

**Subject:** Land In [REDACTED] at Wilton to be zoned E2 and non-certifiable avoid for biodiversity  
**From:** Rein Warry [REDACTED]  
**Date:** 31/08/2020, 1:35 pm  
**To:** biodiversity@planning.nsw.gov.au

Hello Department of Planning

This is a submission in relation to the Draft Cumberland Plain Conservation Plan.= which affects my lands

I purchased this property on the basis that I could build a dwelling on the land. I made a submission to Wollondilly Shire Council on 7-2-2018 (attached) and received a Response (also attached). i paid [REDACTED] for this land to build my final house in a strategic location, close to facilities that would come with the increased development in Wilton.

However, hidden very deeply within your documents I find that my land is to classified as non-certifiable- avoid for Biodiversity E2 zone.

This Zone will not permit residential dwellings.

The land zone when i purchased the property was RU2 and as set out in the accompanying documents, I have a dwelling entitlement.

The effect of your new Cumberland Plain Plan is to acquire my dwelling entitlement. Whilst your plan mentions that some land will be acquired from Land Owners, I am 68 years of age and will not be able to wait years for acquisition.

Furthermore, the subject land was used extensively for agricultural purposes for many years This land and other lands on the eastern side of Peel Street has been subdivided into small allotments for dwelling purposes for well over 100 years. it also acts as a buffer between the more naturally vegetated land to the east in the creek valley. Furthermore such a zoning of E2 on this land will increase the bushfire risk for ll of the Wilton township. You only need to look at the impact of Bushfire in Couridjah, Buxton, Hilltop Colo Vale etc last December and January to see how catastrophic it is with uncontrolled vegetation coming right up to the town fringe.

Despite your departments best intentions for Conservation of Biodiversity there are other significant factors that must be considered, such as human life, existing development patterns, existing infrastructure (such as the power lines through the Sydney Water corridor.

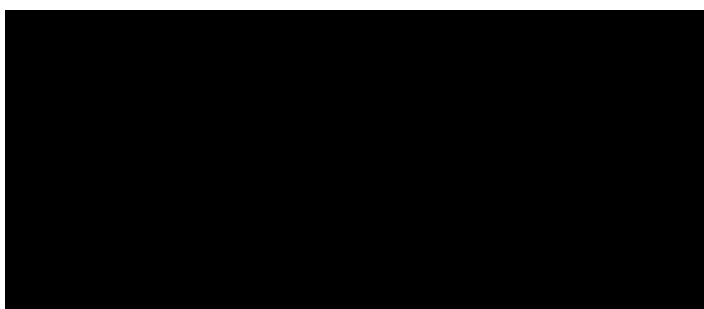
The development in Wilton is based on historical cadastral patterns. The land to the north has an approved dwelling, as well as dwellings on land to the west and south. Your E2 zone will not only increase the bushfire risk for these lots but also the residential development in Wilton. the

significant damage done last December and January should be an upper most concern for planners. You obviously have not taken this into consideration in formulating this plan based on Biodiversity alone.

A far more pragmatic approach would be to allow residential development in a Controlled manner within the town footprint of Wilton, rather than a blanket ban on residential development that will have a serious impact on bushfire hazard.

The acquisition of my property rights will need to be compensated based on the current land value, and in accordance numerous cases in the High Court of Australia and decisions in the NSW LEC.

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— Attachments: —

 -building-entitlement-7-2-2018.pdf	156 KB
WSC-RESPONSE-BUILDING ENVELOPE-7-3-2018.pdf	793 KB

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CONSULTING SURVEYORS AND DEVELOPMENT CONSULTANTS

PICTON NSW 2571

PICTON NSW 2571

7/2/2018

Our ref: 7466

Your Ref:

The General Manager  
Wollondilly Shire Council

Picton NSW 2571

Dear Sir/Madam,

Re: Building Entitlement Wilton

We refer to the above in the following:-

- a. One (1) copy of the original plan for the site;
- b. Our cheque for \$320 to cover Council's enquiry fee;

The property consists of (1) separate allotment zoned RU2 under Wollondilly LEP 2011 (WLEP2011) with a minimum allotment size of 16ha.

