources – Water map under Wollondilly Local Environmental Plan, 2011.	<p>A ‘Drainage Concept Plan’ has been submitted with the application that incorporates the following components:</p> <p>All dwellings to have a minimum 20,000 litre rainwater tank. Tank water overflow would be directed to an open drainage swale running along the eastern boundary of the land and having a width of 3m and a depth of 400mm.</p> <p>The proposed open swale along the rear boundary of the subject site will act to protect land adjoining to the east (No.15 Jarvis Street) from cross country stormwater flow from the proposed subdivision development.</p>

Volume 2 – Urban Release Areas		
	Relevant Provisions	Comment
2.4 Land Between Picton Tahmoor and Thirlmere (commonly known as PTTAG) (refer to DCP for further details of controls)		
	Use of: passive and active recreational areas; public facilities and services, including provision for appropriate traffic management facilities and parking.	Future residents would rely on existing facilities at Tahmoor, Thirlmere and Picton

Volume 3 – Subdivision of Land		
	Relevant Provisions	Comment
Part 2 – General Requirements for all Development		
2.1 Traffic and Transport		
Controls		
1.	All new public roads must comply with Council's design specifications including kerb and guttering, drainage pedestrian paths and street lighting.	<p>This matter could be conditioned if the proposed subdivision were to be approved.</p> <p>Jarvis Street adjacent to the land is owned by the Crown. The ancillary shed on proposed Lot 1531 (that also contains the existing dwelling) currently is accessed via the north-eastern property boundary from the private extension of Jarvis Street which provides access to No.15 Jarvis Street (Lot 154 DP751270) adjoining the subject land to the south-east.</p> <p>The proposed subdivision plan shows a 4m x 4m corner splay at the intersection of Jarvis and Dennis Streets. This would be required if Jarvis Street became a public road in the future.</p>
5.	<p>Road infrastructure enhancement shall be provided to existing roads in accordance with the following:</p> <p>Small Subdivision Requirements</p> <p>Road, drainage for all frontages. Kerb and Gutter or Grass Swale as appropriate.</p>	Dennis Street is sealed with grass verges.
6.	All intersections and new vehicular access points to public and/or private roads must have the relevant safe intersection sight distance for the relevant speed environment.	Complies. Council's Development Engineer is satisfied with sight distances.

Volume 3 – Subdivision of Land		
	Relevant Provisions	Comment
7.	New street lighting must use only LED type lights.	This matter could be conditioned if additional street lighting is required.
9.	Splay corners shall be provided for newly created corner lots with the following sizes: Residential Zones 4m by 4m	The proposed subdivision plan shows a 4m x 4m corner splay at the intersection of Jarvis and Dennis Streets. This would be required if Jarvis Street became a public road.
2.2 Wastewater		
Controls		
1.	All lots created must have access to one or more of the following:	
c)	Sufficient land with the correct physical and chemical characteristics to allow for the wastewater to be treated and disposed of within the boundaries of the lot.	See '(3) Water quality' under SREP 20 earlier in the report
3.	Any subdivision that is carried out on unsewered land (i.e. carried out under control 1(c) above) must meet the requirements of Council's "On-site Sewage Management System and Grey Water re-use Policy".	<p>The Wastewater Site Assessment report was prepared with reference to the following guidelines and policy:</p> <p>Environment & Health Protection Guidelines (Department of Local Government, 1998);</p> <p>AS/NZS Standard 1547:2012 entitled 'On-Site domestic wastewater management' (Standards Australia, 2012);</p> <p>Septic Tank and Collection Well Accreditation Guideline, Part 4: Local Government Approvals (NSW Health Department, 2001);</p> <p>Designing and Installing On-site Wastewater Systems (Sydney Catchment Authority, 2012);</p>

Volume 3 – Subdivision of Land		
	Relevant Provisions	Comment
		<p>On-site Sewage Management and Greywater Re-use (Wollondilly Shire Council, 2011);</p> <p>On-Site Sewage Management Strategy (Wollondilly Shire Council, 2004); and</p> <p>Total Water Cycle Management Study for Picton, Tahmoor, Thirlmere Action Group Re-Zoning</p> <p>This matter could be conditioned if the proposed subdivision were to be approved.</p>
2.3 Stormwater		
Controls		
1.	Development involving the subdivision of land must demonstrate that stormwater management arrangements will allow for drainage to be directed to either a natural water body or a constructed stormwater management system without causing significant environmental harm or risks to human health and safety.	<p>A 'Drainage Concept Plan' has been submitted with the application that incorporates the following components:</p> <ol style="list-style-type: none"> 1. All dwellings to have a minimum 20,000 litre rainwater tank. 2. Tank water overflow would be directed to an open drainage swale running along the eastern boundary of the land and having a width of 3m and a depth of 400mm. 3. The proposed open swale along the rear boundary of the subject site will act to protect land adjoining to the east (No.15 Jarvis Street) from stormwater overflow from the 20,000-litre rainwater tank to be installed on each

