



Our Reference: TRIM 9004

Adrian Hohenzollern  
Team Leader, Sydney Region West  
NSW Department of Planning & Environment  
GPO Box 39  
SYDNEY NSW 2001

**Attention: Mr Stuart McIntosh**

23 February 2017



Dear Mr Hohenzollern,

**REVIEW OF GATEWAY DETERMINATION FOR PLANNING PROPOSAL - THE OAKS NORTH  
PP\_2016\_WOLLY\_005\_00**

Thank you for your letter dated 2 February 2017 inviting Council to provide comment on the Review of Gateway determination for The Oaks North Planning Proposal (PP\_2016\_WOLLY\_005\_00) submitted by COPRAD on behalf of the landowner on 25 January 2017.

In summary the Review of Gateway Determination primarily relates to the objective or intended outcome of the planning proposal and questions the land zoning and minimum lot size for part of 80 Silverdale Road, The Oaks.

**Background**

The draft Planning Proposal for The Oaks North was submitted to Council by Willow Tree Planning on the 26 February 2016.

Following a preliminary assessment of the draft planning proposal, which included consultation with the community and internal staff, Council staff formed the opinion that although there was some community concern with the proposal and the site was constrained the proposal had strategic planning merit in an amended form.

Progressing the draft planning proposal in an amended form was part of the report recommendations to the Ordinary Meeting of Council held 18 July 2016.

The intent of the amended proposal was to allow a modest increase in housing on the northern boundary of The Oaks residential area that was in keeping with the existing residential development along Browns Road, was sympathetic to the rural outlook to the north and west, and retained the communities access to the city view over the escarpment to the east.

### **Objective or Intended Outcome of Planning Proposal (R2 Land Zoning)**

In response to the section of the COPRAD's Gateway Review application letter that states:

*"The proposed R5 Large Lot Residential zoning was proposed against the recommendations of the Council's Strategic Planning team and with no justification"*

Generally a R5 Large Lot Residential zoning would be considered appropriate for constrained land where a larger lot size was anticipated. However, a portion of the site falls within the Sydney Drinking Water Catchment and so the officer's report to Council recommended an R2 Low Density Residential Zone primarily to enable the site to be connected to Sydney Water's wastewater treatment system to ensure that there would be minimal impact on the drinking water catchment. Our understanding is that Sydney Water will not service lots in an R5 Large Lot Residential zone over a certain size.

Advice provided by Water NSW to Council on 18 January 2017 (see attachment) indicates that unsewered lots at this location are considered to be of high risk to water quality.

There was never an intention for this site to be developed for smaller lots and so the change to the R5 zone is not out of keeping with the intent of the recommendation. However the issue of whether or not Sydney Water can service the lots in terms of wastewater treatment is critical if an R2 Low Density Residential zone is being considered and this still needs to be investigated. Therefore it is recommended that Sydney Water be consulted as part of the Review of Gateway Determination.

Council wrote to Sydney Water in December 2016 as part of the post Gateway Determination public agency consultation to seek their comments and any requirements for the preparation of specialist studies for the site. To date a response has not been received.

### **Minimum Lot Size**

COPRAD has also requested a minimum lot size of 1,500sq.m be applied to the planning proposal. In this regard it is noted that the Gateway Determination does not specify a minimum lot size for the planning proposal only that the minimum lot size will be amended. Is this element of COPRAD's request able to be resolved by way of this Review?

In summary, Council has so far resolved the following in relation to minimum lot size:

- That the minimum lot size for existing properties on Browns Road be amended to be 1500sqm. This is an increase from the current minimum lot size of 700sq.m.
- That the lot size for 80 Silverdale Road is determined after the preparation of the Gateway Determination and specialist studies have been completed. This then needs to be reported back to Council for endorsement.
- That notwithstanding the above, the lot size for 80 Silverdale Road shall not be less than the average lot size for the existing allotments in Browns Road, The Oaks. (1883sq.m).

The preliminary assessment of the draft planning proposal identified a number of constraints that could affect the capability of the land for development. These were included within the report to Council on 18 July 2016 and included development in proximity to the transmission line, proximity to ridge line, capacity of essential services (particularly reticulated sewerage), water quality and bushfire prone land.

To gain a greater understanding of how these constraints would affect the development of the site Council resolved that the identification of an appropriate minimum lot size be deferred until the outcome of the specialist studies is known. This would include the preparation of a wastewater study if Sydney Water cannot service the land.

If it is determined that Sydney Water cannot service the land than a lot size of at least 4000sq.m is generally considered the minimum acceptable for the provision of on-site wastewater treatment and disposal. However, the necessary area could be larger given the sites location within the Sydney Drinking Water Catchment and the existing soil characteristics. Again, whether the land can be serviced by Sydney Water is critical to a decision on whether the land could be zoned R2 Low Density Residential and Sydney Water should be consulted as part of the Review.

It was never the intention that a minimum lot size would be less than the existing lot sizes of the Browns Road residential area and it was anticipated that this lot size may result in a larger lot size due to the constraints at the site.

This is supported by Councils resolution from 18 July 2016 which states that:

*"The lot size shall not be less than the average lot size for the existing allotments in Browns Road, The Oaks."*

This intent was further clarified in the additional report to the Ordinary Meeting of Council held 17 October 2016 which sought to include land located along Browns Road (1-22 Browns Road) into the proposal so that the minimum lot size in the *Wollondilly LEP 2011* more accurately reflected the character and the intent to retain this on the ground.

This report highlights the communities desire to retain the character of housing on the northern fringe of The Oaks village and to ensure that any future development matched what is already there. Council supported the recommendation as proposed by the report. A copy of the minutes and report are attached for your information.

