
Barry Millwood Planning

NSW Department of Planning, Industry and Environment

Submission regarding Draft Cumberland Plain Conservation Plan

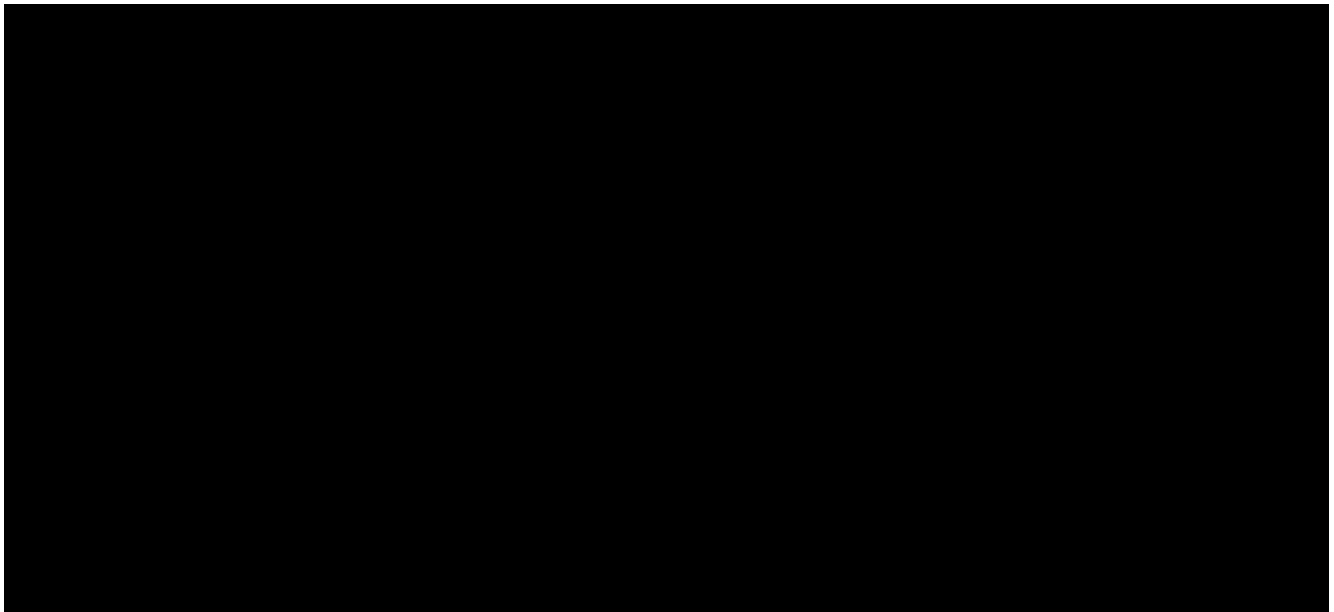
On behalf of the owners of [REDACTED] Wilton I wish to object to the proposed rezoning of their property from RU4 - Primary Production Small Lots to E2 Environmental Conservation under the proposed State Environmental Planning Policy for Strategic Conservation Planning.

The basis of the objection is outlined in the following paragraphs.

Location of the property

The property is located in the developing urban area of Wilton. The surrounding development is as follows:

- Immediately east of the site is large lot residential and then conventional residential subdivisions;
- Immediately north of the site is another rural residential lot of 2 ha and then residential subdivisions to the north west;
- Immediately south of the site are two rural residential lots each with an area of 2 ha;
- To the west of the site, across Condell Park Road is vacant land largely cleared of vegetation but with some tree cover without understorey near Condell Park Road (identified as urban capable and being investigated for employment land);
- To the south of Picton Road is future residential development that will drain through the subject land.