Volume 3 – Subdivision of Land		
	Relevant Provisions	Comment
		proposed allotment created from the proposed subdivision development. Council's Development Engineer raised no objection to the proposal. Conditions have been recommended to be imposed in the consent.
2.4 Lot Size and Shape		
Controls		
2.	Lots in residential zones shall have the following minimum dimensions: Minimum Lot Width – 20m Minimum Lot Width (Corner allotment) – 30m Minimum Lot Depth – 30m	Complies.
2.6 Corner Allotments		
Objectives		
Controls		
1.	Corner allotments in residential zones shall be provided with a building envelope to identify the primary and secondary setbacks.	An existing dwelling with access from Dennis Street and shed with private access from Jarvis Street are located on proposed Lot 1531 which could become a corner allotment if Jarvis Street becomes a public road in the future.
2.	Corner allotments in residential zones shall nominate a vehicular access point to allow the safety of the access point to be assessed with reference to any nearby intersection.	See comments immediately above.
3.	These controls do not apply to proposed corner allotments on which a dwelling is already constructed.	See comments immediately above
2.8 Environmental Protection		
Controls		
2.	The layout of any proposed subdivision must be designed to limit or avoid any adverse impacts on watercourses and vegetation and prevent future development occurring on steep and constrained lands.	No watercourses are located on the site. The land is predominantly cleared and is gently sloping.
PART 3 – Controls for Specific Locations		

Volume 3 – Subdivision of Land		
	Relevant Provisions	Comment
3.8 Land Between Picton, Tahmoor and Thirlmere (commonly known as PTTAG)		
Controls		
1.	Prior to the grant of consent for any subdivision of land to which this clause applies must demonstrate that all downstream stormwater infrastructure, including culverts, are adequate for post development flows or can and will be upgraded to accommodate such flows.	See 'Part 2.3– Stormwater' under 'DCP Volume 3- Subdivision of Land' earlier in this report.
2.	The consent authority shall consult with local aboriginal groups as a part of the assessment for any subdivision application within the PTTAG precinct and may require additional archaeological assessment on a site by site basis.	Consultation has occurred. With regard to Aboriginal heritage see 'Cubbitch Barta' and 'Tharawal' under the 'Referrals' section earlier in the report.

1.3.4 DRAFT AND/OR PLANNING AGREEMENTS ENTERED OR OFFERED TO ENTER INTO

The proposal has been referred to DP&E and certification that satisfactory arrangements for designated State public infrastructure are in place has been received.

1.4 IMPACT OF THE DEVELOPMENT

Head of Consideration	Comment
Natural Environment	The development is expected to cause acceptable impact on the natural environment as the land is gently sloping, no drainage lines traverse the site and the property is predominantly cleared of trees.
Built Environment	No structures other than the inter-allotment drainage swale are proposed, however, it is considered that the lot layout allows any future buildings on the site to be designed and located with minimal impact on the built environment of the area.
Social Impacts	The scale and nature of the proposed subdivision development is generally consistent with surrounding existing and anticipated future development and is considered to be in keeping with broader community expectation for appropriate development of the area as LEP and DCP provisions are generally satisfied. No adverse impact is therefore anticipated.

Head of Consideration	Comment
Economic Impacts	<p>Subdivision construction works and construction of future dwellings has the potential to provide some future local employment.</p> <p>The potential small population increase can contribute to the viability of existing commercial and industrial areas.</p>

1.5 SUITABILITY OF THE SITE

The site is considered suitable for the development because:

- Physical attributes of the site have been accounted for in the design of the subdivision.
- Utility services are available and adequate for the development.
- Access can be provided and the existing road system could adequately cater for the increased traffic generated by the proposed subdivision.
- There are no hazardous land uses or activities nearby.

1.6 SUBMISSIONS

No submissions from the public have been received.

1.7 THE PUBLIC INTEREST

It is considered that the development would not have any detrimental impact to the public interest nor the interest of any government agency representative of the public interest.

Compliance with statutory planning instruments and policies is achieved.

FINANCIAL IMPLICATIONS

This matter has no financial impact on Council's adopted budget or forward estimates.

A breakdown of the developer contributions payable are included in the draft conditions of consent.

