

Review of Gateway determination – Briefing Report

Date of Review Application:	25 January 2017
Department Ref. No:	PP_2016_WOLLY_005_00
LGA:	Wollondilly
LEP to be Amended	Wollondilly Local Environmental Plan 2011
Address:	80 Silverdale Road, The Oaks
Reason for review:	<input type="checkbox"/> A determination has been made that the planning proposal should not proceed. <input type="checkbox"/> A determination has been made that the planning proposal should be resubmitted to the Gateway. <input checked="" type="checkbox"/> A determination has been made that has imposed requirements (other than consultation requirements) or makes variations to the proposal that the proponent thinks should be reconsidered.

INTRODUCTION

- The Oaks North planning proposal (Tab C) was lodged with the Department seeking to amend planning controls at 80 Silverdale Road and 1–22 Browns Road.
- On 8 December 2016, a Gateway determination (Tab D) was given which included the following amendments to Wollondilly Local Environmental Plan 2011 (LEP):
 - part of 80 Silverdale Road:
 - amend land zone from RU2 Rural Landscape to R5 Large Lot Residential;
 - amend the height of buildings to introduce a maximum height of 9m; and
 - amend the lot size from 40ha to a minimum lot size to be determined following specialist studies.
 - 1–22 Browns Road:
 - amend the minimum lot sizes from 700m² to 1500m².
- On 25 January 2017, an application was lodged by COPRAD (Tab E), on behalf of the land owner, to review the Gateway determination by seeking the following alternative planning controls for part of the land included in the determination:
 - part of 80 Silverdale Road only (the site):
 - amend land zone from RU2 Rural Landscape to R2 Low Density Residential;
 - amend the lot size from 40ha to a minimum lot size of 1500m²; but
 - retain the proposed maximum building height of 9m.
 - It is not proposed to alter the Gateway determination for 1–22 Browns Road.
- COPRAD's concept layout plan (Tab F) indicates a 12-lot subdivision ranging in size from approximately 1500m² to 2400m².

SUMMARY OF THE PROPOSAL

Background

- In February 2016, Willow Tree Planning (hired by COPRAD) submitted a planning proposal (Tab G) to Council requesting the following amendment to the planning controls applying to the site, which would align planning controls at the site with adjacent land at 1–22 Browns Road:
 - amend the land zone from RU2 Rural Landscape to R2 Low Density Residential;
 - amend the height of buildings to introduce a maximum height of 9m; and
 - amend the lot size from 40ha to a minimum lot size of 700m².

- Council officers prepared a report for Council's Ordinary meeting recommending the following amended planning controls for the site (Tab H):
 - amend the land zone from RU2 Rural Landscape to R2 Low Density Residential;
 - amend the height of buildings to introduce a maximum height of 9m; and
 - that an appropriate lot size cannot be determined at present until further information is available to inform a position on the site's capability for development. This is due to the nature of site constraints such as the transmission line, proximity to ridge line, capacity of essential services (particularly reticulated sewerage), water quality and bushfire-prone land.
- On 18 July 2016, Councillors resolved to support the preparation of a planning proposal for the site in a further amended form:
 - amend the land zone from RU2 Rural Landscape to R5 Large Lot Residential;
 - amend the height of buildings to introduce a maximum height of 9m; and
 - that lot sizes are to be determined after the preparation of the Gateway determination and specialist studies have been reported back to Council for endorsement. Also, that the lot sizes shall not be smaller than the average lot size for the existing allotments in Browns Road.
- In response to the publication of the agenda for the Ordinary meeting on 17 October 2016 (Tab I), COPRAD made a submission to Council, which was provided to Councillors, requesting reconsideration of rezoning the land to R5 with a minimum lot size of 1500m².
- On 17 October 2016, Councillors resolved to support an addition to the planning proposal, to increase the minimum lot size of land at 1–22 Browns Road from 700m² to 1500m² (Tab I).
- The Department Planning Team Report (Tab J) assessed the planning proposal and on 8 December 2016, a Gateway determination was issued as discussed above.