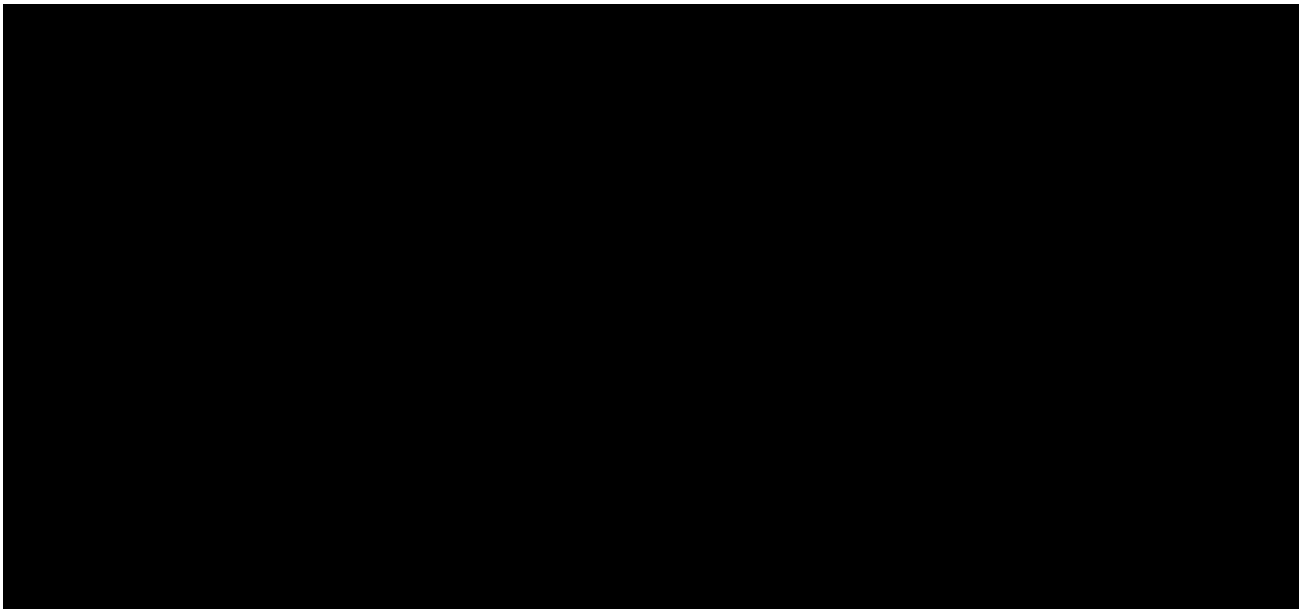


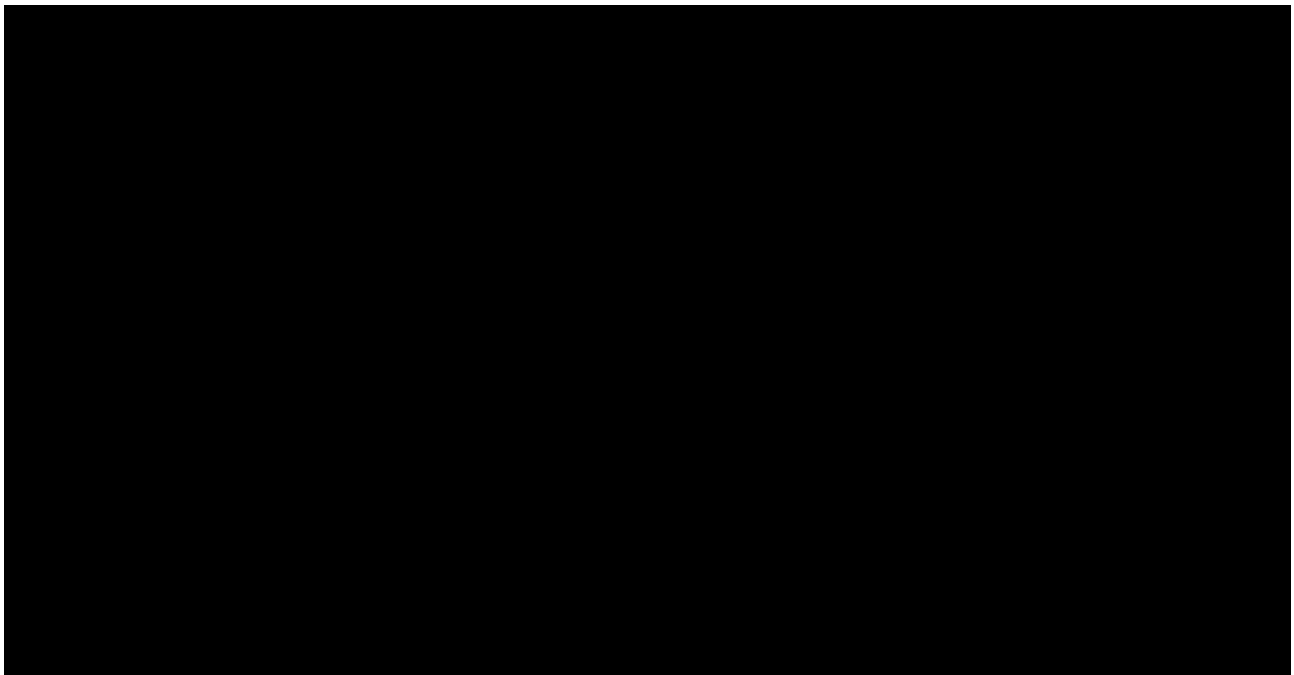


Description of the property

The site has an area of 2 ha. It is occupied by a dwelling house, large garage and various sheds around the site. There is a gas easement that passes across the site which is cleared of vegetation and will be required to remain that way. It is fenced on all sides. There are a number of dams on site. An intermittent watercourse passes through the north western corner of the site. It can be described as a class 2 stream under the Strahler classification.

There is minimal understorey on the site. There is some native tree cover as well as species not endemic to the local area planted along the frontage to Condell Park Road. There are a number of farm animals grazing on the site. The subject site and the adjoining sites are fenced around their boundaries and being in an increasingly urban area it is unlikely that these will be removed. The sites will increasingly be subject to invasive fauna such as suburban cats.