ATTACHMENTS IN SEPARATE BOOKLET

1. Plan of Proposed Subdivision
2. Drainage Concept Plan

RECOMMENDATION

That Development Application 010.2015.00000731.001 for the three lot Torrens title subdivision at 25 Dennis Street, Thirlmere be granted a deferred commencement consent subject to the following conditions:

PART A – DEFERRED COMMENCEMENT MATTERS

(DC1) 'Deferred Commencement' consent has been granted to the Application in accordance with the provisions of Section 4.16(3) of the

Environmental Planning and Assessment Act 1979 (As Amended). This consent will become valid and may be acted upon subject to the meeting of the following requirements:

- (i) Submission of a Phase 2 Contamination Report as per the recommendations of the Phase 1 Environmental Site Assessment, prepared for 25 Dennis Street Thirlmere, job reference 201431, dated 28 February 2018 prepared by Harvest Scientific Services Pty Ltd.

NOTE:

- 1. Nothing in this Deferred Commencement consent permits the commencement of any works or development as proposed in this application until the receipt of a valid development consent from Council.
- 2. This deferred commencement consent will lapse if the above requirement has not been satisfied within two years of the date of the deferred commencement consent.
- 3. Following compliance with the above conditions of Deferred Commencement Consent, written confirmation of Consent will be forwarded to you from Council.
- 4. Once the consent is valid, the development will also be subject to the following conditions outlined below.

PART B – OPERATIONAL CONSENT CONDITIONS

1 COMPLIANCE

These conditions are imposed to ensure that the development is carried out in accordance with statutory requirements, the conditions of consent and the approved plans to Council's satisfaction

- (1) Development Consent is granted for 3 lots Torrens title subdivision at Lot: 153 DP: 751270, No. 25 Dennis Street THIRLMERE
- (2) Where any work associated with this consent has the potential to disturb neighbours through the generation of noise, dust, odour, vibration or through deliveries to the site the person with control over the works shall advise the occupants of all adjoining and potentially affected properties of the timing and duration of such works. The land owner has the ultimate responsibility for ensuring that anybody undertaking works under this development consent on their behalf is aware of this requirement and completes the task required by this condition.
- (3) Development shall take place in accordance with the submitted plans:

Plan name	Prepared by	Date	Reference no.
'Proposed Allotments' – plan of subdivision	Rein Warry & Co	19 th August 2014	7289 sheet 2 of 3
Drainage Concept Plan	Rein Warry &	19 th August	7289 sheet 3 of 3

(as amended and stamped by Council)	Co	2014	
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- (4) Development shall take place in accordance with the recommendations of the following reports:

- Wastewater Site Assessment (Job reference : 201431), dated 13 January 2015 prepared by Harvest Scientific Services Pty Ltd.
- Phase 1 Environmental Site Assessment (Job reference : 201431), dated 28 February 2018 prepared by Harvest Scientific Services Pty Ltd.
- Aboriginal Cultural Heritage Assessment for Picton Thirlmere Tahmoor Action Group, prepared by Tharawal Local Aboriginal Land Council (undated)
- Bushfire Constraints Report (Assessment No. B121717-1) dated 25.10.2012), prepared by Australian Bushfire Protection Planners Pty Ltd.

2. INTEGRATED DEVELOPMENT

These conditions have been imposed to ensure that the development is carried out in accordance with the requirements of other Approval Authorities:

- (1) The conditions of the Bushfire Safety Authority (ref D15/3142 DA15101998989 DD) dated 13 November 2015 issued by the NSW Rural Fire Service are included as conditions of this consent.
- (2) Certification is to be provided by an appropriately qualified person to the Principal Certifying Authority prior to the issue of any Subdivision Certificate that the conditions of the General Terms of Approval/Bush Fire Safety Authority (ref D15/3142 DA15101998989 DD) dated 13 November 2015 issued by the NSW Rural Fire Service have been complied with.

3. CONSTRUCTION GENERAL

These conditions have been imposed to ensure that all construction work is undertaken to an approved standard and related approvals.

- (1) Construction shall not commence on the site, including the placement of temporary buildings, site sheds, earthworks, site excavation, filling or other site preparation works (with the exception of site survey work), prior to the issue of a Construction Certificate by Council or a nominated Accredited Certifier.
- (2) All construction and building work shall be restricted to between 7:00am and 6:00pm Mondays to Fridays (inclusive), 8:00am and 1:00pm Saturdays and prohibited on Sundays and Public Holidays unless written approval to vary the hours of work is granted by Council.

- (3) Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. These facilities are to be provided prior to the commencement of any works and:
- (a) Must be a standard flushing toilet; and
 - (b) Must be connected:
 - (i) to a public sewer, or
 - (ii) if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council, or if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the Council.

In this condition:

Accredited sewage management facility means a sewage management facility to which Division 4 of Part 2 of the *Local Government (General) Regulation 2005* applies, being a sewage management facility that is installed or constructed to a design or plan the subject of a certificate of accreditation referred to in clause 41 of the Regulation.

Approved by the Council means the subject of an approval in force under Division 4 of Part 2 of the *Local Government (General) Regulation 2005*.

