

# REIN WARRY AND CO. PTY.LTD

CONSULTING SURVEYORS AND DEVELOPMENT CONSULTANTS

PICTON NSW 2571

PICTON NSW 2571

1/9/2020

Our ref: 7466

Your Ref:

The Secretary

and Environment

Parramatta NSW

By email via Portal

Draft Cumberland Plain SEPP relating to Lot [REDACTED] known as [REDACTED] Milton

Your submission to your Department regarding the Draft Cumberland Plain SEPP. This email submission is attached as Annexure 1.

**I am writing this submission as the owner of this subject land.**

**1. THE CURRENT ZONE FOR LOT [REDACTED]**

RU2 RURAL LANDSCAPE under Wollondilly LEP 2011.

Dwellings and secondary dwellings are permissible with consent. A dwelling entitlement has been established and acknowledged by Wollondilly Shire Council (see annexure 1);

**2. CURRENT MARKET APPRAISAL OF VALUE BY A LOCAL REAL ESTATE AGENT**

\$800,000 TO \$900,000

**3. THE PROPOSED ZONE FOR LOT [REDACTED] UNDER DRAFT SEPP**  
E2 (virtually no development)

**4. OBJECTION TO THE PROPOSED ZONE OF E2**

- a. I purchased the land on the basis that it had a dwelling entitlement and all of the rights and privileges of RU2 zoned land in a unique location. Three (3) phase power and town water has been supplied to the land at a cost of more than [REDACTED]. See point 1 above and annexure 1 regarding building entitlement;

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b. The proposed Zone does not recognise the historical occupation of Wilton by European settlement. (see Annexure 2);

c. The Draft SEPP does not provide a transition between the R2 land in Peel [REDACTED] 2 zone. With the squeezing effect of the new zone limiting the use of the land under "existing use rights" the land will eventually become unmanaged vegetation. We only need to look at the poor personal and [REDACTED] comes from the bushfires in December and January in areas like [REDACTED], Couridjah to be aware that an E2 zone **SHOULD NOT BE** [REDACTED] site R2 residential land. This is exceptionally bad planning [REDACTED]

[REDACTED] and critical habitat classification deprives the current land [REDACTED] themselves of the Rural Fire Services 10-50 which applies to other RU2 land, but not here. This is a discriminatory measure designed to [REDACTED] prevent the owners having protection against bushfires and in turn protecting the residential zoned land opposite;

e. The current use by owners, and in the future by myself, in this locality **HAVE PRESERVED THE LAND** to such a high degree that it is now **"CRITICAL HABITAT"**. This maintenance was not done by Council, it was not done by Government, it was not done by Landcare it was not done by your environmental consultants...it was done by the owners who have respected the fauna and flora in this locality. The reward for this respect is to be deprived of future normal occupation and eventual squeezing out due to tight environmental controls;

f. The proposed E2 zone will acquire my property rights that are attached to land ownership and currently permits [REDACTED] the RU2 zone;

g. There is 100% priority given to the ecological communities and 0% given to the human use, occupation and heritage; There are other significant factors that must be considered, such as human life, existing development patterns, existing infrastructure such as the power lines along the Sydney Water Corridor, the historic stone tunnel vents, etc.

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5. **SUGGESTED ZONE FOR LOT 90 DP751297 AND OTHER LANDS IN  
PEEL STREET WILTON UNDER DRAFT SEPP**

- a. I have prepared a plan and attached it as Annexure 3;
- b. This plan shows the effect of allowing the current landowners the ability to [REDACTED] properties under the 10-50 rule. The 50 metre radius rings are shown in yellow;
- c. [REDACTED] SEPP zone boundary occurs along Peel Street, with all [REDACTED] east of Peel Street proposed to be zoned E2;
- d. [REDACTED] alternative, I have shown a suggested zone [REDACTED] Green. [REDACTED] suggested zone boundary would allow existing owners to carry on [REDACTED] work that they have achieved in the past. The land between Peel [REDACTED] the Green line should be zoned E4 with a minimum allotment size of 1 ha. This will not provide any significant development potential;
- e. [REDACTED] Some allotments will have split zones, that is the western section E4 and the eastern section as E2;
- f. [REDACTED] This annexure 3 plan shows my Lot 90 edged in red. It contains an area of 1 ha. and would benefit from the maintenance of the existing dwelling entitlement, but would not benefit from any subdivision potential;
- g. By adopting these suggested zone boundaries and the new suggest E4 zone, it still shows an emphasis on environmental outcomes, but without depriving people of their principal asset where there is a demonstrated ability to maintain the land collectively in a highly effective and sustainable manner;

Whilst my land is vacant, it does enjoy a dwelling [REDACTED] ent and I have acquired easements over adjoining land and extended services of electricity (3 phase power) telephone and town water. If your Department continues with the publication of the Draft SEPP as exhibited, then I put your Department on notice that if the Zone is changed to E2 and the ability to use the RFS 10-50 rule, I will seek acquisition of the property immediately under the Land Acquisition (Just Terms Compensation Act) 1991.