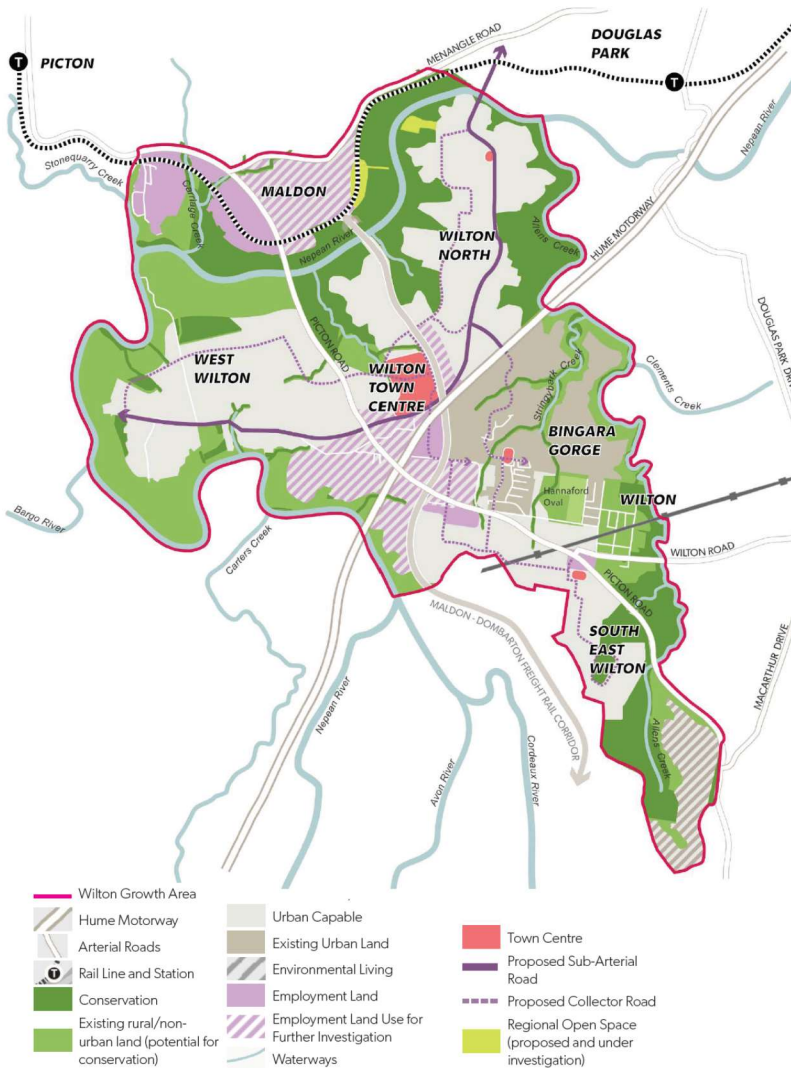




Likely surrounding development

Wilton 2040, prepared by the NSW Department of Planning and Environment - A Plan for the Wilton Growth Area 8 August 2018 provides a structure plan to guide the development of Wilton.

Within it, the Wilton Structure Plan suggests that the area west of Condell Park be investigated for Employment Land. This land is strategically located adjacent to the M31 Hume Highway and Picton Road. It also identifies the subject site as “urban capable”. It also only suggests the creek line as “conservation”.



Creek Corridor

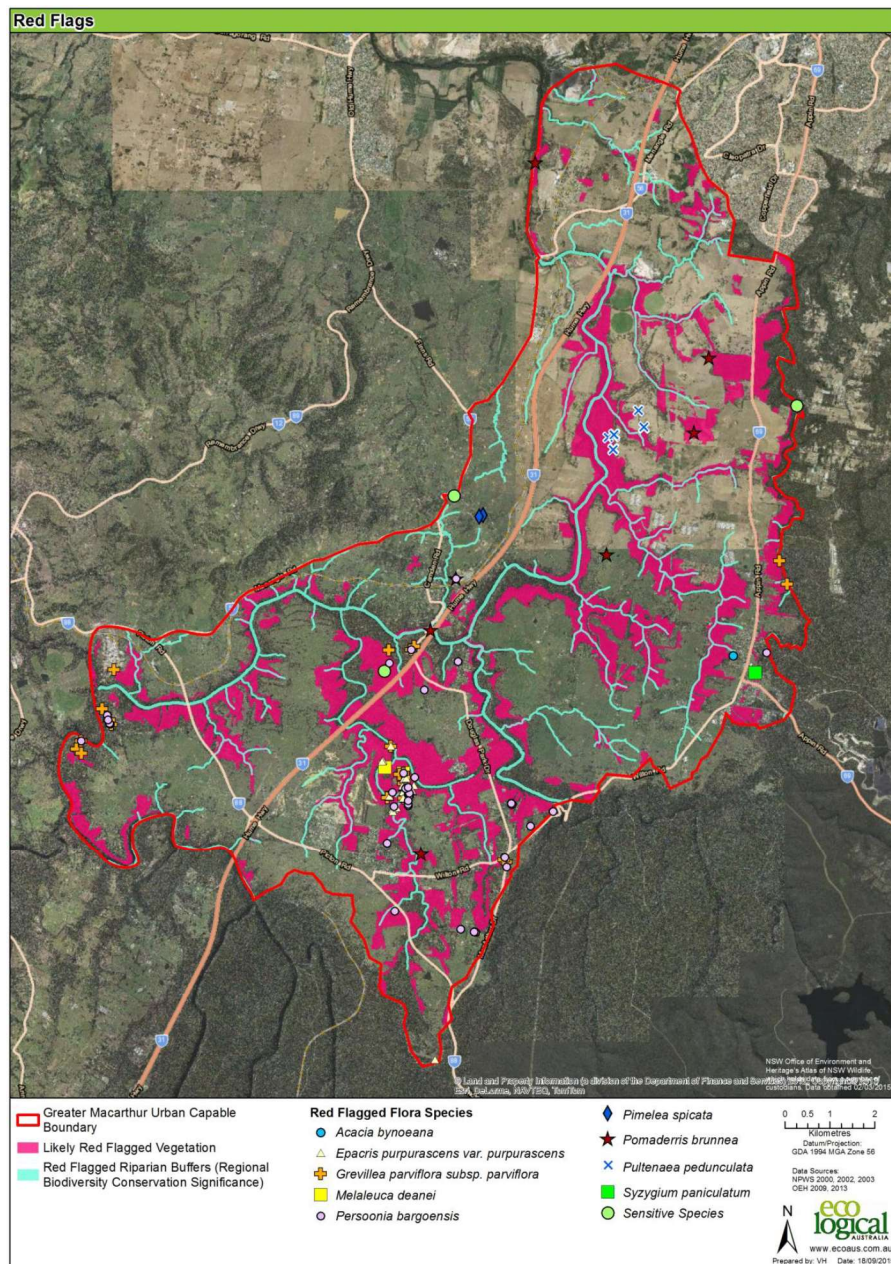
The site straddles a creek corridor that links downstream to Stringy Bark Creek to the north, which in turn links to the Nepean River. To the south heading upstream it becomes a water course over largely cleared land on the western side of Condell Park Road and passes under Picton Road to land identified for future residential development. The tree cover largely finishes just after it crosses under Condell Park Road.

