



15 January 2025

Department of Planning, Housing
and Infrastructure



PARRAMATTA NSW 2124

Dear Sir/Madam

Request for Gateway Review (PP-2024-291)

Planning Proposal to rezone and amend Minimum Lot Size on Lots along Brisbane Grove Road, Goulburn

This letter supports the review of the refusal to grant gateway for Planning Proposal PP2024-291 submitted to the Department on 14 February 2024 the '**Current PP**') for the rezoning and amendment to Minimum Lot Size on Lots along Brisbane Grove Road, Goulburn (the '**Site**').

The Current PP was rejected by the Department on 12 November 2024 on grounds which appear to relate only to site specific matters.

We note that on 16 December 2024, Mr George Curtis, Senior Planner, Local Planning and Council Support—Southern, Western and Macarthur Region, emailed the proponents to say, "*I can confirm the Department's approval of an extension of time to lodge your gateway review applications of Wednesday 15 January 2025.*" We attach a copy of this communication marked as 'A' for ease of access.

CHRONOLOGY

This Current PP is a revision and resubmission of a planning proposal submitted to Goulburn Mulwaree Council (the '**Council**') on 20 December 2021.

The original proposal (PP-2021-7390) (the '**Original Proposal**') proposed an LEP amendment to facilitate a 27-lot subdivision of the site with all but one lot (lot south of Brisbane Grove Rd) provided access via a new internal access road from Brisbane Grove Road, creating a loop. The original proposal sought the rezoning of the current RU6 Transition zoned land to R5 Large Lot Residential and a change to the minimum lot size from 10ha to 2ha in accordance with the *Goulburn Mulwaree Urban and Fringe Housing Strategy (the '**Housing Strategy**')*.

The Housing Strategy was made on 28 July 2020 pursuant to a resolution of the Council 202/261. The aims of the Housing Strategy were to identify areas suitable for the provision of additional housing to assist the Council in meeting the housing demands generated by expected continued population growth. The Strategy was prepared in response to both the limited supply of residential land available to meet the short- and medium-term needs of the community and the directions of the South East and Tablelands Regional Plan 2036.

The Housing Strategy identifies areas suitable for the provision of additional housing to meet housing demand generated by population growth, expected to increase the residential population of the LGA by an additional 5000 to 7000 residents.

It is noted that the Housing Strategy identified the Site and surrounding areas for large lot residential subdivisions, meaning lot sizes of a minimum of 2 hectares.

We note that on 20 November 2020, Ms Lees, Director, Southern Region Local and Regional Planning sent the Council a letter endorsing the Housing Strategy and expressing their desire to work with the Council on its implementation. We attach a copy of this communication marked as 'B' for ease of access.

The Original Proposal and Current PP sought to propagate the intent of the Housing Strategy and provide for the type of subdivision that could facilitate the housing stock deemed to be appropriate for the region. Each planning proposal has sought to fulfil a part of the 10% large lot urban fringe opportunity.

The Original Proposal was authorised to proceed to preparation stage and Gateway submission by Council on 15 March 2022. The proposal was subject to pre-gateway consultation with Water NSW with an initial referral response received on 9 May 2022 and a subsequent pre-gateway referral response received on 26 September 2022. The proposal was submitted to the Department of Planning and Environment for its adequacy assessment and Gateway determination on 2 November 2022 with a conditional Gateway determination granted on 29 November 2022.

The Gateway determination included the following conditions:

1. Undertake public exhibition
2. Consult with the following public authorities: - Rural Fire Service
 - Water NSW
 - Department of Planning and Environment- Biodiversity and Conservation Division (Floodplain team), and
3. A Public Hearing is not required
4. Authorises Council as the Local Plan-making Authority subject to the following: - All the conditions of the gateway are satisfied
 - The planning proposal is consistent with the Ministerial Directions
 - There are no outstanding objections from public authorities
5. The LEP should be completed by 29th November 2023.