I trust that your Department takes a pragmatic approach and carries out significant investigation into the merits of my suggestion into consideration when reviewing the public submissions.

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[REDACTED]  
PICTON NSW 2571

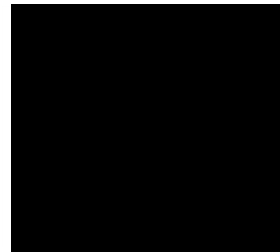
[REDACTED]  
PICTON NSW 2571

[REDACTED]  
[REDACTED]

-----

Should you have any queries in this matter please do not hesitate to contact our office.

Yours faithfully  
[REDACTED]



[REDACTED]

.....  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

# ANNEXURE 1

**Subject:** Land In Fitzroy Street at Wilton to be zoned E2 and non-certifiable avoid for biodiversity

**From:** [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.

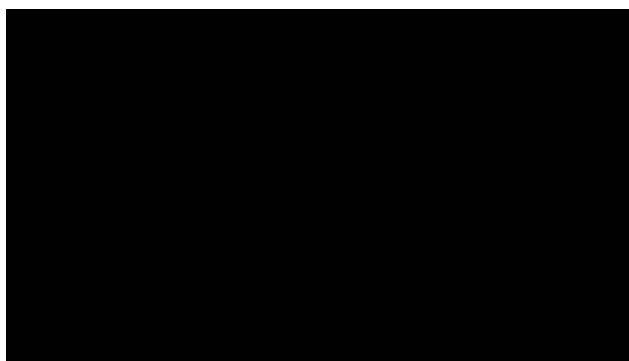
Despite your departments best intentions for Conservation of Biodiversity there are other significant factors that must be considered, such as human life, existing development patterns, existing infrastructure (such as the power lines through the Sydney Water corridor.

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.



— Attachments: —

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

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7/2/2018

Our ref: 7466

Your Ref:

The General Manager  
Wollondilly Shire Council  
62-64 Menangle Street  
Picton NSW 2571

Dear Sir/Madam,

Re: Building Entitlement Lot [REDACTED] [REDACTED] Wilton

We refer to the above matter and now enclose 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.

## **[REDACTED] THE SUBJECT ALLOTMENT AND SURROUNDING LOTS**

### **1. Lot [REDACTED] (Crown Plan W8-1216)**

This Lot 90 was created by survey dated 30/9/1881 carried out by Mr. Surveyor G.H. Sheaffe. The land has a frontage of 100.584 metres to the northern side of Fitzroy Street and depth in a northly direction of 107.625 metres. It contains an area of 107.625 m<sup>2</sup> (1.0825 ha.).

ADJOINING ON THE NORTH is Lot 87 DP 751297 which is an allotment of similar size and fronts a Crown public road;

ADJOINING ON THE EAST is part of Lot [REDACTED] which is an allotment of 2.8 ha. and contains a residence and sheds. This property is known as No. 75 Peel Street Wilton;

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

ADJOINING ON THE WEST is Lot [REDACTED] 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 states:

*(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 that commencement, 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 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.*

**Comment:** Subclause (c) is not applicable as the subject land was not the subject of development consent 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 dwelling-house 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), the [REDACTED] h[REDACTED] separate 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 DP 751297 (Crown Plan 8-1216). 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) Subclause [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 created [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 than [REDACTED] are metres and unless a reticulated water supply is available to that land.*

**COMMENT:** This relates to Buxton

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

**COMMENT:** Not relevant to Wilton

*provided by clause 14, subclause (9) does not operate to [REDACTED] erection of a dwelling-house on land shown on the map as land to which this subclause applies (other than an allotment lawfully created under Interim Development Order No 7—Shire of Wollondilly) unless the parcel of land has an area of not less than 100 ha.*

**COMMENT:** Not relevant to subject land

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(7) Notwithstanding subclauses (5) and (6), a dwelling-house may be erected on any parcel of land which was not h 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.