Previous biodiversity studies

In September 2015 Ecological prepared a Biodiversity Assessment Report for the NSW Department of Planning and Environment to inform assessment of the Greater Macarthur Investigation Area. This included the Wilton Growth Area and it identified the type and quality of the bushland in the area.

The area of the subject site was identified as part of the Shale / Sandstone Transition Forest Ecological Community and vegetation zone as Narrow-leaved Ironbark - Broad-leaved Ironbark - Grey Gum open forest of the edges of the Cumberland Plain, Sydney Basin Bioregion (HN556).

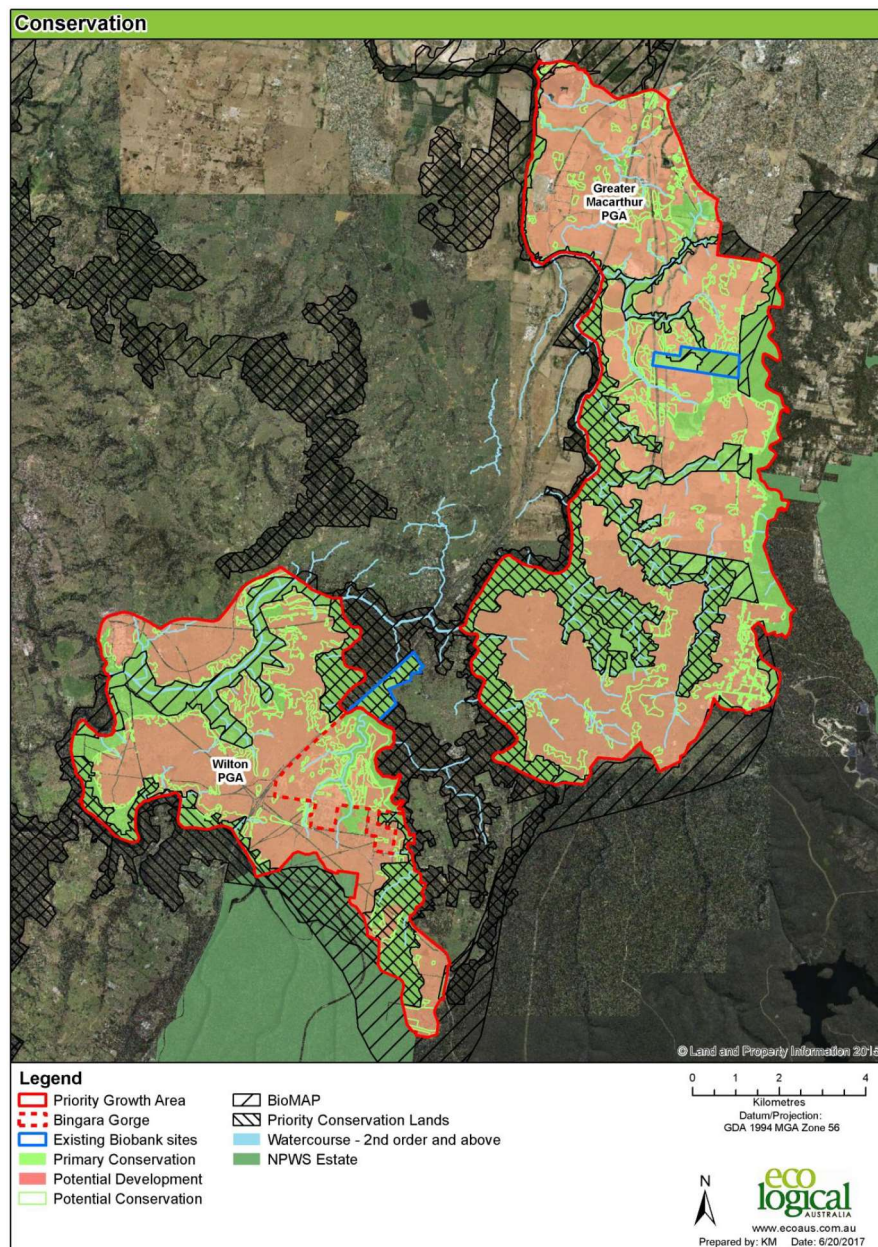
The Biodiversity Certification Assessment Methodology (BCAM) uses the term 'red flag' to describe those communities and species which are to avoid further loss. These in effect become highly constrained lands. The Red Flagged communities did not include the subject site, refer to the following map.



