

DEVELOPMENT ASSESSMENT REPORT - DA238/14 - PROPOSED SUBDIVISION 3 LOTS INTO 12, "GLEN ALICE" GLEN ALICE-OLD ROAD GLEN DAVIS NSW 2846

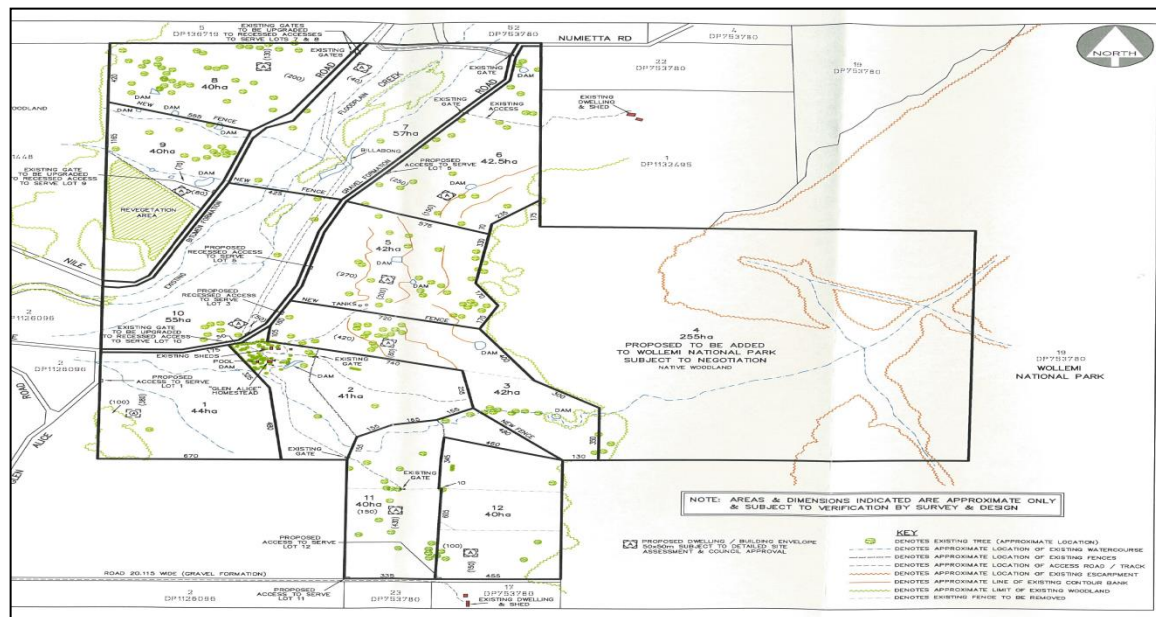
1. PROPOSAL

Council is in receipt of Development Application DA238/14 for a SUBDIVISION of 3 LOTS INTO 12 on land known as Lot 1 DP 651340, Lot 1 and Lot 21 DP 753780 "GLEN ALICE" GLEN ALICE-OLD ROAD GLEN DAVIS NSW 2846.

The proposal is for a 12 lot subdivision being:

- Lot 1 is proposed to contain 44ha with access from Nile Road;
- Lot 2 is proposed to contain 41ha with access from Nile Road;
- Lot 3 is proposed to contain 42ha with access from Nile Road;
- Lot 4 is proposed to contain 255ha. This lot is not proposed to contain building structures as it is proposed to be transferred to the Wollemi National Park.
- Lot 5 is proposed to contain 42ha with access from Nile Road;
- Lot 6 is proposed to contain 42.5ha with access from Nile Road;
- Lot 7 is proposed to contain 57ha with access from Upper Nile Road;
- Lot 8 is proposed to contain 40ha with access from Upper Nile Road;
- Lot 9 is proposed to contain 40ha with access from Upper Nile Road;
- Lot 10 is proposed to contain 55ha with access from Nile Road;
- Lot 11 is proposed to contain 40ha with access via a partially formed Crown Road from Glen Alice Road and
- Lot 12 is proposed to contain 40ha with access via a partially formed Crown Road from Glen Alice Road.

The proposed subdivision is shown on the map below:



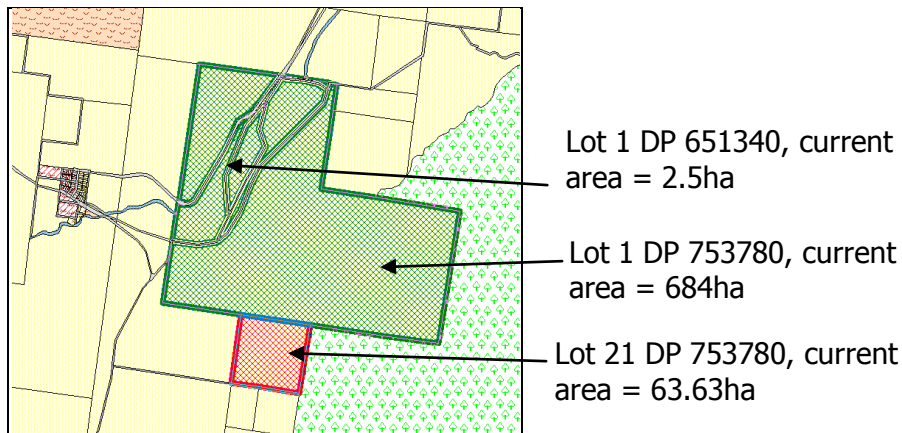
The property has a total area of 779.73 hectares and contains an existing building and associated outbuildings on proposed Lot 2 and proposed Lot 10. There are other farm building structures scattered across the property. The property is generally flat along Upper Nile Creek, undulating to hilly and mountainous. Refer to the photo below showing the landscape of the property (proposed Lot 7):



Council contains no records of the building structures on the property.