**COMMENT:** Not relevant 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 90 has a dwelling entitlement.**

We would appreciate it if you would provide a letter advising that the subject Lot 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**

Darryl Warry

Our Reference: PR9511

3/67 Menangle Street  
PO Box 662  
PICKTON NSW 2571

Attention: D Warry

7 March 2018

Dear Mr Warry,

**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:

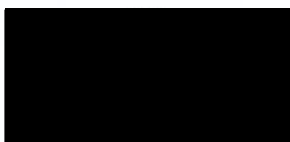
Subclause	Control	Comment
(a)	<i>a lot that is at least the minimum lot size specified for that land by the Lot Size Map or</i>	The allotment has an area of 1.082ha. The minimum lot size map within LEP 2011 prescribes a minimum lot size of 16ha for the subject land. The lot therefore does not benefit 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*.

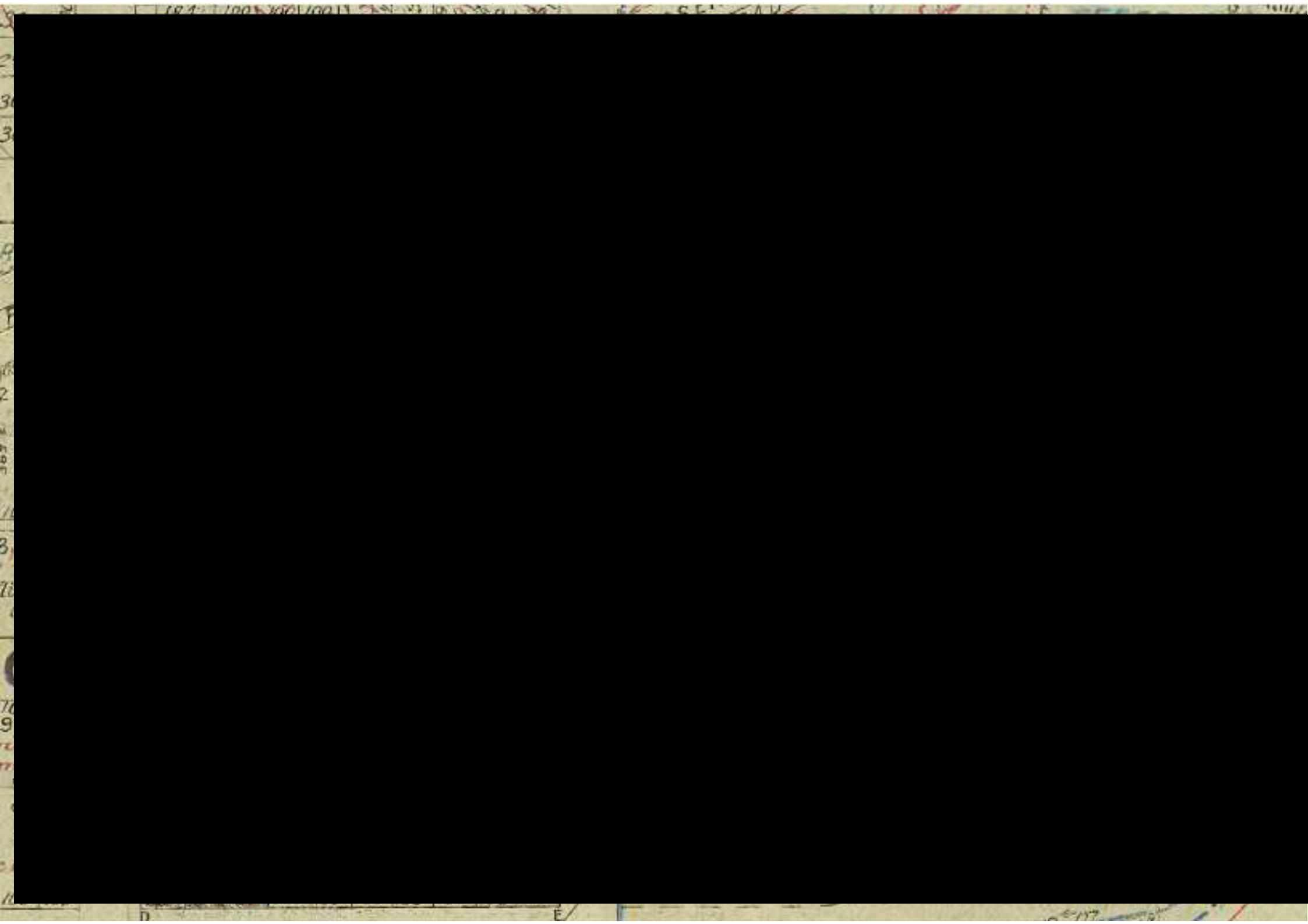
Should you require clarification on any of the matters discussed please contact Bridie Riordan on (02) 4677 9575 between the hours of 8:00am and 4:00pm Monday to Friday or alternatively via email at [council@wollondilly.nsw.gov.au](mailto:council@wollondilly.nsw.gov.au).