Council undertook post-gateway consultation with the above-listed public authorities, with referral responses received from Water NSW, Heritage NSW, and the Department of Planning and Environment—Biodiversity and Conservation Division. The Rural Fire Service did not respond to the referral request.

Water NSW raised no objection to the planning proposal. Heritage NSW raised no objection to the planning proposal. The Rural Fire Service raised no objection to the planning proposal. The Department of Planning and Environment - Biodiversity and Conservation Division post gateway referral response raised objections to the planning proposal relating to flood impact and risk assessment.

Council met with the proponent on 1 March 2023 to discuss the objection and request the submission of a FIRA to demonstrate compliance with the Floodplain Manual, Ministerial Direction 4.1 Flooding and ultimately resolve the outstanding objection.



Subsequent to this meeting, the Council also met with SES on 15 March 2023 to discuss constraints around evacuation of areas to the South of the Hume Highway, including the subject site. Council also met with the proponent and their flood consultant GRC Hydro on 27 June 2023 and 24 August 2023 to discuss requirements of the FIRA and examine secondary flood risks.

Condition 4 of the Gateway determination required outstanding objections to be resolved, Condition 1 required public exhibition and Condition 5 required completion of the planning proposal process by 29 November 2023. These conditions could not be met until the proponent prepared a FIRA addressing the concerns of DPE and resolving the outstanding objection. A FIRA had not been received by October 2023, and it became clear that the conditions of the gateway determination could not be met by the expiry date of 29 November 2023. As such, the Department of Planning and Environment issued a Gateway Alteration on 29 October 2023, which amended the authorisation to proceed to do not proceed.

The Gateway Alteration correspondence identified that DPE considered it necessary to finalise the FIRA and for it to be considered by Council before seeking a new gateway determination.

Since the expiry of the Gateway determination on the Original Proposal, the proponent Submitted a Current PP with the below amendments to the original concept layout plan to assist in flood risk management as follows:

- Reducing the number of lots from 27 to 21
- Locating all dwelling pads outside all flood prone land including the PMF and overland flow corridor.
- Replacing the internal connection road with two cul-de-sac internal roads

In addition to the above, the proponent also commissioned GRC Hydro to prepare a Flood Impact and Risk Assessment to accompany the revised planning proposal dated December 2023. This document has been provided to the department and continues to be relied upon. We attach same marked as 'c' for ease of access.

The planning proposal to amend the RU6 Transition zoning to large lot residential with a minimum lot size of 2 hectares is the best means of achieving the objectives of the planning proposal and the *Urban and Fringe Housing Strategy*. The large lot zoning provides the rural character, the ability to accommodate effluent management areas and ensure areas of flooding can be avoided. The planning proposal also seeks to apply a C2 Environmental Conservation Zone to the flood planning area that applies along the drainage corridor. This approach seeks to maintain buffer distances between development and watercourses, maintain water quality, improve biodiversity and reduce soil erosion.

The changes to the proposed number of lots, layout, road access, land use zoning and development control plan provisions all combine to deliver an improved development outcome which best meets the objectives of the Housing Strategy and the information that has been obtained through the flood risk assessment between the Original Proposal and Current PP.

Our client engaged Sowdes who prepared all the original documentation supporting the Original Proposal. They have provided their commentary on the chronology as well as outlined their concerns with the determination of the Current PP in a document attached and marked 'D'.



STRATEGIC AND SITE-SPECIFIC MERIT

There is a requirement for the consideration of the Current PP in respect of strategic and site-specific merit.

We note that the Original Proposal was considered to have both strategic and site-specific merit, and we are unable to ascertain what has changed has been between the proposals to render a different conclusion.

We have reviewed the Gateway determination dated November 2024 and raise concerns as to the determination of the merit matters especially noting the consideration of same in the Original Proposal.

Please see attached and marked 'E' a table which provides our feedback to the commentary about merit issue in a gateway determination report.