## **THE SUBJECT ALLOTMENT AND SURROUNDING LOTS**

### **1. Lot**

This Lot was created by survey dated 30/9/1881 carried out by . The land has a frontage of metres to the northern side of Fitzroy Street and depth in a northly direction of metres. It contains an area of

ADJOINING ON THE NORTH is Lot which is an allotment of similar size and fronts a Crown public road;

ADJOINING ON THE EAST is part of Lot which is an allotment of approximate area of 2.8 ha. and contains a residence and sheds. This property is known as No. Wilton;

ADJOINING ON THE SOUTH is which is a public Crown Road;

ADJOINING ON THE WEST is Lot which is an allotment of similar size and contains a residence and shed;

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ADJOINING ON THE NORTH WEST is Lot [REDACTED] which is an allotment of similar size and contains a new two storey residence;

## **PART 2 PLANNING CONTROLS**

The existence of a dwelling entitlement is determined by the provisions of the repealed WLEP 1991 and the current WLEP 2011.

### **Part 2.1 WLEP 2011**

Under the current Wollondilly LEP 2011 the erection of a dwelling house is controlled by clause 4.2A (3) which [REDACTED]

*(3) Development consent must not be granted for the erection of a dwelling house on land to which this clause applies, and on which no dwelling house has been erected, unless the land is:*

*(a) a lot that is at least the minimum lot size specified for that land by the [Lot Size Map](#), or*

Comment: Subclause (a) is not applicable as the subject land does not contain 16ha. as mapped on the Lot Size Map. The end of each subclause with an OR is stating several alternate means of having a building entitlement;

*(b) a lot created before this Plan commenced and on which the erection of a dwelling house was permissible immediately before the commencement of this WLEP 2011. or*

Comment: Subclause (b) is applicable as the subject land was in existence prior to the commencement of WLEP 2011 and as discussed below, a dwelling house was permissible immediately before the commencement of this WLEP 2011.

*(c) a lot created from a subdivision for which development consent (or equivalent) was granted before the commencement of this Plan commenced and on which the erection of a dwelling house would have been permissible immediately before the plan of subdivision had been registered before that commencement.*

Comment: Subclause (c) is not applicable as the subject land was not the subject of a subdivision for which development consent was granted before WLEP 2011 commenced.

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## Part 2.2 WLEP 1991

Under WLEP 1991 clause 13(3) stated:

*13(3) Notwithstanding subclause (2) but subject to subclauses (4)– (9), a [REDACTED] may be erected on any allotment of land which was in existence as a separate allotment on the appointed day.*

**COMMENT:** WLEP 1991 in the historical notes states: *Wollondilly Local Environmental Plan 1991 published in Gazette No 119 of 23.8.1991*. Therefore, to satisfy this subclause 13(3) [REDACTED] h [REDACTED] parate allotment on the 23/8/1991. As stated above the subject land was created on the 10<sup>th</sup> November 1881 with the registration of [REDACTED] [REDACTED] It has existed as a separate allotment with its own title since that time. It therefore satisfies the specific criteria in 13(3) stated above.

### The exclusions under Subclauses (4) -(9) are as follows: -

*(4) Subcl [REDACTED] not operate to authorise the erection of a dwelling-house on land shown on the map as land to which this subclause applies (other than an allotment lawfully cr [REDACTED] [REDACTED] or Interim Development Order No 7 or 17—Shire of Wollondilly) unless that land comprises a single allotment having an area of not less th [REDACTED] reticulated water supply is available to that land.*

**COMMENT:** This relates to Buxton [REDACTED]

*(5) Except as provided by clause 14 [REDACTED] use (3) does not operate to [REDACTED] section of a dwelling-house on land shown on the map as land to [REDACTED] cause applies (other than an allotment lawfully created less than [REDACTED]*

**COMMENT:** [REDACTED] ant to Wilton

*provided by clause 14 [REDACTED] (9) does not operate to authorise the erection of a dwelling-house on land shown on the map as land to which th [REDACTED] applies (other than an allotment lawfully created under [REDACTED] Development Order No 7—Shire of Wollondilly) unless the parcel of land has an area of not less than 400 ha.*

**COMMENT:** Not relevant to subject land [REDACTED]

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(7) Notwithstanding subclauses (5) and (6), a dwelling-house may be erected on any parcel of land which was not held in [REDACTED] ownership with any adjoining or adjacent land in respect of which consent to erect a country dwelling or a dwelling-house could have been granted by the council in accordance with the provisions of the Wollondilly Planning Scheme Ordinance as in force prior to 18 July 1973.

[REDACTED] ant to subject land

(8) Notwithstanding any other provision of this plan, the council may consent to the erection of a dwelling-house on each of the parcels of land referred to in Schedule 4 subject to the conditions specified in that Schedule in relation to that land.