In 2017 Ecological prepared a Biodiversity Study for the NSW Department of Planning and Environment to inform planning of the Wilton and Greater Macarthur Priority Growth Areas. Again, the subject land is identified as part of the Shale / Sandstone Transition Forest Ecological Community and vegetation zone as Narrow-leaved Ironbark - Broad-leaved Ironbark - Grey Gum open forest of the edges of the Cumberland Plain, Sydney Basin Bioregion (HN556).

It identified land as an endangered Ecological Community. It is noted that the area of the shale sandstone transition forest is substantial and in areas not threatened by future urban development. The creek through the site is not identified as a key fish habitat.

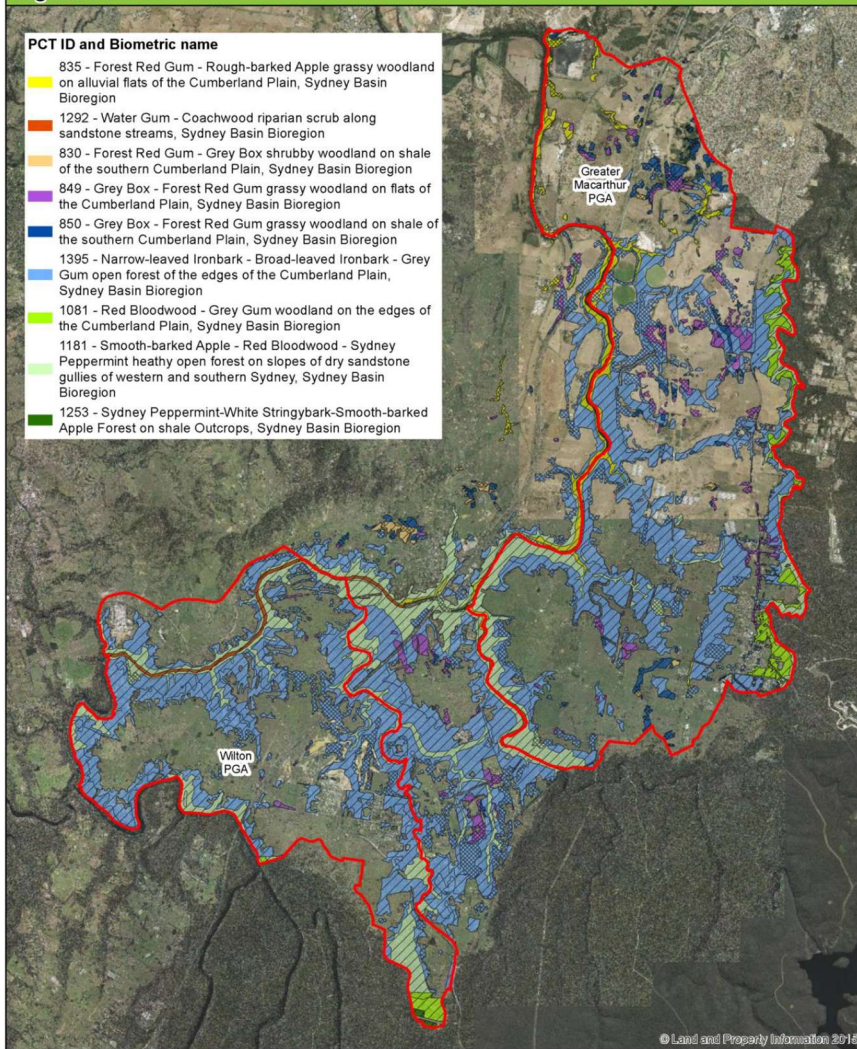
The report identified potential conservation outcomes as primary conservation areas and potential conservation areas. The subject site was not identified as a primary conservation area but as a potential conservation area. Refer to the following extracts from the report.