The Site – 80 Silverdale Road

- Current planning controls at the site are RU2 Rural Landscape, with a minimum lot size of 40ha.
- The site is approximately 1.9ha of land contained within Lot 3 DP 1201486 in the Wollondilly Shire Local Government Area:
 - located at the northern tip of The Oaks, approximately 1km from the village centre, and adjacent to 1–22 Browns Road (Figure 1, overleaf); and
 - gentle undulating land, cleared of vegetation with an open stormwater easement running from east to west through the middle (Figure 2, overleaf).
- The site is bounded by:
 - low density residential housing to the south (Browns Road), with various lot sizes ranging from 1491m² to 2799m²;
 - a steep vegetated escarpment to the east;
 - a high voltage transmission easement that is approximately 30.48m wide to the north; and
 - Silverdale Road to the west.
- Land surrounding the site to the west, east and north, is zoned RU2 and comprises pasture, farm dams, farm dwellings, outbuildings and scattered vegetation.
- High points on the site have distant views of the Sydney skyline.
- Due to the nature of the site, the Gateway determination supported a number of specialist studies to assist Council in evaluating an appropriate capacity for the site and establishing minimum lot sizes. These include:
 - Geotechnical and Salinity Assessment to understand risk of erosion of the escarpment and slope stability;

- Bush Fire Threat Assessment to understand the risk to housing and evacuation;
- Traffic and Safety Audit to understand current or future issues regarding capacity and access via Browns Road; and
- updated Stage 2 Contamination Assessment and NorBe Assessment on water quality to assist in understanding the capacity and permissibility of housing on the site.
- Upon review of this information, Council will amend the planning proposal to specify a minimum lot size, which will be referred to the Department for endorsement prior to community consultation.