Sewage Management Facility has the same meaning as it has in the *Local Government (General) Regulation 2005*.

- (4) Any damage to the Council footway, road or other land shall be restored in accordance with Council's specifications prior to the issue of any Subdivision Certificate for the development.
- (5) An appropriate fence preventing public access to the site shall be erected for the duration of construction works.
- (6) A garbage receptacle must be provided at the work site before works begin and must be maintained until the works are completed. This receptacle must have a tight fitting lid and be suitable for the reception of food scraps, papers, etc.
- (7) A demolition/construction waste storage area (bins or bays) must be provided. This area shall separate demolition/construction waste into categories such as hard waste (e.g. bricks, concrete, tiles), soft waste (e.g. timber, gyprock, metal, glass) and light waste (e.g. paper, plastic, pods). The light waste storage area must be enclosed so as to prevent the material from escaping the enclosure.

- (8) There shall be no burning of builders' rubble, felled trees or other material on site.
- (9) Dust shall be controlled so that it will not leave the construction site.

4. STREET ADDRESSING

These conditions have been imposed in order to ensure the development complies with the requirements of the New South Wales Address Policy as published by the Geographical Names Board of New South Wales.

- (1) Prior to the issue of a Construction Certificate for the subdivision an application to name all roads within the development (public and private) shall be submitted to Council in accordance with Section 5.3 of the NSW Address Policy.

5. ENGINEERING & CONSTRUCTION SPECIFICATIONS

These conditions have been imposed to ensure that developments within the Shire are of a standard which is both safe and acceptable to Council and members of the public.

- (1) All works are to be designed and carried out in accordance with Wollondilly Shire Council's adopted Design and Construction Specification.
- (2) Engineering Design Plans for the sealed road shoulder widening, footpath crossings and stormwater drainage are to be submitted to and approved by the nominated Accredited Certifier, prior to issue of a Construction Certificate for any works associated with this development.

Drainage calculations are to be carried out in accordance with "Australian Rainfall and Runoff" published by the Institution of Engineers Australia, and are to include a contoured catchment diagram and delineation of flow paths for storms of average recurrence interval of 1:100 years (1% AEP) where appropriate.

- (3) Where Council's Construction Specification require that density tests, beam tests or CBR tests be undertaken, the results shall be forwarded to Council or the nominated Accredited Certifier within 7 days. A NATA registered laboratory shall carry out the tests. When testing for density, the Standard Compaction testing method is to be used.

Failure to submit test results may result in Council refusing to issue completion certificates and hence may result in additional works being required.

- (4) A defects liability period of twelve (12) months will apply from the date of issue of the Certificate of Practical Completion by Council and for Public Roads the twelve (12) months is dated from the date of registration of the road as Public Road. A 10% maintenance bond, or a minimum of \$1,000, whichever is greater, is to be lodged in accordance with Council's Construction Specification for all work that is to become the property of Council.
- (5) A certified "Works as Executed" plan from a Chartered Professional Engineer or Registered Surveyor is to be submitted electronically for all road stormwater lines to the Principal Certifying Authority before the final inspection for the Certificate of Practical Completion. The "Works as Executed" details shall be shown on the approved plans and must certify that the works have been constructed in accordance with the approved drawings and to the levels specified.
- (6) A "Soil and Water Management Plan" (SWMP) that outlines the measures that will be taken to limit and contain sediment laden runoff during construction shall be submitted to Council prior to the issue of the Construction Certificate. The measures shall be in accordance with Council's Construction Specification and the Department of Housing's "Blue Book". The plan is to be approved by Council or the Accredited Certifier with the Engineering Plans.
- (7) A "Traffic Management Plan" that details suitable safety measures that will be implemented whenever work is being undertaken in the public road reserve shall be submitted to Council or a nominated Accredited Certifier. The safety precautions are to be in accordance with the requirements of the "Traffic Control at Work Sites" manual (as published by the RMS). The plan is to be prepared and endorsed by a person with current NSW Roads and Maritime Services (RMS) certification and provided to Council or a nominated Accredited Certifier before the issue of a Construction Certificate for development.

6 DRAINAGE/STORMWATER

These conditions have been imposed to ensure drainage/stormwater is appropriately managed.

- (1) Stormwater runoff from and through the property is to be appropriately managed so as to control nuisance, damage and hazard during storm events.
- (2) Stormwater runoff from all impervious surfaces on the property shall be collected and conveyed to a point suitable for integration with either the natural or constructed stormwater drainage system. A piped drainage system shall be provided to convey runoff from storms up to the 20% AEP. Defined overland flow paths shall be provided to safely convey runoff from storm events up to the 1% AEP.