The Statement of Environmental Effects states that the mountainous portion of the property is covered with timber as it adjoins the Wollemi National Park. A large portion of the property is relatively cleared with scattered eucalypts and timber on the western boundary.

The existing layout of the property is shown on the map below:



2. SUMMARY

To assess and recommend determination of DA238/14. Recommendation will be for approval subject to conditions.

3. LOCATION OF THE PROPOSAL

Legal Description : Lot 1 DP 651340, Lot 1 and Lot 21 DP 753780
Property Address : GLEN ALICE GLEN ALICE-OLD ROAD GLEN DAVIS NSW
2846

4. ZONING: The land is zoned 1(a) (General Rural) in accordance with Rylstone Local Environmental Plan (LEP) 1996.

5. PERMISSIBILITY: The development is permissible under the Rylstone Local Environmental Plan 1996, Clause 13, subject to development consent.

Clause 13 states:

13 Subdivision for the purposes of dwellings within Zone No 1 (a)

(1) *The Council may consent to the subdivision of land within Zone No 1 (a) if the Council is satisfied that each of the allotments to be created by the subdivision is intended to be used for the purpose of a dwelling, but only if each allotment:*

- (a) has an area of not less than 40 hectares, and*
- (b) is unlikely adversely to affect the existing and potential capability of the land and adjacent land to produce food or fibre or to be used for other agricultural purposes, and*
- (c) does not comprise prime crop and pasture land.*

Each proposed lot would contain an area of over 40 hectares. Council has resolved that the property is not identified as being “prime crop and pasture” land. This is discussed in more detail in the next section of this Report.

The development is classed as being ‘Integrated Development’ with the Rural Fire Service. The development is permissible under the Rural Fires Act 1997.

Although the development was submitted under the Rylstone LEP 1996, Lithgow Council’s Draft Local Environmental Plan 2013 is also taken into consideration in determining this application. The property is located within ‘Area 1’ of the Lot Size Map. Council’s Draft LEP 2013 states that Area 1 cannot be further subdivided.

Clause 1.8A under Council’s Draft LEP 2013 states:

1.8A Savings provision relating to development applications

If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.

The savings clause above allows the development to be determined under Council’s Draft LEP 2013, however Council’s Draft LEP 2013 is detailed further in this report.

5.1 POLICY IMPLICATIONS (OTHER THAN DCP’s)

Rylstone LEP 1996

The Rylstone Local Environmental Plan (LEP) 1996 states:

Prime Crop or pasture land means land within an area identified, on a map dated May 1982, prepared by or on behalf of the Department Agriculture, and which is deposited in the office of the Council, as Class 1, Class 2 or Class 3, but does not include land which the Council has from time to time determined by resolution as not being prime crop or pasture land for the purposes of this plan.

A Report was presented at Council's Ordinary Meeting held 11 May 2015 in relation to the above definition within the Rylstone LEP 1996. It was resolved:

15-100 RESOLVED

THAT:

1. Council resolve that Lot 1 DP 651340, Lot 1 and Lot 21 DP 753780 for DA 238/14 are not prime crop or pasture land for the purposes of the Rylstone Local Environmental Plan 1996.
2. Council resolve that Lot 5 DP 136719, Lots 3, 4, 11 and 12 DP 755796 for DA 228/14 are not prime crop or pasture land for the purposes of the Rylstone Local Environmental Plan 1996.
3. A **DIVISION** be called in accordance with the requirements of Section 375A(3) of the Local Government Act, 1993.

MOVED: Councillor F Inzitari **SECONDED:** Councillor R Higlett.

A **DIVISION** was called in accordance with Section 375A(3) of the Local Government Act, 1993.

Division -

FOR

Councillor R Higlett
Councillor C Hunter
Councillor F Inzitari
Councillor M Statham
Councillor R Thompson

AGAINST

Councillor M F Ticehurst
Councillor J J McGinnes

In accordance with the "prime crop and pasture land" definition under the Rylstone LEP 1996 and with the previous Council resolution above, a final report is now presented to the Council for determination.

Policy 7.5 – Notification of Development Applications

2. Applications for which notification will not be given under this policy

- Subdivision creating less than 5 new lots on land zoned RU1 or RU2.
- Any other development of a minor nature that, in the opinion of the assessing officer, does not have the potential to create a negative impact on the amenity of the neighbourhood by way of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise.