It is noted that COPRAD made a submission to Council in response to the publication of the report included within the Agenda for the Ordinary Meeting of Council in October 2016. The submission was provided to the Councillors for their consideration prior to making a decision. COPRAD's submission requested Council reconsider rezoning the land to R5 Large Lot Residential and also that the minimum lot size should not be less than 1,500sqm. Council did not change their position on this site in response to the submission. A copy of the submission is provided for your information.

#### **Response to issues highlighted in documentation**

COPRAD's letter accompanying the Gateway Review states that:

*"Recently it has become evident that Council is considering a minimum lot size of 4,000m<sup>2</sup> which would limit the Site to a maximum of four lots, significantly less than the expectations of the Owner and of DoP as detailed in the Planning Team Report which states "It is expected this rezoning will create approximately 13 lots".*

There has been no identification of a minimum lot size for the site except that it must not be less than 1883sqm, and additionally, the expectation of the owner is not a planning consideration in terms of the capability of the land to accommodate residential development.

This letter also claims that:

*"The Owner and representatives attended the Ordinary Meeting of Council in which the Draft Planning Proposal was discussed and dispute any reference to R5 Large*

*Lot Residential or a minimum lot size concept incorporating the adjacent Browns Road allotments, as is reflected in the Minutes."*

Council meetings are minuted in live time and all resolutions are minuted as they are read out on the floor. In addition to this, the Council resolutions are projected onto two screens in the chambers.

#### **Inaccuracies in the Gateway Review documentation submitted by COPRAD**

A table is provided on page 4 of the Gateway Review letter, a copy of this table is provided in Figure 1 below.

| Timeframe       | Details   | Planning controls   |
|-----------------|---|---|
| 2011            | The Site is identified as a 'Potential residential growth area' in Council's Growth Management Strategy.  | N/A   |
| February 2016   | Willowtree Planning Proposal lodges a Planning Proposal.  | Area: 7 hectares<br>PZ: R2 Low Density Residential<br>LS: 700m <sup>2</sup>               |
| 18 July 2016    | Draft Planning Proposal prepared by Council's Strategic Planning team considered at Meeting. <i>"Cr Hannan declared a Non-Pecuniary (Less than Significant) Conflict of Interest"</i> and proposed an alternate motion. | Area: South of easement only<br>PZ: R2 Low Density Residential<br>LS: 700m <sup>2</sup>   |
| July 2016       | Minutes for the Meeting are published introducing R5 Large Lot zoning and a concept for calculation of minimum lot size.  | Area: South of easement only<br>PZ: R5 Large Lot Residential<br>LS: 1,883m <sup>2</sup> * |
| August 2016     | Council adds the Browns Road allotments to a Draft Planning Proposal with an increased minimum lot size of 1,500m <sup>2</sup> in lieu of 700m <sup>2</sup> .   | N/A   |
| November 2016   | Council submits Planning Proposal to DoP for Gateway Determination.   | Area: 1.9222 hectares<br>PZ: R5 Large Lot Residential<br>LS: 1,883m <sup>2</sup>          |
| 8 December 2016 | Gateway Determination issued by DoP.  | Area: 1.9222 hectares<br>PZ: R5 Large Lot Residential<br>LS: 1,883m <sup>2</sup>          |
| January 2017    | Gateway Determination Review submitted requesting DoP consider consistency with adjacent Browns Road allotments.  | Area: 1.9222 hectares (TBC)<br>PZ: R2 Low Density Residential<br>LS: 1,500m <sup>2</sup>  |

\* 1,883m<sup>2</sup> is the average lot size of the existing Browns Road allotments.

This table provides a summary and timeline of the progression of the proposal to the Gateway determination.

A couple of inaccuracies are noted in the table as follows:

The table suggests that on 18 July 2016 a Draft Planning Proposal was prepared by Council's Strategic Planning team and considered at Council's Meeting with the following planning controls:

Area: South of easement only  
PZ: R2 Low Density Residential  
LS: 700m<sup>2</sup>

This statement is incorrect as a draft planning proposal had not been prepared at this stage. A report to the Ordinary Meeting of Council was prepared for the purpose of seeking Council's position on the draft planning proposal and whether it should proceed to a Gateway determination and if so, in what format.

The recommended zoning provided by Council's planning team was R2 Low Density Residential; however no minimum lot size was identified. This is contrary to the table which suggests 700sqm was recommended.

In addition to this, from July 2016 onwards, the table incorrectly identifies a minimum lot size of 1883sqm. Neither the Planning Proposal nor the Gateway determination identify a minimum lot size. Council's position on the minimum lot size has already been explained earlier in this letter.

**Other Matters (Who can seek a Review of Gateway determination)**

It is noted that the Department's guidance *Local Environmental Plan: A guide to preparing local environmental plans* states that "a proponent or a council, when it is the relevant planning authority for a proposal, may request" a Review of the Gateway determination. In this regard the Review of Gateway determination has been submitted by Tim Colless from COPRAD who is not the "proponent" for this planning proposal. Council's records show that Willow Tree Planning is the relevant proponent.

Council has never received any documentation from the land owner authorising COPRAD to act on his behalf and when Council queried the role of Mr Colless in December 2016 we were instructed that Willow Tree Planning would remain the Proponent unless instructed otherwise.

I have included the following documents for your information:

- Minutes & Report to Ordinary Meeting of Council on 18 July 2016,
- Minutes & Report to Ordinary Meeting of Council held on 17 October 2016;
- Submission from Water NSW date 18 January 2017,

Please contact Nicole Aiken from Council's Strategic Planning Team by phone on (02) 4677 9746 or by email [nicole.aiken@wollondilly.nsw.gov.au](mailto:nicole.aiken@wollondilly.nsw.gov.au) if you require further information.

Yours faithfully



David Smith  
**Manager Strategic Planning & Growth  
PLANNING**