However, in summary we raise the following issues:

Strategic Merit

- a. the Current Proposal displays strategic merit insofar that it seeks to achieve the aims and vision under the South East and Tablelands regional Plan 2036. The vision in this plan is for

'New homes are located in places that make the best use of infrastructure and services. The type of new housing is more diverse and better suited to the growing and ageing population. New housing is also contributing to housing affordability and the demand for visitor accommodation.'

Further, the Current PP meets the four main goals of the regional plan including providing connection to a prosperous economy by providing housing in a regional location and proximate to growth centres and local tourism. Managing lot size to ensure the ongoing protection of the biodiversity of the area and local ecology, ensuring strong and healthy communities and providing sustainable forms of housing.

Clearly the provision of housing in an area identified in the Housing Strategy endorsed by the Council and the Department is a logical strategic outcome.

- b. The Current PP displays strategic merit when considered against the Council's own strategic plan including the Housing Strategy.

In this regard we note the Council's Housing Strategy and their specific goal for the land the subject of the Current Proposal. We provide an extract of precinct 11, 'Brisbane Grove' and mark same as 'F'

The Council have spent significant site and resources in considering land use opportunities in their local government area and have concluded that there is potential for large lot residential subdivision in Brisbane Grove.

- c. In respect of flooding related issues, we have obtained a response prepared by GRC Hydro dated 19 December 2024 (the '**GRC Response**') which contained very different conclusions to those summarised in the November 2024 Gateway report. We attach a copy of this report marked 'G'.



The most marked difference is the time for 5% and 1% isolation periods noting that there is no flooding event that would cause isolation in a 5% flood and the maximum isolation for emergency services for a 1% AEP event is 8.5 hours.

It is noted that the most significant concerns relate to the potential for isolation. We might suggest that this is not a strategic concern and is more so a site-specific issue but notwithstanding same, it is noted that the GRC responset that there is no threat to human life because of the levels of the land within the Site and, whatsmore, any concerns for secondary matters like fire and ambulance access in these isolation periods can be managed by those services for the periods of isolation.

- d. In respect for planning for bushfire, the Gateway Report states that this matter is to be determined. The Rural Fire Service did not provide a response to the Council referral request. The Rural Fire Service did respond to a referral request for another planning proposal (PP-2024-291) and did not object.
- e. In respect of all remaining strategic matters, we consider that they are justified and that the development attributes strategic merit

Site-Specific Merit

It would appear that the substantive issue is related to flooding, and we rely on the GRC Report.

CONSIDERATION BY THE INDEPENDENT PLANNING COMMISSION

We respectfully request that this matter be referred to the Independent Planning Commissioner (the 'IPC') for a non-binding review of the Current PP pursuant to s3.34(5) of the Environmental Planning and Assessment Act 1979.

We note the Gate review policy direction published by the IPC in June 2024 found here https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/general/2024-policy-documents/scope-of-rezoning-and-gateway-reviews_approved_240627.pdf.

We note clause 2 of that document which is consistent with the provision of the Act which states:

'If requested by the Minister or the Department, the Commission will undertake a strategic and site-specific merit assessment of the planning proposal and recommend whether the proposal should be submitted for a Gateway determination under section 3.34 of the Environmental Planning and Assessment Act 1979.'

We respectfully request that this letter together with all its attachments, all reports supporting the Original proposal and Current PP and each of their gateway reports be provided to the IPC to facilitate the review.



CONCLUSION

We consider that the Gateway review must reverse the previous decision of the Department.

After further review of the documents supporting the Current PP and the additional documentation provided with this letter, including the GRC response, the proposition that the Current PP displays strategic and site-specific merit should be supported.

We are instructed that our client has been somewhat frustrated by the process noting that they have worked with the community and Council for some time before, during and after the Housing Strategy. They have outlined their thoughts in a letter marked as 'H' which we attach for your consideration.

Please contact me directly should you wish to discuss this matter further.

Yours truly,



Darren Hogan M.P.I.A
Principal