Comment: The development was neighbour notified as it is not exempt under Council's Policy stated above. The development is also located within Area 1 of Council's Draft Local Environmental Plan 2013 (which was subsequently gazetted as LEP2014). Council's Draft LEP 2013 identifies properties within the Area 1 zone (former Rylstone area) as prohibited to be further subdivided. Due to the prohibition of subdivisions under Council's Draft LEP 2013, the development was referred to adjoining neighbours and placed on public display for a period of 14 days. During the notification period one submission was received. The concerns raised in this submission are detailed further in this report.

Policy 7.10 – Planning Agreements

The Policy provides procedures for reporting Voluntary Planning Agreements, outlines the circumstances when Planning Agreements would be entered into, the form of development contributions and the public benefits of Planning Agreements.

5.2 FINANCIAL IMPLICATIONS (eg Section 94)

Council's Section 94A Contributions Plan 2012

Council's Section 94A Contributions plan does not apply to subdivisions.

Planning Agreement

A Voluntary Planning Agreement (VPA) has been negotiated with the developer in relation to the subdivision proposal. The developer has agreed to make a contribution of \$40,000 for the proposed 12 lots to go towards upgrading of Glen Alice Road.

Council's previous Section 94 Contributions Plan for Rural Roads (in force between 1998 to 2012) was originally \$3,000 per lot and was increased overtime to \$4080.

As Council does not have a contributions plan specifically for the upgrade of rural roads, Council's previous Section 94 Contribution Plan was taken into consideration, along with the potential impact of the development, road network capacity and the location of the development.

Council's Engineers have assessed the roads immediately surrounding the proposed subdivision (Upper Nile Road and Nile Road) and consider that the roads are in a suitable condition and are not required to be upgraded as part of the development. The Crown Road is proposed to service two lots and constitutes legal access. It is in a suitable condition and is not required to be upgraded.

Additionally, Council's Section 94A Development Contribution Plan 2012 will be applicable to the construction of dwellings on each proposed lot in the future.

It is considered appropriate that if the application is approved, the following condition is imposed on the consent:

Pursuant to section 80A(1) of the Environmental Planning and Assessment Act the draft Planning Agreement that relates to the Development Application, the subject of this consent must be finalised and paid prior to the issue of the Subdivision Certificate.

5.3 LEGAL IMPLICATIONS

Environmental Protection and Biodiversity Conservation Act 1991

No federally listed Threatened Species or Endangered Ecological Community is required to be cleared as a result of this application. Accordingly, there are no legal implications of this Act on the proposed development.

Native Vegetation Act 2003

No native vegetation is required to be cleared as a result of this application. Accordingly, there are no legal implications of this Act on the proposed development.

Rural Fires Act 1997

The development is integrated under this Act (via Section 91 of the EP & A Act 1979). Accordingly the approval of the Rural Fire Service is required prior to Council being in a position to determine the application. Approval from the Rural Fire Service has been obtained and is discussed later in this report under “submissions made in accordance with the Act”.

Threatened Species Conservation Act 1995

No state listed Threatened Species or Endangered Ecological Community is required to be cleared as a result of this application. Accordingly, there are no legal implications of this Act on the proposed development.

Environmental Planning and Assessment Act 1979

In determining a development application, a consent authority is required to take into consideration the matters of relevance under Section 79C of the *Environmental Planning and Assessment Act 1979*. These matters for consideration are as follows:

5.3.1 Any Environmental Planning Instruments

Rylstone Local Environmental Plan 1996

Rylstone LEP 1996 – Compliance Check		
	Clause	Compliance
9	1(a) zoning table	Yes
10	General Considerations for development in rural zones	Yes
11	Subdivision of land generally	Yes
13	Subdivision for the purposes of dwellings within Zone No 1(a)	No
29	Land subject to bushfire hazards	Yes

Comment: The development is considered to comply with the objectives of the 1(a) zone as there are no heritage items located on the property or within the vicinity of the development. The property is not identified as being a significant nature conservation area or identified as environmentally sensitive land as no trees are proposed to be removed as part of this application. The property is not identified as containing valuable mineral deposits.

A similar subdivision proposal for the adjoining property (DA228/14) was submitted at the same time as this development. DA228/14 is proposed to subdivide 5 lots into 25, 40 hectare allotments. The two development proposals are similar in that they would provide allotments that are 40 hectares or more for dwelling purposes. The surrounding allotments to the two development proposals vary in sizes with the majority having an area over 40 hectares. The land ownerships are grouped and colour coded in the map below as well as the size of the surrounding allotments:

The applicant has requested that Council considers an agronomist report and a soil classification report to change the agricultural land classification from Class 3 to Class 4 for the proposed subdivision development.

The Rural Land Evaluation Manual describes Class 3 as being:

Class 3

Grazing land or land well suited to pasture improvements. It may be cultivated or cropped in rotation with pasture. The overall production level is moderate because of edaphic or environmental constraints. Erosion hazard, soil structural breakdown or other factors including climate may limit the capacity for cultivation and soil conservation or drainage works may be required.