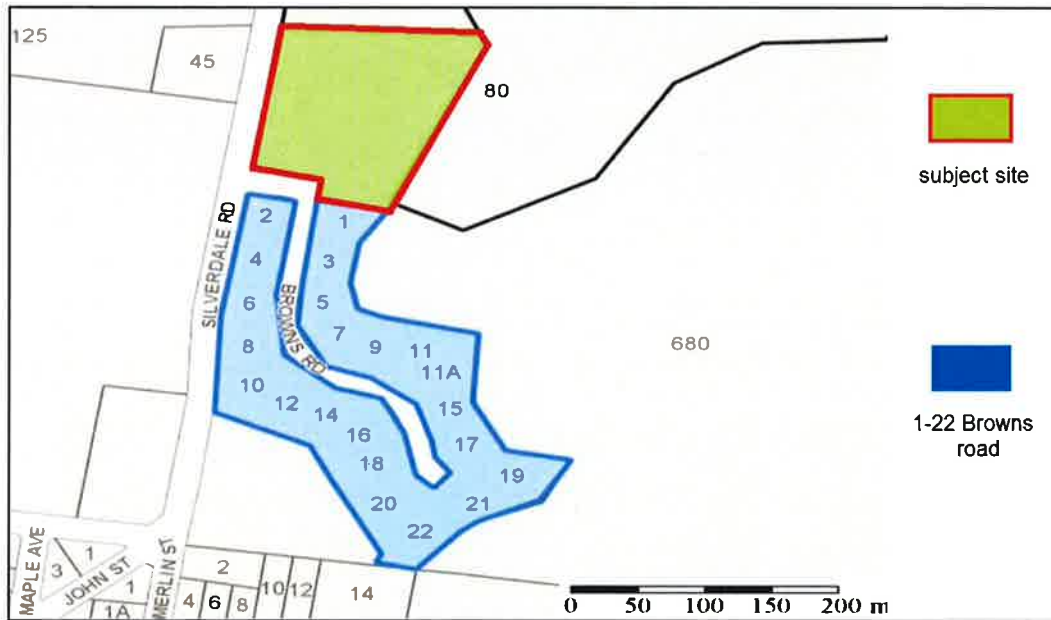


Figure 1

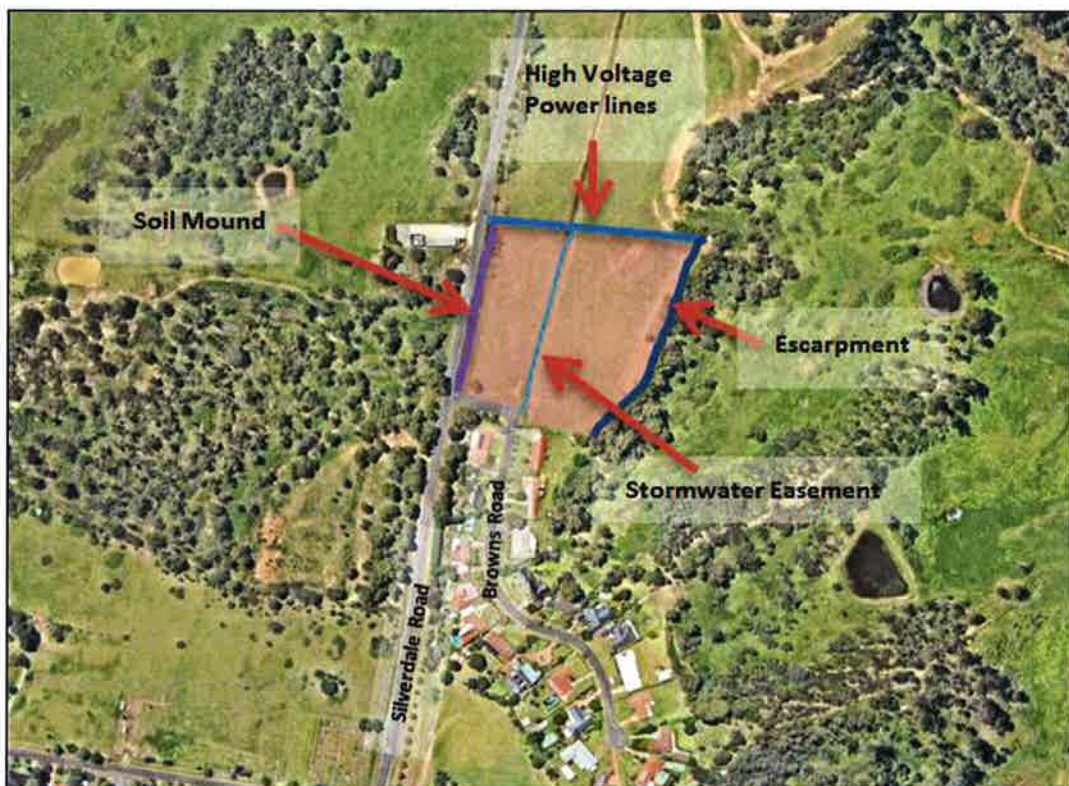


Figure 2

PROPONENT'S JUSTIFICATION

- The planning proposal lodged with Council by Willow Tree only applied to 80 Silverdale Road and sought to rezone the site to R2 Low Density Residential with a minimum lot size of 700m².
- At the time Willow Tree lodged this proposal, those controls applied to the neighbouring land at 1–22 Browns Road.
- 1–22 Browns Road is already developed with detached residential dwellings, with an approximate lot size of 1800m².
- Prior to formally lodging the proposal with the Department for a Gateway determination, Council amended the planning proposal to:
 - include 1–22 Browns Road to increase the minimum lot size to 1500m²; and
 - seek R5 Large Lot Residential for 80 Silverdale Road, (rather than R2 Low Density Residential), and determine the minimum lot size following completion of various technical studies. The proposal also noted a Council resolution of 18 July 2016 which required the lot size to be not less than the average lot size for the existing allotments in Browns Road (i.e. approximately 1800m²).
- COPRAD argues (Tab E) that:
 - Council's changes to the planning proposal were without sound reasoning or justification;
 - the Gateway determination is unlikely to achieve an appropriate lot size for the site;
 - the alternative planning controls requested would be in keeping with existing development at 1–22 Browns Road and are not likely to be in conflict with surrounding land uses; and
 - the proposed amendment will deliver a relatively small yield of 12 lots with a minimum lot size of 1500m² as seen in the concept layout plan.

VIEWS OF COUNCIL

- On 23 February 2017, the Department received Council's comments (Tab K) which highlighted that the planning proposal was prepared to allow for a modest increase in housing that was in keeping with the existing residential development along Browns Road.

Objection to COPRAD's Request for Review

- Council referred to the Department's *A Guide to Preparing and Local Environmental Plan* which states that "*a proponent or a Council may request*" a review of the Gateway determination, and highlighted that Willow Tree Planning is the proponent for this planning proposal.
- The Department has been informed that COPRAD engaged Willow Tree Planning, and COPRAD has decided not to further engage their services for this review.
- The Department is satisfied that COPRAD is the proponent for the purposes of this review.