Yours faithfully

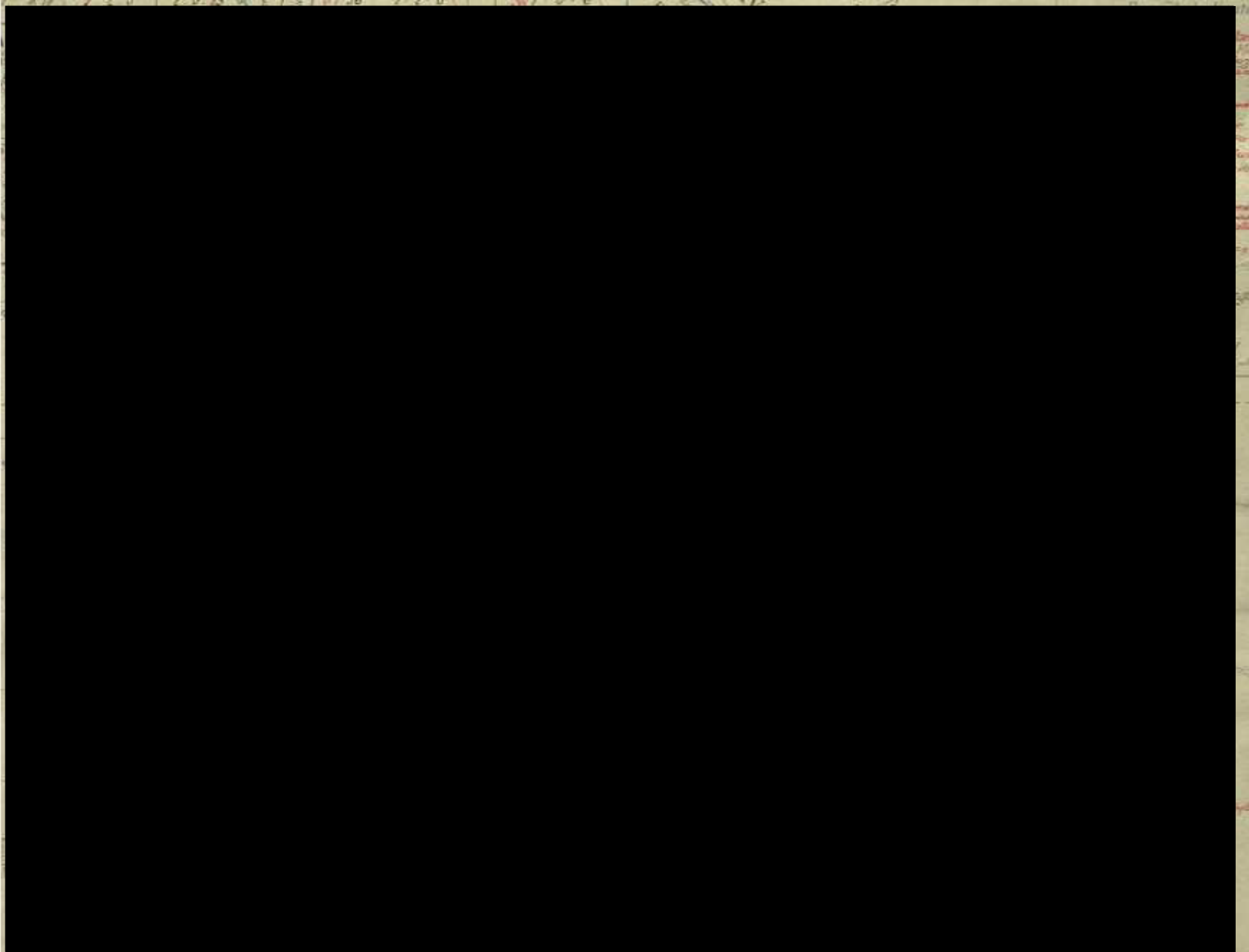


Andrew Golden,  
**Acting Development Assessment Team Leader**  
**DEVELOPMENT SERVICES**