**COMMENT:** Not relevant to subject land

(9) Notwithstanding any other provision of this plan Council may consent to the erection of a dwelling-house on an allotment created under this plan.

**COMMENT:** Not relevant to subject land

**Therefore Lot [REDACTED] has a dwelling entitlement.**

We would appreciate it if you would provide a letter advising that the subject [REDACTED] has a building entitlement. Should you have any queries in this matter please do not hesitate to contact our office.

Yours faithfully

**REIN WARRY AND CO**

[REDACTED]

3/67 Menangle Street  
PO Box 662  
PICKTON NSW 2571

Attention: D Warry

7 March 2018

Dear [REDACTED]

**DEVELOPMENT ENQUIRY – DWELLING ENTITLEMENT – LOT [REDACTED]  
WILTON.**

Reference is made to your letter dated 7 February 2018 requesting that Council approve a dwelling entitlement in respect to a vacant allotment, being Lot [REDACTED] Wilton.

In answer to your request the following is advised:

The subject allotment is zoned RU2 Rural Landscape under the provisions of the *Wollondilly Local Environmental Plan 2011* (LEP 2011). Clause 4.2A of LEP 2011 prescribes whether an allotment that is zoned RU2 benefits from a dwelling entitlement. This clause states at subclause (3) the following:

*“(3) Development consent must not be granted for the erection of a dwelling house on land to which this clause applies, and on which no dwelling house has been erected, unless the land is:*

- (a) a lot that is at least the minimum lot size specified for that land by the Lot Size Map or*
- (b) a lot created before this Plan commenced and on which the erection of a dwelling house was permissible immediately before that commencement, or*
- (c) a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling house would have been permissible if the plan of subdivision had been registered before that commencement.”*



The subject allotment must meet at least one of the above subclauses in order to benefit from a dwelling entitlement under LEP 2011. Whether the subject allotment benefits from a dwelling entitlement under each of the sub-clauses is provided below:

Subclause	Control	Comment
(a)	<i>a lot that is at least the minimum lot size specified for that land by the Lot Size Map or</i>	The allotment has an area of 1.082ha. The minimum lot size map within LEP 2011 prescribes a minimum lot size of 16ha for the subject land. The lot therefore does not benefit from a dwelling entitlement under this subclause.
(b)	<i>a lot created before this Plan commenced and on which the erection of a dwelling house was permissible immediately before that commencement, or</i>	<p>The lot was created prior to the commencement of this plan. Council records indicate the allotment was in existence on 22 February 1887. The lot was therefore created before the date of commencement of LEP 2011 (being 23 February 2011). The clause, however, requires consideration of whether a dwelling house was permissible <u>immediately</u> before that commencement.</p> <p>The relevant planning instrument in force immediately prior to the commencement of LEP 2011 was <i>Wollondilly Local Environmental Plan 1991</i> (LEP 1991). Consideration therefore needs to be given to whether the lot benefited from a dwelling entitlement under LEP 1991.</p> <p>The land was zoned 1(a2) (Rural "A2" Zone) under LEP 1991. Clause 13 (3) provided that subject to subclauses (4) – (9), a dwelling house may be erected on any allotment of land which was in existence as a separate allotment on the appointed day. The appointed day for LEP 1991 was 23 August 1991.</p> <p>Subclauses 4-7 do not apply, they do not relate to the land in question.</p> <p>Subclause 8 is not applicable. The allotment is not referenced in Schedule 4.</p> <p>Subclause 9 is not applicable as the allotment was not created under this plan.</p> <p>Therefore, the allotment is shown to have a building entitlement under this subclause.</p>



(c)	<i>a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling house would have been permissible if the plan of subdivision had been registered before that commencement.</i>	Not Applicable – the lot was not the subject of a development consent issued before the commencement of LEP 2011 and the subdivision not being registered until after the commencement of LEP 2011.

It is therefore advised that Lot [REDACTED] does benefit from a dwelling entitlement under Clause 4.2A (3) (b) of *Wollondilly Local Environmental Plan 2011*.

Should you require clarification on any of the matters discussed please contact [REDACTED] [REDACTED] between the hours of 8:00am and 4:00pm Monday to Friday or alternatively via email at [council@wollondilly.nsw.gov.au](mailto:council@wollondilly.nsw.gov.au).

Yours faithfully

[REDACTED]

Andrew Golden,  
**Acting Development Assessment Team Leader**  
**DEVELOPMENT SERVICES**