- (3) Stormwater management measures in accordance with Council's Design Specification shall be provided to ensure adequate control of water quality and water quantity from the site. Stormwater control measures shall ensure that post development flow rates from the site are not more than pre development site discharge. Treatment types shall include vegetated swales along the rear boundary of each lot, infiltration trenches for rain water tank overflows and provision of 20,000 litre roof water tanks for water reuse to each dwelling.
- (4) A Restriction shall be placed on the Title of proposed lots 1532 and 1533 for the 20,000 litre tanks with the installation of a tank for the existing dwelling.

7. PUBLIC ROADS

These conditions have been imposed to ensure all public road works required by the development are provided to an adequate standard.

- (1) In accordance with Section 138 of the Roads Act, a 138 Consent Certificate must be obtained from Council's Infrastructure Planning Section a minimum 7 days prior to commencement of work within the site or public road. A fee is payable for issue of this Consent Certificate.
- (2) The applicant shall provide a 1.0 metres wide asphalt sealed road shoulder with concrete edge strips for the full frontage in Dennis Street. Details shall be included on the engineering plans for approval by the Council or the Nominated Accredited Certifier.
- (3) The person having the benefit of this consent shall undertake all reasonable efforts to protect the public road pavement from damage during the course of construction work. Restoration of any damaged road or footway shall be at the applicant's expense.
- (4) Provision of Vehicular Access to the proposed lots 1532 and 1533 from the road edge of Dennis Street to the property boundary through the construction of concrete dish crossings and bitumen sealed access in accordance with Council's Design & Construction Specifications. The crossings shall suit the swale shape.

Note: Any adjustment to services shall be at the expense of the applicant. Prior to the construction of the crossing, approval shall be obtained from Council's Infrastructure Planning Section.

- (5) Access gates to individual Lots must be set back no less than 5 metres inside the front boundary. A Restriction to this effect shall be placed on the Title of each Lot.
- (6) Street lighting shall be provided at the intersection of Dennis Street and Jarvis Street on the existing power pole as determined with a Design Brief, using LED Lighting from an Endeavour Energy approved design consultant.

8. EROSION AND SEDIMENT CONTROL

These conditions have been imposed to minimise the impact of the Development on the environment and on adjoining properties.

- (1) Erosion and sediment control devices are to be installed prior to any construction activity on the site. These devices are to be maintained for the full period of construction and beyond this period where necessary.
- (2) Vehicle access is to be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site has been affected by wet weather.
- (3) Topsoil stripped from the construction site is to be stockpiled and protected from erosion until re-used during landscaping.
- (4) All disturbed areas are to be stabilised by turfing, mulching, paving or otherwise suitably stabilised within 30 days of completion.
- (5) Kikuyu will not be permitted to be used for turfing of any disturbed area.

9. EARTH FILL

These conditions have been imposed to ensure the safe disposal of fill.

- (1) All filling on the site, including footpath areas, shall be compacted to not less than 95% Standard Compaction.
- (2) A Cut/Fill plan shall be prepared and supplied with the Engineering design plans, showing the exact extent and depth of cut and filling on each lot prior to the issue of the Construction Certificate.
- (3) Only fill characterised as VENM or ENM under the guidelines of the NSW Environmental Protection Authority may be used in this development. Copies of validation reports for all fill used shall be retained and presented to Council on request.

10. INSPECTIONS

These conditions have been imposed to ensure that construction works are undertaken to an approved standard.

- (1) The engineering works shall be inspected by the Principal Certifying Authority at the following stages of construction to ensure they comply with Council's Construction Specification and associated approvals:
 - Prior to commencement of any construction work on the site, after erosion and sediment control and traffic control measures are implemented.
 - When drainage lines have been laid, jointed and bedded, prior to backfilling.

- Prior to pouring of the drainage pits, when the formwork and steel is in place.
- Prior to pouring of the road drainage culverts, when the formwork and steel is in place.
- When roadworks have been excavated to subgrade, prior to placing of pavement.
- When subsoil drainage lines have been excavated and drainage pipe laid prior to placing filter material.
- After shaping and prior to topsoil/turf placement of overland flow paths.
- When part of the pavement depth (as indicated by Principal Certifying Authority) has been placed.
- During the roller test, which is to be carried out using a three point roller or approved equivalent?
- At sealing
- At completion of the preparation of all concrete pipe culvert crossing.
- Prior to pouring concrete to driveway, when formwork and steel is in place or prior to sealing pavement in place.
- At practical completion of works.
- At final completion of works

Note: It is the responsibility of the applicant or contractor to notify the Principal Certifying Authority when inspections are required. Failure to notify may lead to additional work being required prior to issue of inspection certificates. A minimum of 24 hours' notice is required for inspections where Council is the Principal Certifying Authority.

11. SERVICES

These conditions have been imposed to ensure that an adequate level of services and infrastructure are provided for this development.