The matter was referred to the Department of Primary Industries (Agriculture) in 2014 for advice. The following comment was received:

“Our advice to the Lithgow City Council and also the Mid Western Regional Council (in the past 7 years) when it also had to deal with such applications has been that the Department of Primary Industries sees no case for reviewing land currently mapped as prime agricultural land in the former Rylstone area. It would set a precedent and if it was to occur the Department would need to be satisfied that reclassification of small localised parts of the map would not contribute to significant risk of conflict with adjoining land use. In this case we would consider it to be appropriate for this continue unless detailed and informed land assessments take place to be considered otherwise.”

The submission of the additional reports was referred to the Department on 14 April 2015 for assessment. No response has been received to date.

Two agricultural land classification reports were submitted for the development by independent consultancies in March 2015. The reports identify the property as being class 4 or 5 under the agricultural classification map rather than a class 3.

The conclusion from the reports state that:

- 12 soil tests were undertaken on the property and indicated moderate to high erodibility,
- Many of the soils were identified as sodic, these are usually unstable, exhibit poor physical and chemical properties which impede water infiltration, water availability and plant growth.
- Salinity in soils can have an effect on plant growth and yield, reduce water availability and lead to soil erosion. Most crops are negatively affected by (moderate) saline soils.
- Cation exchange capacity (cec) was measured on the property. Cation exchange capacity is used as a measure of soil fertility, the higher the cec the higher the fertility of the soil. Many of the soils tested at the property had low cec's.

The report submitted by PB Ag Consulting Pty Ltd states that that in regard to soil type and structure, slope and steepness, mountain areas along with rocky sections and past cropping failures, the land is only suitable for grazing and not cultivation.

Another property within the Rylstone area and within proximity to the property in question was subdivided as per 310/04DA for a 15 lot subdivision (identified within the lot size map above). The DA was approved on 5 September 2000 by Rylstone

Shire Council and amended for staging purposes by Lithgow City Council on 12 October 2014. At the time of the original assessment of the subdivision the Department of Agriculture classified the land as a 'Class 3' with the property described as not being 'prime crop and pasture land'. The Department of Agriculture recommended that the property is more suited for grazing purposes. 310/04DA was approved at Rylstone's Extra-Ordinary Meeting held on 22 August 2000.

Council officers inspected the property on 31 March 2015. The inspection allowed the findings of the additional reports, mentioned above, to be confirmed. The land in question does not contain the characteristics of Class 3 'prime crop or agriculture land'.

The property is located within the bushfire prone area. A bushfire report has been submitted with the application and indicates that the property contains managed grassland for grazing purposes. The development is classed as being 'Integrated Development' and was referred to the Rural Fire Service (RFS) for commenting. These comments are found later in this report. It is considered that the development complies with the Rural Fire Service requirements.

The land is deemed suitable for the proposal; a geotechnical report has been submitted to Council and is found to be satisfactory that disposal of domestic waste water is feasible within the boundaries of each allotment.

State Environmental Planning Policy (Rural Lands) 2008

SEPP (Rural Lands) 2008 – Compliance Check		
	Clause	Compliance
8	Rural Subdivision Principles	Yes
10	Matters to be considered in determining development applications for rural subdivisions or rural dwellings	Yes

Comment: This property is mapped as 'Class 3' land on the agricultural land classification map.

The proposed subdivision would not create land use conflicts as the surrounding properties are utilised for rural residential purposes. The lot sizes, natural and physical constraints are considered suitable for the area and for future residential purposes.

The applicant has requested that Council considers an agronomist report and a soil classification report as being acceptable to change the agricultural land classification from Class 3 to Class 4 for the proposed subdivision development.

As previously stated in this report Council officers inspected the property on 31 March 2015. The inspection allowed the findings of the additional reports, mentioned above, to be confirmed. The land in question does not contain the characteristics of Class 3 'prime crop or agriculture land'.

State Environmental Planning Policy 44 – Koala Habitat Protection

SEPP 44 is applicable to site given that it exceeds 1ha in size and is located within the Lithgow Local Government Area to which the SEPP applies.

Part 2 of the SEPP requires Council to consider whether the land the subject of the application retains potential and subsequently core koala habitat.

Comment: Given that no trees are to be removed as part of the development, and the section of the subject site relevant to the application is devoid of native vegetation it is considered unnecessary to proceed further with SEPP 44 assessment.

5.3.2 Any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority

Lithgow Draft Local Environmental Plan 2013

Lithgow Draft LEP 2013 – Compliance Check		
	Clause	Compliance
Part 2	RU1 Primary Production	Yes
Clause 4.1	Area 1 –Class 1 to 3 Agricultural Land	No
Clause 4.2	Rural Subdivision	Yes
Clause 7.4	Riparian lands and waterways	Yes
Clause 7.5	Groundwater vulnerability	Yes
Clause 7.6	Terrestrial Biodiversity	Yes
Clause 7.7	Sensitive Land	Yes

Comment: The proposed subdivision generally complies with the objectives of the RU1 Primary Production Zone as:

- *The natural resource base would be maintained and enhanced as no building structures are proposed.*
- *The landform will be maintained and not impacted.*
- *Surrounding landuses are of similar nature in that conflicts between landuses would be minimal.*
- *The visual impact on the rural landscape would not be affected by the subdivision.*
- *The water quality in the vicinity would be maintained as geotechnical reports have been submitted indicating that the septic systems are compatible with the property.*

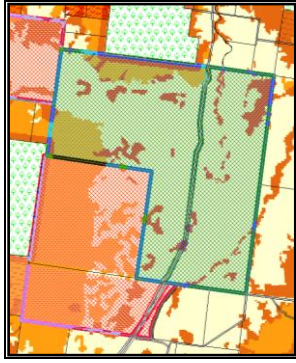
Clause 4.2 states:

4.2 Minimum subdivision lot sizes

(5) Despite any other provision of this clause, land shown as “Area 1” and “Area 2” on the Lot Size Map may not be further subdivided.

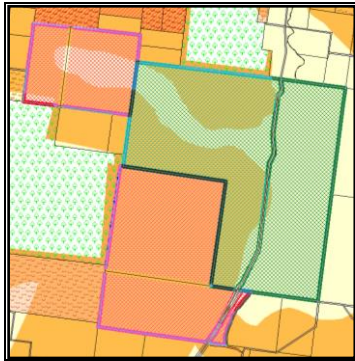
Although the development is located within the Area 1 zone under Council’s Draft LEP 2014, the development was submitted in August 2014 and is therefore primarily assessed under the Rylstone LEP 1996.

The property is identified as containing Biodiversity. The proposed subdivision is not expected to have any adverse impact on ecological value or significant flora and fauna on the property. Biodiversity is scattered over the large allotment as shown on the map below:



No clearing of the property is proposed as part of this application and the land form would not be impacted upon.

Part of the property is identified as being sensitive land. The land has a slight slope less than 25%. The land is not subject to high erosion potential, salinity, impeded drainage or expected to be subject to regular or permanent inundation. The development is designed, sited and will be managed to avoid significant adverse environmental impact. The sensitive land map is shown below:



The property is identified as containing ground water vulnerability. Geotechnical reports have been submitted with the application along with soil tests which identifies the impact on groundwater to be minimal.

Groundwater dependent ecosystems would not be impacted upon by the development as the landscape of the property is proposed to remain. The development is designed, sited and will be managed to avoid any significant adverse environmental impact. Water vulnerability is mapped below:



Therefore, the development generally complies with the provisions of the DLEP2013 with the exception of the minimum subdivision lot size. However, given the

application was lodged under the Rylstone LEP 1996, the development may be given determinative weight in this instance under Rylstone LEP1996.

5.3.3 Any Development Control Plan

None.

5.3.4 Any planning agreement that has been entered into under Section 93F, or any draft planning agreement that a developer has offered to enter into under Section 93F?

Planning Agreement

A Voluntary Planning Agreement (VPA) has been negotiated with the developer in relation to the subdivision proposal. The developer has agreed to make a contribution of \$40,000 for the proposed 12 lots to go towards the upgrade of Glen Alice Road.

Finalisation of the VPA would be conditioned on the consent.

5.3.5 Any matters prescribed by the regulations that apply to the land

There are no demolition works, rebuilding or extension of the building is proposed as part of this application.

5.3.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Context and Setting: The proposed development will be located within an established rural general area and will have no major impact on the context and setting.

Soils: The proposed development will have no significant impact on soils. There is no reason to believe the site would be affected by acid sulphate soil or contamination problems.

The Statement of Environmental Effects states:

Most of the soils are derived from the weathering of sandstones. They are poor soils from agriculture having low levels of moisture and nutrients. They generally have shallow rooting zones and poor drainage due to subsoil cementation. A low ph further compounds issues along with phosphate deficiencies and aluminium toxicity.

This is considered satisfactory for the subdivision and for future dwelling purposes.

Social and Economic Impact: The development would have a positive social impact as it would allow future dwellings to be erected on rural properties.

As the proposed development will be generally in keeping with the provisions of the planning instruments and is reasonably compatible with other similar development in the locality, it is expected to have minimal social and economic impact.

Bushfire: The property is located within the bushfire prone area. A bushfire report has been submitted with the application and indicates that the property contains managed grassland for grazing purposes. The development is classed as being 'Integrated Development' and was referred to the Rural Fire Service (RFS) for

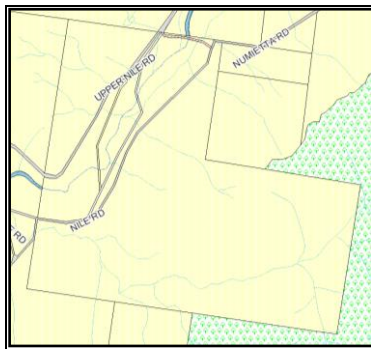
commenting. These comments are found later in this report. It is considered that the development complies with the Rural Fire Service requirements.

Noise and Vibration: There are no nearby sources of noise or vibration that would impact detrimentally on the development. The proposal will further not cause any noise issues except during the construction of the road.

Public Domain: The development will not impact on the public domain.

Heritage: There is no known heritage item located on or in the vicinity of the site.