Vegetation

PCT ID and Biometric name

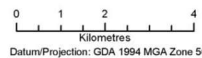
- 835 - Forest Red Gum - Rough-barked Apple grassy woodland on alluvial flats of the Cumberland Plain, Sydney Basin Bioregion
- 1292 - Water Gum - Coachwood riparian scrub along sandstone streams, Sydney Basin Bioregion
- 830 - Forest Red Gum - Grey Box shrubby woodland on shale of the southern Cumberland Plain, Sydney Basin Bioregion
- 849 - Grey Box - Forest Red Gum grassy woodland on flats of the Cumberland Plain, Sydney Basin Bioregion
- 850 - Grey Box - Forest Red Gum grassy woodland on shale of the southern Cumberland Plain, Sydney Basin Bioregion
- 1395 - Narrow-leaved Ironbark - Broad-leaved Ironbark - Grey Gum open forest of the edges of the Cumberland Plain, Sydney Basin Bioregion
- 1081 - Red Bloodwood - Grey Gum woodland on the edges of the Cumberland Plain, Sydney Basin Bioregion
- 1181 - Smooth-barked Apple - Red Bloodwood - Sydney Peppermint heathy open forest on slopes of dry sandstone gullies of western and southern Sydney, Sydney Basin Bioregion
- 1253 - Sydney Peppermint-White Stringybark-Smooth-barked Apple Forest on shale Outcrops, Sydney Basin Bioregion



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Legend

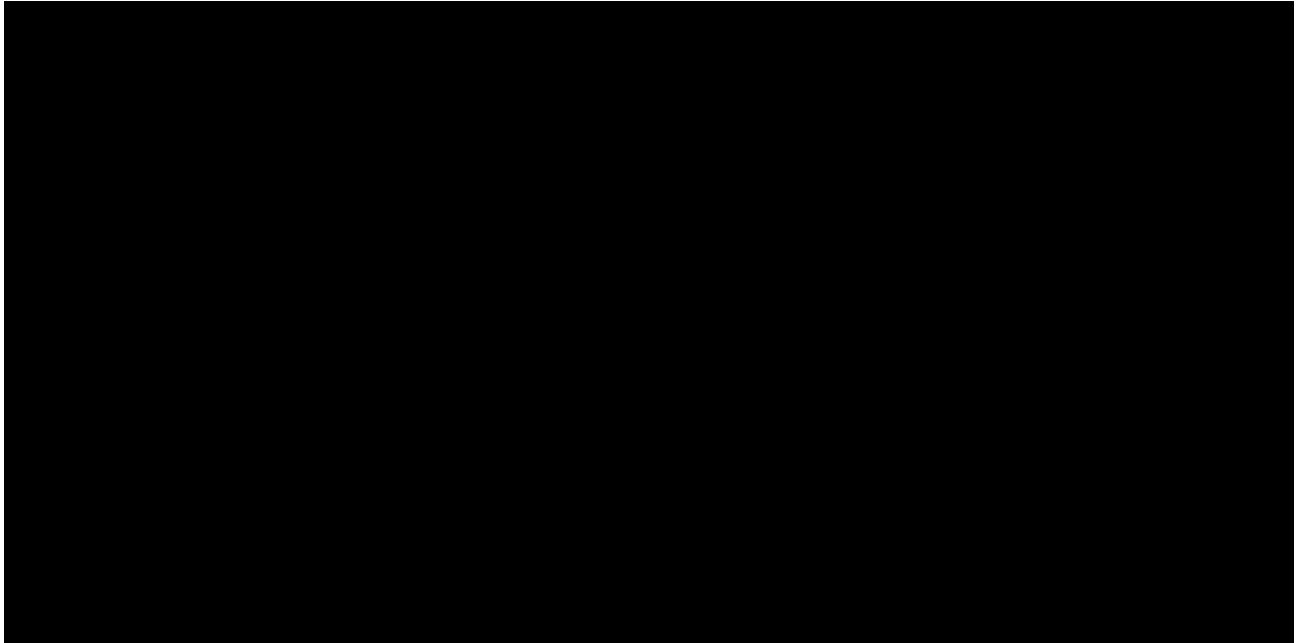
- Priority Growth Area
- Bingara Gorge
- TX (indicatively Low)
- ABC (indicatively Moderate/Good)