- (1) Electricity supply is to be made available to all proposed lots in accordance with the requirements of Endeavour Energy. In this regard, written confirmation from Endeavour Energy that suitable arrangements have been made shall be submitted to the Principal Certifying Authority prior to the release of the Subdivision Certificate.
- (2) Provision is to be made for the supply of telephone services to all proposed lots in accordance with the requirements of Telstra or NBN Co. In this regard, written confirmation from Telstra Australia or NBN Co. that arrangements have been made shall be submitted to the Principal Certifying Authority prior to the release of the Subdivision Certificate.
- (3) A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au then refer to "Water Servicing Co-ordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to the issue of any Subdivision Certificate for the development.

- (4) All power and services provided to the development within the site shall be underground.
- (5) Wastewater generated by the development shall be disposed of via onsite disposal using an Aerated Wastewater Treatment System. This system will be subject to an Approval to Install and an Approval to Operate under Section 68 of the Local Government Act, 1993. A pump out system for any of the proposed lots is prohibited.

12. LANDSCAPING

These conditions have been imposed to reduce the impact of any development activity on the landscape/scenic quality through vegetation works and maintenance.

- (1) Street trees shall be installed at a rate of one tree per lot in front of each lot prior to the release of the subdivision certificate. Species used shall be in accordance with the species listed in Volume 1 of the Wollondilly Development Control Plan 2016.

NOTE: By resolution of Council on 19 July 2010 all plants used in landscaping must be native species endemic to the area and the planting of conifers is not permitted.

13. FENCING

These conditions are imposed to ensure that any fencing has a minimal effect on the landscape/streetscape/environment of the locality:

- (1) No fencing may be constructed on the subject lots nor along their property boundaries unless such fencing is visually open rural fencing with a height no greater than 1.2 metres.

14. HERITAGE

These conditions have been imposed to ensure that development is carried out in a manner sensitive to the heritage values of the locality.

- (1) If Aboriginal objects are located during works the archaeologist, Aboriginal stakeholders and the Office of Environment and Heritage should be notified and further archaeological work, Aboriginal consultation, and/or an Aboriginal Heritage Impact Permit (Section 90) may be necessary.

- (2) If human skeletal remains are encountered during excavation, work must cease immediately and the NSW Police, and the Office of Environment and Heritage (OEH) must be notified. If the skeletal remains are found to be Aboriginal a process of consultation and investigation in accordance with the OEH guidelines must be implemented.

15. VEGETATION MANAGEMENT

These conditions have been imposed to protect significant vegetation that has been identified on the subject land.

- (1) No works are to be undertaken within 5m radius of the drip zone of the tree(s) or vegetation nominated for retention.

16. SUBDIVISION PLANS

These conditions have been imposed:

- (a) **To ensure the submission of Subdivision Plans to the specifications of Land and Property Information for registration.**
 - (b) **To submit the required documentation for the creation of property restrictions and easements as specified.**
- (1) Submission to Council of the Linen Plan of Subdivision together with five copies suitable for certification by the General Manager and lodgement at Land and Property Information. A fee for the release of the Subdivision Certificate applies.
 - (2) A Section 88B Instrument shall be prepared which provides for the following Restriction on the subject land:
 - The entire property shall be managed, in perpetuity, as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bushfire Protection 2006' and the NSW Rural Fire Service's documents 'Standards for asset protection zones'.

The restriction shall also contain a provision that it may not be released, varied or modified without the consent of Council.

17. SECTION 94 CONTRIBUTIONS

These conditions have been imposed to ensure the adequate provision of public facilities required as a result of the development.

- (1) Payment of a Contribution for 2 additional lots in accordance with the Wollondilly Section 94 Contribution Plan 2011, the cost of which will be determined and payable at the time of the release of the Subdivision Certificate.

The current amount payable is:

(i)	Open Space, Sport & Recreation (Shire)	\$544
(ii)	Open Space, Sport & Recreation (Precinct)	\$22,252
(iii)	Library & Community Facilities (Shire)	\$2,570
(iv)	Library & Community Facilities (Precinct)	\$3,312
(v)	Transport & Traffic (Roads & Intersections)	\$9,222
(vi)	Transport & Traffic (Cycleways)	\$132
(vii)	Bushfire Protection	\$64
(viii)	Companion Animal	\$0
(ix)	Stormwater Drainage	\$0
(x)	Plan Administration	\$1,904
TOTAL		\$40,000

These figures are reviewed quarterly in accordance with the provisions of the Contributions Plan and an updated figure must be obtained from Council at the time of payment.