Land Zoning

- Council considers the R5 Large Lot Residential zoning is appropriate as Council's intention for the site is to permit large lots.

Lot Size

- Council has noted a number of site constraints which affect the capability of the land.
- These include the proximity to the transmission line, proximity to the ridge line, bushfire-prone land, water catchment quality and if the site could be serviced by Sydney Water (particularly reticulated sewerage).

- Council indicated that it never had the intention to have smaller than the average size lots on 1–22 Browns Road, and it was anticipated that understanding constraints through specialist studies may result in larger lot sizes.

Water NSW

- 18 January 2017, a letter from Water NSW to Council (Tab L) confirmed that the majority of the site drains away from the Sydney drinking water catchment, however a portion to the west of the site and part of lots 1–3 Browns Road fall within the Sydney Water Catchment area.
- Strategic Land and Water Capability Assessment mapping identifies the risk to water quality from residential sewered lots as being moderate and unsewered lots as high.
- If the site is not serviced by sewerage infrastructure, a minimum residential lot size of 2000m² is recommended, as it is generally considered the minimum acceptable size for the provision of on-site wastewater treatment and disposal.
- Water NSW supports an R5 zone and future developments should incorporate water sensitive urban design measures in accordance with Water NSW practice guide for rural residential subdivisions.
- Further studies will be needed to demonstrate whether future development will have a neutral or beneficial effect on water quality.

Dual Occupancy Concerns

- Council highlighted the following concerns:
 - the Wollondilly Development Control Plan 2016 seeks to prevent dual occupancy subdivision on lots over 1400m², but dual occupancy is permissible in the R2 zone under the LEP; and
 - dual occupancies would change the character of the location and result in a development that is incompatible with the adjoining residential properties and the surrounding landscape.

DEPARTMENT COMMENT

- The intended outcomes of the planning proposal are to allow for a modest increase in housing, in keeping with the existing housing in Browns Road which are detached residential dwellings on lot sizes ranging from 1492m² to 2799m²
- The Gateway determination reflects the need for further specialist studies to best understand the constraints and capacity of the site, prior to confirming a minimum lot size.

Sydney Water

- On 28 February 2017 (2 months after the Gateway determination), a letter from Sydney Water to Council (Tab M) confirmed there is a drinking water connection available and sufficient capacity for sewerage for the proposed development as seen in the concept layout plan (i.e. 12 lots, minimum lot size of 1500m²).

Zoning

- If the site were to be rezoned R2 as requested by COPRAD, this would permit dual occupancies and result in denser forms of housing at further distances from The Oaks village centre than the existing detached dwellings in Browns Road.
- Therefore, the R5 zone is considered most suitable as it will not permit dual occupancy development and provide an appropriate graduation of zones.

Lot Size

- The Department's comparison of the 12 proposed lot sizes in the concept layout plan and the existing lots at 1–22 Browns Road is seen in Table 1 below.

	Concept Layout Plan (proposed lot sizes)	1–22 Browns Road (existing lot sizes)
Smallest lot size	1525m ²	1492m ²
Largest lot size	2389m ²	2799m ²
Average lot size	1839m ²	1880m ²

Table 1 Lot size comparison

- In light of Table 1 above, it is the Department's view that COPRAD's proposed lot sizes are generally in keeping with existing development at 1–22 Browns Road, and capable of delivering the intended outcomes of the planning proposal.
- As mentioned above, Sydney Water has confirmed current capacity to service the 12 lots sought in the concept layout plan.
- Therefore, it is considered a minimum lot size 1500m² could be applied to the site subject to results of specialist studies listed in condition 1 of the Gateway determination.

Proponent Comment

- On 6 April 2017, the Department consulted COPARD on whether they would accept an R5 zone with a minimum lot size of 1500m². COPRAD's reply noted:

"We believe that we have adequately justified the R2 zoning with a minimum lot size 1,500m², consistent with the Browns Road community and significantly less in density than what was recommended by Council's Strategic Planners to the Ordinary Meeting of Council. However, in the interests of progress and mindful of the delays, we would be willing to support R5 with a 1,500m² minimum lot size if the R2 zoning is deemed not appropriate".

Conclusion

- Advice is sought from the Commission whether the requirements of the Gateway determination should be amended.

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