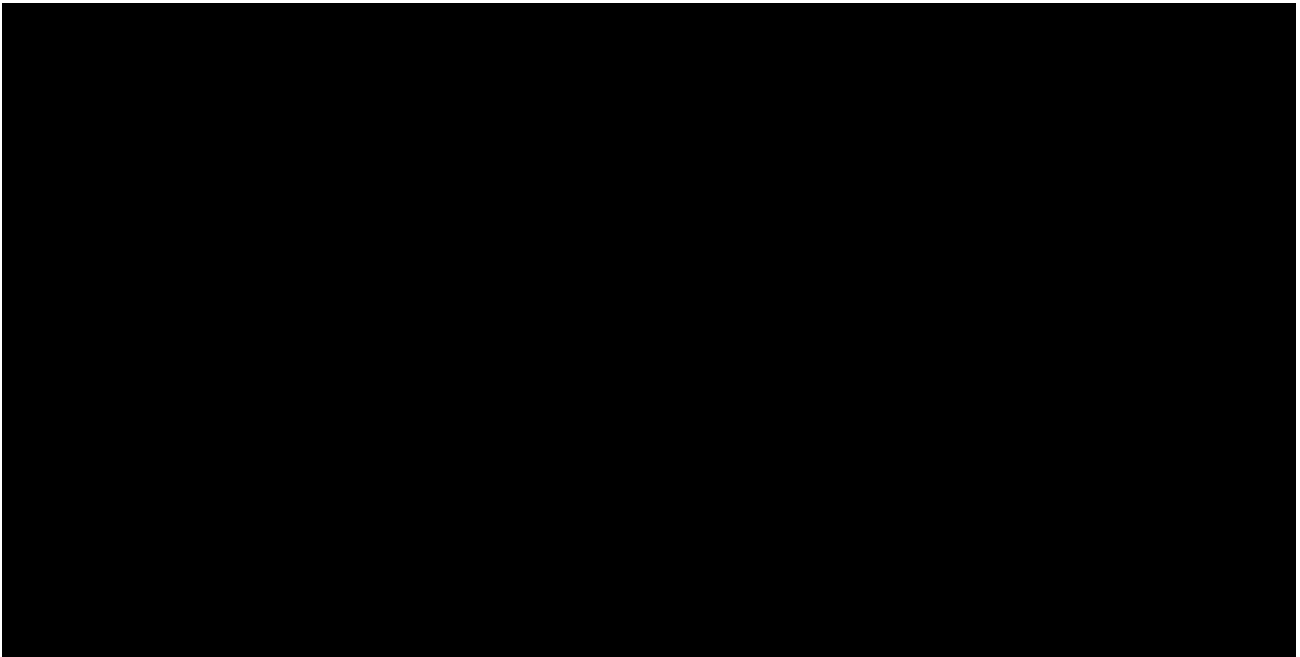
eco
logical
AUSTRALIA

www.ecoaus.com.au
Prepared by: KM Date: 6/7/2017

The following shows a sample of shale sandstone transition forest in nearby bushland on the edge of new residential subdivisions in Wilton, which are larger and less disturbed having an intact understorey with no impediments such as fences to affect fauna movement.



The following photo shows the same creek that traverses the subject site but further downstream and which shows less disturbance having an intact understorey with no impediments such as fences to affect fauna movement.



Wilton 2040

Wilton 2040 identifies land according to its capability for development. It includes urban capable land with limited constraints. It also identifies land as constrained including land with significant slopes, environmental values and constraints are not suitable for development. This includes riparian and habitat corridors and land with high biodiversity value, and items or areas of historic and Aboriginal cultural heritage significance. It identifies the subject site as High Value Waterways and Riparian and identifies the creek corridor as Vegetation Areas Existing rural/non-urban land with (potential for conservation)

It is clear that the subject site is not a major conservation area as identified elsewhere in the Growth Area.

Wollondilly LEP 2011

The existing zoning of the site is RU4 - Primary Production Small Lots, with a minimum permissible lot size of 2ha. It is also identified as Riparian Lands and Watercourses Sensitive Land. The range of permissible uses (only with consent) includes:

<i>Animal boarding or training establishments;</i>	<i>Environmental protection works;</i>	<i>Landscaping material supplies;</i>
<i>Aquaculture;</i>	<i>Farm buildings;</i>	<i>Open cut mining;</i>
<i>Bed and breakfast accommodation;</i>	<i>Farm stay accommodation;</i>	<i>Places of public worship;</i>
<i>Cellar door premises;</i>	<i>Flood mitigation works;</i>	<i>Plant nurseries;</i>
<i>Cemeteries;</i>	<i>Group homes;</i>	<i>Recreation areas;</i>
<i>Centre-based child care facilities;</i>	<i>Home-based child care;</i>	<i>Research stations;</i>
<i>Community facilities;</i>	<i>Home businesses;</i>	<i>Respite day care centres;</i>
<i>Dual occupancies (attached);</i>	<i>Home industries;</i>	<i>Roads;</i>
<i>Dwelling houses;</i>	<i>Home occupations (sex services);</i>	<i>Roadside stalls;</i>
<i>Educational establishments;</i>	<i>Information and education facilities;</i>	<i>Rural supplies;</i>
<i>Environmental facilities;</i>	<i>Intensive plant agriculture;</i>	<i>Secondary dwellings;</i>
		<i>Signage;</i>
		<i>Veterinary hospitals;</i>
		<i>Water supply systems</i>

Extensive agriculture; Home occupations are also permitted without consent.

Wollondilly DCP 2011

The site is subject to the Wollondilly DCP 2011, which has provisions involving tree preservation and procedures for obtaining tree removal approval.

Biodiversity Conservation Act 2016

The site is also subject to this Act, which regulates development of land in relation to retaining biodiversity. Any clearing of bushland on the site would be regulated by this Act.