Water Resources: There are a number of non-perennial water courses and dams on the property with Umbrella Creek running through the middle in a north-south direction. Refer to the riparian corridors shown on the map below:



Council is satisfied that the building envelopes shown on the plan are located a suitable distance away from the water courses with no crossings for access proposed or required.

A plan was submitted with the application showing the distance from the building envelopes to the water courses with the minimum distance being 40m (proposed Lot 7). The other proposed lots show a greater distance.

Flooding: Upper Nile Creek is located through proposed Lots 7 and 10. The Statement of Environmental Effects states:

Part of Lots 7 and 10 would be considered flood liable – however the building envelopes depicted on the subdivision plan are outside of the flood area.

Council has no records or flood information relating to this property to determine the potential impacts. Additional information as submitted by the applicant states the building envelope for proposed Lot 7 would be 3.53m above the river level and the building envelope on Lot 10 is 5.1m above the river level. Council is satisfied that the building envelopes are not within the flood prone area.

An advisory note would be placed on the consent to ensure that any future dwellings on proposed lots 7 and 10 are to be located within the identified building envelope. Any variation to the building envelope may require a flood study to be undertaken.

Flora and Fauna: The Statement of Environmental Effects states that the mountainous portion of the property is covered with timber and it adjoins the Wollemi National Park. A large portion of the property is relatively cleared with scattered eucalypts and timber on the western boundary. Refer to the photo below looking towards the existing homestead on proposed Lot 2:



Council has undertaken a site inspection of the property and is satisfied that the development would not impact flora and fauna in the vicinity and that no further assessment is required for the development.

Air and Microclimate: There will be no significant impact on air or microclimate.

Services: Electricity and telephone services exist within the vicinity and are connected to the existing dwelling on proposed Lot 2. A condition would be placed on the consent, if the development is approved, requiring electricity and telephone connection to each of the proposed lots.

Domestic water is obtained via water tanks for the dwellings on the property. A Water tank would be required when a dwelling is proposed on the lots. Water for agricultural use is from numerous dams that are scattered throughout the property.

Adjoining Landuse: The surrounding properties consist of a mixture of residential and agricultural uses. Vegetation in the area is cleared farmland with some bushland to the north and west.

The size and purpose of the subdivision is similar to the surrounding lot sizes and residential uses.

The development is considered to have minimal impacts on adjoining neighbours in terms of overshadowing, visual impacts etc.

The development is expected to increase traffic in the vicinity when future dwellings are proposed. As access to the proposed lots are scattered between Nile Road, Upper Nile Road and a Crown Road it is unlikely that the increase in traffic would impact adjoining residents.

Access, Transport and Traffic: Access to Lots 1-6 and 10 is proposed to be from Nile Road. Nile Road is currently a gravel road and is in a suitable condition for the development. Refer to the photo below:



Lots 11 and 12 are proposed to gain access via a Crown Road and are required to be constructed to Council's Engineering requirements.

Access to lots 7, 8 and 9 are proposed to have access from Upper Nile Road which is bitumen sealed.

The Statement of Environmental Effects states:

It is likely that the proposal will only generate up to an additional 60 vehicle movements per day once a future dwelling is built on each lot. Nile Road is a good quality gravel road and Upper Nile Road is a good quality bitumen road that receives a modest amount of traffic each day.

It is considered that the road network is capable of handling the additional traffic volume without the need for upgrading.

Council is satisfied with the applicant's response relating to minimal impacts to the road and traffic. The development was referred to Council's Engineers whose comments are found later in this report.

It would be conditioned on the consent that each access is to comply with Council's Engineering standards.

Effluent Disposal: geotechnical reports have been provided for the development which suggests that any proposed residential development is able to provide effective onsite effluent disposal for all of the proposed lots.

Council's Building Surveyor assessed the geotechnical reports and determined that the existing system servicing the dwelling on proposed Lot 2 is required to be upgraded as it does not comply with the current standard capacity or dimensions. This would be conditioned on the consent and is required to be upgraded prior to the release of the subdivision certificate.

All of the proposed locations of the effluent disposal systems are located over 40m from water courses on the property. Effluent disposal for proposed Lots 7 and 10 are also located over 100m from the creek.

Other Land Resources: The development will not impact on the value of the land in terms of agricultural potential, mining etc.

5.3.7 The Suitability of the site for the development

The surrounding land uses are for rural/residential pursuits. Therefore, the size and nature of the development will be consistent with those in the surrounding area.

Hence, the site is considered to be suitable for the proposed development. The proposal is compatible with the objectives of the zone and is considered to have minimal impact on the surrounding amenity.

5.3.8 Any submissions made in accordance with this Act or the Regulations

The proposal was sent to the Department of Primary Industries (DPI), the Rural Fire Service (RFS), Council's Operations Department and Council's Building Surveyors for commenting. The proposal was also sent to adjoining neighbours and placed on public display in Councils Administration Building for a period of 14 days.