- (2) Prior to the release of each Subdivision Certificate, the persons having the benefit of this consent shall provide Council with documentary evidence that works and the like subject of the Voluntary Planning Agreement entered into between the Minister of Planning and the developer, in accordance with Section 93G of the Environmental Planning and Assessment Act 1979 have been undertaken in accordance with the lot creation anniversaries.

18. PRESCRIBED CONDITIONS UNDER THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979.

These conditions are imposed as they are mandatory under the Act.

(1) ERECTION OF SIGNS

- (a) For the purposes of section 80A (11) of the Act, the requirements of subclauses (b) and (c) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
- (b) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (i) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

- (c) Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
- (e) This clause does not apply in relation to Crown building work that is certified, in accordance with section 109R of the Act, to comply with the technical provisions of the State's building laws.
- (f) This clause applies to a development consent granted before 1 July 2004 only if the building work, subdivision work or demolition work involved had not been commenced by that date.

Note. Principal Certifying Authorities and principal contractors must also ensure that signs required by this clause are erected and maintained (see clause 227A of the *Environmental Planning and Assessment Regulation 2000* which currently imposes a maximum penalty of \$1,100).

19. ADVICES

- (1) During the course of construction, care must be taken to prevent damage to any public utility or other service and the applicant will be held responsible for any damage caused by him or his agents, either directly or indirectly. Any mains, services, poles, surface fittings etc., which require alterations shall be altered at the applicants expense and to the satisfaction of Council and the authority concerned.
- (2) At all times work is being undertaken within the public road, adequate precautions shall be taken to warn, instruct and guide road users safely around the work site with a minimum of disruption.
- (3) The developer and any contractor or sub-contractor used to carry out any work authorised by or out of this approval on Council owned or controlled land, is to carry the following insurance, copies of which are to be produced to Council upon request:
 - Motor Vehicle Insurance (comprehensive or property damage) for all self-propelled plant, as well as valid registration or RMS permit (Including CTP insurance). Primary producer's registration is not registration for use on Public Road construction work.
 - Workers Compensation Insurance.
 - Twenty Million Dollar Public Liability Insurance.
- (4) The following service providers should be contacted before commencement of construction to establish their requirements:

- Dial before you dig (various services) 1100
- Telstra (telephone) 1 800 810 443
- Endeavour Energy (electricity) 131 081
- AGL (gas) 131 245
- Sydney Water (water & sewer) 132 092

- (5) The applicant is advised that Council reserves the right to restrict the days and hours of operation if considered necessary to prevent the emission of “offensive noise” as defined in the Protection of the Environment Operations Act, 1997.

Offensive noise means noise:

- (a) that, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances:
- (i) is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted; or
 - (ii) interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted; or
- (b) that is of a level, nature, character or quality prescribed by the regulations or that is made at a time, or in other circumstances, prescribed by the regulations.

5. **Delegation of Determinations**
266876

TRIM 10100

EXECUTIVE SUMMARY

- The introduction of the Local Planning Panels was accompanied by a Minister's Direction setting out the thresholds for referral of applications to the Panel for determination.
- Section 2.20(8) of the *Environmental Planning & Assessment Act 1979* permits the Local Planning Panel to delegate matters back to Council staff for determination.
- It is recommended that the Local Planning Panel endorse the draft Instrument of Delegation.

BACKGROUND

From 1 March 2018, upon establishment of Local Planning Panels (Panel), all development applications identified in Schedule 1 of the Minister's Direction must be referred to the Panel for determination.

There has been much conjecture about the appropriateness of the referral thresholds. There has also been some uncertainty around the manner in which Modification Applications are to be determined.

On 14 May 2018, Council staff spoke via a teleconference with key staff from the Department of Planning (Department). When developing the referral thresholds it was intended that no more Development Applications would be referred to the Panel than would have previously been dealt with by the elected Council. The Department staff suggested that if this was not proving to be the case, use of Section 2.20(8) should be explored with the Panel.

REPORT

Delegation of determination

Part 2 of the *Environmental Planning & Assessment Act 1979* (Act) deals with the administration of Panel matters. Section 2.20(8) suggests that a Panel:

"may delegate any function of the Panel under this or any other Act (other than this paper of delegations) to the General Manager or other staff of the Council."

The legal advice received by Council has confirmed that nothing in this section prohibits a blanket delegation being made.

The Minister's Direction also refers to arrangements for the determination of applications by either the Panel or Council staff.

The verbal advice received from Department staff is that such arrangements under Section 2.20(8) of the Act should form part of an Instrument of Delegation and be recorded in the Minutes of a Panel Meeting.

Applications to Modify Development Consent

During our recent teleconference with the Department staff it was suggested that Modified Applications were not caught by the Directions and should be determined by Council staff.