Zoning controls under proposed SEPP for Strategic Conservation Planning

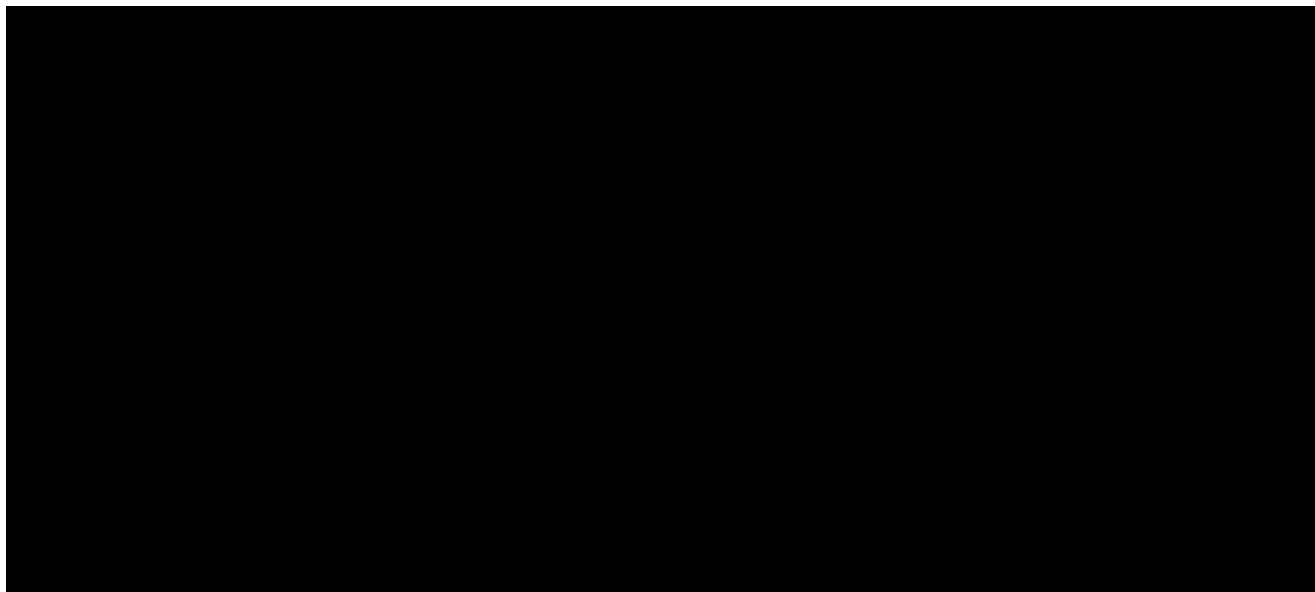
The proposed objective is as follows:

The objective of environmental conservation (E2) zoning is to protect parts of the nominated areas that have been identified as non-certified because they are avoided for biodiversity purposes or avoided for other purposes.

The aims of the E2 zone are to:

- *protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values*
- *prevent development that could destroy, damage or otherwise adversely affect those values.*

Certain development will be permitted with consent, including environmental protection works and flood mitigation work. No other development will be permitted on avoided land under the proposed SEPP.



Comment

Proposed E2 zoning

The proposed zoning of E2 under the proposed SEPP severely reduces the range of permissible uses on the property, which is a primary place of residence. Normally a resident could expect to be allowed the option of any of the following uses on their land.

Dual occupancies (attached);	Home-based child care;	Home occupations
Dwelling houses;	Home businesses;	Secondary dwellings;
Farm buildings;	Home industries;	Signage;

It seems outrageous that a dwelling house is not permitted on a person's primary place of residence. While the "existing use rights" may apply, it still puts an unreasonable limit on a resident to be able to enjoy their own place of residence. It must be stressed that this site is not a large bushland block of land that is on the edge of new residential development or the remaining bushland block after residential subdivision has taken place as is the case in other nearby bushland areas. It is land that will be in the middle of urban development and is already significantly modified when compared with other bushland on the edges of the Wilton Growth Area.

It is noted that it is not in an area identified as a "strategic conservation area". It is also noted that the shale sandstone transition forest occurs in areas to the south of Wilton, which are not affected by the proposed SEPP.

LEP Practice Note for Environmental zone – may invoke the Land Acquisition Act

The practice note, issued by the NSW Department of Planning provides guidance to Councils on various matters, including Environment zones. It states amongst other matters that:

The range of uses proposed to be permitted in the E zones is a consideration for council in consultation with the Department of Planning. In determining uses, council should be aware that the range of uses

should not be drawn too restrictively as they may, depending on circumstances, invoke the Land Acquisition (Just Terms Compensation) Act 1991 and the need for the Minister to designate a relevant acquiring authority.

Unless a relevant acquisition authority has been nominated and that authority has agreed to the proposed acquisition, council should ensure, wherever possible, that the range of proposed land uses assists in retaining the land in private ownership.

The site and the adjoining 2ha sites are primary places of residence. The permitted uses only allow “environmental protection works” and “flood mitigation work”, neither of which relate to a person’s primary place of residence. As the range of permitted uses is so restrictive it effectively prohibits the use of the site by its residents it is considered that this may invoke the Land Acquisition Act in this location and other locations with similar circumstances.

Accordingly, it is requested that the proposed State Environmental Planning Policy for Strategic Conservation Planning not be applied to the subject site and possibly the adjoining sites in the RU4 zone in Condell Park Road, Wilton.