NEIGHBOUR NOTIFICATION

During the notification period one submission was received. The concerns are:

1. Loss of privacy in relation to the location of the building envelopes for proposed lots 11 and 12.
2. If the Crown Road gets upgraded it is requested that the existing fence remains in order to provide a separation between the properties.

Applicant's Response: *The building envelope for Lot 11 is located in the middle of that lot and is a considerable distance (about 800m) from the nearest existing dwelling. Trees obscure the view of this building envelope from the existing adjacent dwelling.*

The building envelope for Lot 12 is below the existing dwelling on the adjacent property. This building envelope can be moved further down the hill (north) and further away from the adjacent dwelling.

It is proposed that the existing fence will remain in place.

Council Comment: Council is satisfied with the applicant's response as the building envelopes are considered to be in a suitable location as to have minimal impact on privacy. The Crown Road is not proposed to be upgraded and the fence remaining.

DEPARTMENT OF PRIMARY INDUSTRIES (DPI)

Council has requested comment from the Department of Primary Industries on a number of occasions seeking their advice on the application, including additional information that the Department required.

The Department response was unfavourable and required additional information to be submitted involving reports and studies indentifying that the property is not prime crop and pasture land.

Through telephone calls with the Department it was stated that it would be up to Council to make the final determination.

To date Council has not received written comment from the Department.

RURAL FIRE SERVICE (RFS)

Reference is made to Council's letter dated 20 January 2015 seeking general terms of approval for the above Integrated Development in accordance with Section 91 of the 'Environmental Planning and Assessment Act 1979'.

This response is to be deemed a bush fire safety authority as required under section 100B of the 'Rural Fires Act 1997' and is issued subject to the following numbered conditions:

Asset Protection Zones

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

At the issue of subdivision certificate and in perpetuity, the land surrounding the existing dwelling(s) on proposed Lot 2, to a distance of 20 metres, shall be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

2. Water, electricity and gas are to comply with the following requirements of section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

- In recognition that no reticulated water supply exists, a 20,000 litre water supply shall be provided for fire fighting purposes.
- The water source shall be made available or located within the inner protection area (IPA) and away from the structure.
- A hardened ground surface for truck access is to be supplied up to and within 4 metres of the water source.
- A 65mm metal Storz outlet with a gate or ball valve shall be provided.
- Above ground tanks are manufactured of concrete or metal and raised tanks are to have their stands protected. Plastic tanks shall not be used.
- Underground tanks shall have an access hole of 200mm to allow tankers to refill direct from the tank. A hardened ground surface for truck access is to be supplied within 4 metres of the access hole.
- Tanks and associated fittings on the hazard side of the building shall be provided with adequate shielding to mitigate the impact of flame contact and radiant heat and provide safe access for fire fighters.
- All associated fittings to the tank shall be noncombustible.
- Pumps are to be shielded from the direct impacts of bush fire.
- Pumps to supply water for fire suppression activities shall be a minimum 5hp or 3kW and petrol or diesel powered.

Design and Construction

The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:

3. The existing building on proposed Lot 2 is required to be upgraded to improve ember protection. This is to be achieved by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen mesh with a maximum aperture of 2mm. Where applicable, this includes any sub floor areas,

openable windows, vents, weepholes and eaves. External doors are to be fitted with draft excluders.

COUNCIL'S OPERATIONS DEPARTMENT

Reference is made to the Development Application in regard to Council's Planners referral dated 20 January 2015 and provide the following comments in relation to the following matter of interest:

- Subdivision Access
- Access from Crown Road

It is suggested that the following conditions be placed on any Development Consent:

- The proposed access driveways off Upper Nile Road for proposed Lot 7, Lot 8 and Lot 9 are to provide a minimum entry splay of 6.0 metres in width, tapering back into a minimum of 4.0 metre wide internal access road. Each access driveway shall have a minimum of 150mm of DGG-20 road base applied and compacted providing a smooth transitional surface and is to be (2) two-coat bitumen sealed (14/7mm pre-coated aggregate) from the edge of Upper Nile Road to the boundary of each property or alternatively concreted. Where access is existing, the access must be upgraded to this standard.

- The proposed access driveways off Nile Road for proposed Lot 1, Lot 2, Lot 3, Lot 5, Lot 6 and Lot 10 are to provide a minimum entry splay of 6.0 metres in width, tapering back into a minimum 4.0 metre wide internal access road. Each access driveway shall have a minimum of 150mm of DGB-20 road base applied and compacted providing a smooth transitional surface from the edge of Nile Road to the boundary of each property. Where access is existing, the access must be upgraded to this standard.

- Where road side stormwater drainage is present, a minimum 450mm diameter pipe is to be installed at the new or upgraded access, with headwalls attached on each side of the piped culvert in order to maintain road side stormwater drainage. The pipes are to be of a reinforced concrete standard with precast headwalls with a minimum cover of 300mm (class 4). The pipes and headwalls are to be formed in such a way as to not obstruct the flow of water through any existing table drains.

- to be fully sealed for the entire length where it exceeds a 10% slope gradient.

- Council accepts no responsibility for the upgrade or maintenance of the Crown Road which will serve as access to Lot 11 and Lot 12. This will be entirely the responsibility of the parties gaining access from the Crown Road and as such, the permission of the Crown shall be gained.