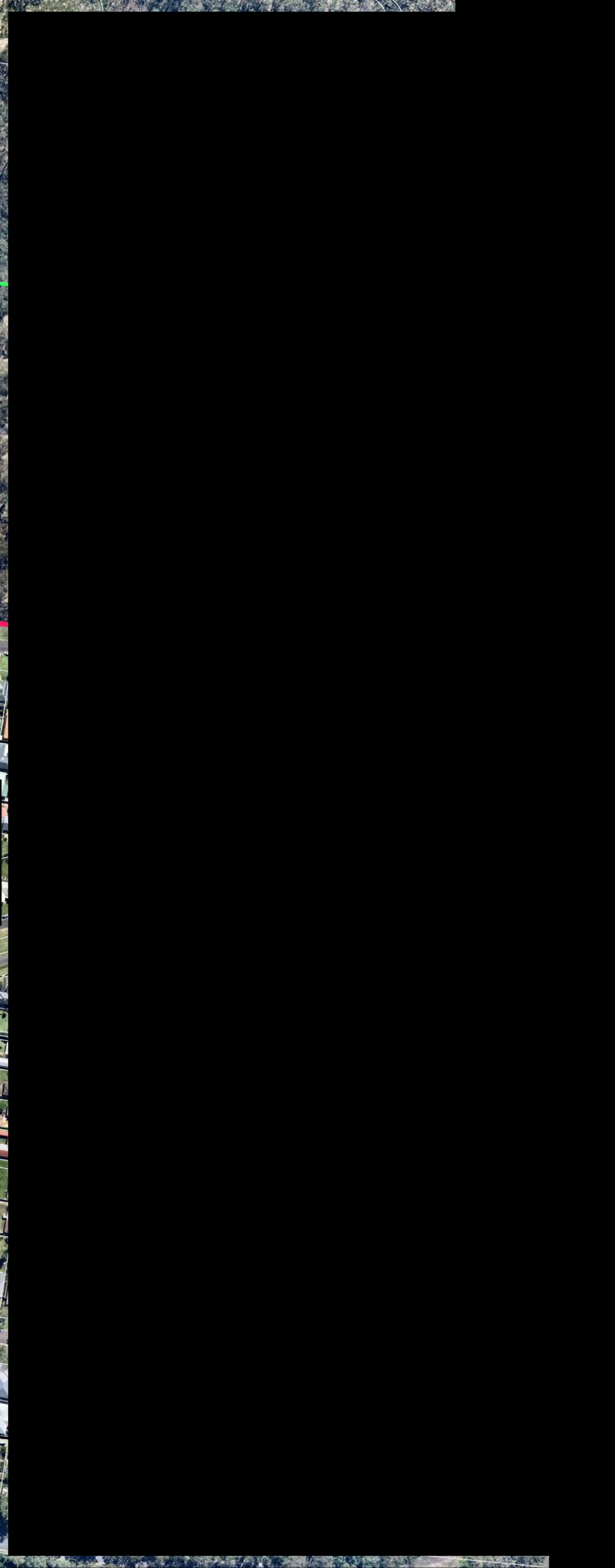
# ANNEXURE 2







# ANNEXURE 3



0  
E

GREEN LINE IS SUGGESTED LIMIT OF THE E2 ZONE;

THE AREA WHICH IS CURRENTLY OCCUPIED BY DWELLINGS AND SHOULD BE ZONED E4 TO RECOGNISE THE SENSITIVE AREA BUT ALLOW FOR DWELLINGS WHERE DWELLING ENTITLEMENTS EXIST.

## 1. RECOGNISING THE HISTORICAL DEVELOPMENT PATTERN OF V

2. PROVIDING A TRANSITION BETWEEN THE R2 RESIDENTIAL AND
3. NOT DEPRIVING THE CURRENT LAND OWNERS THE ABILITY TO PROTECT THEIR IMPROVEMENTS UNDER THE RURAL FIRE SE WHICH IS CURRENTLY DENIED TO THESE LANDOWNERS;
4. PROVIDING GREATER MAINTENANCE OF THE VEGETATION IN - BY CONTINUING TO ALLOW DEVELOPMENT IN THE SUGGESTED THE E4 ZONE HAS BEEN EXTENSIVELY USED IN MANY PART
5. A SUGGESTED MINIMUM ALLOTMENT SIZE WOULD BE 1 ha.;
6. REMOVE THE NEED TO ACQUIRE PROPERTIES WITH COLLECT
7. NOT DENY THE EXISTING LAND OWNERS THE ABILITY TO CC A BENEFIT THAT EXISTS FOR ALL RU2 ZONED LAND IN WOL
8. BALANCE THE CONCERNS OF ESTABLISHED RESIDENCE AGAIN GIVE 100% PRIORITY TO THE ECOLOGICAL VALUES AND NON
9. IT IS THE LAND OWNERS IN PEEL STREET WHO HAVE MAINTAINED CONSIDERED CRITICAL HABITAT WHILE STILL OCCUPYING AND ARE NOW BEING PROTECTED BY "EXISTING USE RIGHTS" AND