Council sought legal advice on this matter. The legal opinion disagrees with the above position. The Act specifically states that Modification Applications are one of the functions as a consent authority to be undertaken by a Panel (see Section 4.8(4)(a) of the Act). The fact that the Minister's Direction expressly provides that Council may make arrangements for the determination of modification of development consents by either the Panel or Council staff is further evidence that Modification Applications are caught by the new planning framework.

The draft Instrument of Delegation, to be provided under separate seal, proposes that Council staff be granted delegation to determinate modification applications under the following sections of the Act:

1. Section 4.55(1) – modifications involving minor error, misdescription or miscalculation;
2. Section 4.55(1A) – modifications involving minimal environmental impact.
3. Section 4.55(2) – applications for other modifications subject to the following limitations:
 - i. The modification does not result in an increase in the non-compliance of the proposal with a development standard in an environmental planning instrument; or
 - ii. The modification does not result in a proposal failing to comply with a development standard in an environment planning instrument when the current consent complies; or
 - iii. The modification does not result in an increase in the non-compliance of the proposal with a Development Control Plan; or
 - iv. Any written objections received in response to the public notification of the modification application only reaffirms previous objections that were considered and dealt with under the original development application and/or does not detail the concern with the proposed change. In all cases where a submission relevant to the modification itself is made, the modification shall be referred to the panel for consideration.
4. Section 4.56 – Application for modification for the Land & Environment Court Consent that would satisfy the criteria for a modification under points 1, 2 and 3 above, had the application been determined by the Council or Local Planning Panel instead of by the Land & Environment Court.

Whether a modification has minimal environmental impact depends on the particular circumstances of the case. Any merit assessment undertaken by Council will consider the principles established in relevant Court judgements (i.e. *Bechara v Plan Urban Services P/L 2006* and *King v Bathurst Regional Council 2006*).

Satisfactory Arrangements clause

Most of the recently rezoned residential land throughout the Shire is affected by the Urban Release Area Map under Council's Local Environmental Plan 2011 (LEP). The Satisfactory Arrangements clause in Council's LEP (Clause 6.1) requires the developer to pay a Special Infrastructure Contribution. The mechanism for collecting this contribution is via a Planning Agreement.

The Planning Agreement is between the developer and the State Government. Council is not party to these Agreements. Hence there is no risk of Council engaging in corrupt behaviour. It is proposed that applications subject to such Planning Agreements be delegated to Council staff for determination.

Voluntary Planning Agreements

Furthermore, it is recommended that applications subject to certain Voluntary Planning Agreements (VPA) also be delegated to Council staff for determination.

Under Council's Land Dedication Policy (Policy), a developer may divest ownership of an asset (i.e. stormwater detention system) or environmental land to Council. Acceptance of the asset / land is subject to payment of a maintenance contribution calculated in accordance with the formula in the Policy. The mechanism for collecting the maintenance contribution is via a VPA between Council and the developer.

It is suggested that Council staff be permitted to determine such applications in circumstances where:

1. The VPA does not propose works in lieu of Section 94/94A contribution payments and
2. The quantum of the maintenance contribution is consistent with Council's adopted Land Dedication Policy

ATTACHMENTS IN A SEPARATE BOOKLET:

1. Local Planning Panels Direction – Development Applications
2. Draft Instrument of Delegation (to be provided under separate cover)

RECOMMENDATION

That the Instrument of Delegation be endorsed by the Wollondilly Local Planning Panel to permit determination by Council staff of the following applications:

1. Section 4.55(1) Applications for modifications involving minor error, misdescription or miscalculation;
2. Section 4.55(1A) Applications for modifications involving minimal environmental impact.
3. Section 4.55(2) – applications for other modifications subject to the following limitations:
 - i. The modification does not result in an increase in the non-compliance of the proposal with a development standard in an environmental planning instrument; or
 - ii. The modification does not result in a proposal failing to comply with a development standard in an environment planning instrument when the current consent complies; or
 - iii. The modification does not result in an increase in the non-compliance of the proposal with a Development Control Plan; or
 - iv. Any written objections received in response to the public notification of the modification application only reaffirms previous objections that were considered and dealt with under the original development application and/or does not detail the concern with the proposed change. In all cases where a submission relevant to the modification itself is made, the modification shall be referred to the panel for consideration.
4. Section 4.56 – Application for modification for the Land & Environment Court Consent that would satisfy the criteria for a modification under points 1, 2 and 3 above, had the application been determined by the Council or Local Planning Panel instead of by the Land & Environment Court.
5. Applications involving a Planning Agreement between the State Government and the developer to satisfy Clause 6.1 of Wollondilly Local Environmental Plan 2011.
6. Applications involving a Voluntary Planning Agreement between Council and the developer in circumstances where:
 - The VPA does not propose works in lieu of Section 94/94A contribution payments and
 - The quantum of the maintenance contribution is consistent with Council's adopted Land Dedication Policy.