COUNCIL'S BUILDING SURVEYOR

Reference is made to the development application in regard to Council's Planners referral dated 1 September 2015. The applicant has addressed all points from the previous Memo of 21 April 2015 through the submission of additional information.

It is noted that proposed Lot 2 contains an existing dwelling and OWMS (to be upgraded) and proposed Lot 4 is not for dwelling purposes.

Onsite wastewater disposal for the existing dwelling upon proposed Lot 2 will consist of the upgrading of an existing septic tank and absorption trench whilst upon proposed Lots 1, 3 & 5-12 will comprise of an AWTs and subsurface irrigation.

Proposed Lot 1

Consists of sandy soil with various moderate site/soil constraints. Soil amelioration required at dwelling stage. Buffer distances appear to comply (40m from watercourse – Silverbook).

Proposed Lot 2

Consists of sandy loam soil with various moderate site/soil constraints. Soil amelioration required at dwelling stage. Buffer distances appear to comply (40m from watercourse – Silverbook).

Proposed Lot 3

Consists of medium clay soil with various moderate site/soil constraints. Soil amelioration required at dwelling stage. Buffer distances appear to comply (40m from watercourse – Silverbook).

Proposed Lot 4

Not for dwelling purposes. No Geotechnical Report provided. No additional information required.

Proposed Lot 5

Consists of light clay soil with various moderate site/soil constraints. Soil amelioration required at dwelling stage. Buffer distances appear to comply (40m from watercourse – Silverbook).

Proposed Lot 6

Consists of clay loam soil with various moderate site/soil constraints Buffer distances appear to comply (40m from watercourse – Silverbook).

Proposed Lot 7

Consists of medium clay soil with various moderate site/soil constraints. Buffer distances appear to comply (40m from watercourse and 100m from creek – Silverbook).

Proposed Lot 8

Consists of clay loam soil with various moderate site/soil constraints. Buffer distances appear to comply (40m from watercourse – Silverbook).

Proposed Lot 9

Consists of medium clay soil with various moderate site/soil constraints. Buffer distances appear to comply (40m from watercourse – Silverbook).

Proposed Lot 10

Consists of sandy loam soil with various moderate site/soil constraints. Buffer distances appear to comply (40m from watercourse and 100m from creek – Silverbook).

Proposed Lot 11

Consists of sandy loam soil with various moderate site/soil constraints. Soil amelioration required at dwelling stage. Buffer distances appear to comply (40m from watercourse – Silverbook).

Proposed Lot 12

Consists of clay loam soil with various moderate site/soil constraints Buffer distances appear to comply (40m from watercourse – Silverbook).

As such, should approval be granted there are no objections subject to the following conditions being implemented on the Development Consent:

- 1. The development shall take place in accordance with the approved development plans containing Council’s approved development stamp and all associated documentation submitted with the application, except as modified in red by Council and/or any conditions of this consent.
- 2. A separate Development Application is to be submitted to and determined by Council for any future dwelling on proposed Lots 1, 3 and 5 to 12.
- 3. A separate application under Section 68 of the Local Government Act 1993 is to be submitted to and determined by Council for the installation of any Onsite Wastewater Management System on proposed Lots 1, 3 and 5 to 12.
- 4. Prior to release of subdivision certificate, a separate application under Section 68 of the Local Government Act 1993 is to be submitted to and approved by Council for the installation/upgrade of the Onsite Wastewater Management System serving the existing dwelling on proposed Lot 2.

5.3.9 The public interest

There has been no issues raised from the public regarding planning issues.

6. DISCUSSION AND CONCLUSIONS

The proposal is considered to generally comply with the relevant provisions of the applicable Environmental Planning Instruments. The proposal is not considered likely to have any significant negative impacts upon the environment or upon the amenity of the locality. As such it is recommended that development consent is issued subject to the conditions outlined below.

7. ATTACHMENTS

Schedule A- Conditions of consent.

8. RECOMMENDATION

THAT development application DA 238/14 is approved subject to conditions set out in Schedule A.

Report prepared by: Lauren Stevens

Group Manager Environment and Development: Andrew Muir

Signed:.....

Signed:.....

Dated:.....

Dated:.....

REASONS FOR CONDITIONS

The conditions in Schedule A have been imposed for the following reasons:

- To ensure compliance with the terms of the relevant Planning Instruments
- To ensure no injury is caused to the existing and likely future amenity of the neighbourhood
- Due to the circumstances of the case and the public interest.
- To ensure that adequate road and drainage works are provided.
- To ensure access, parking and loading arrangements will be made to satisfy the demands created by the development.
- To ensure the structural integrity of the development.
- To ensure the protection of the health and safety of the occupants of the development.
- To protect the environment.
- To prevent, minimise, and/or offset adverse environmental impacts.
- To ensure lots are adequately serviced.
- To ensure there is no unacceptable impact on the water quality.
- To ensure compliance with the requirements of the Rural Fire Services.
- To ensure adequate soil conservation and protect against movement of soil and sediments.

Schedule A

Conditions of Consent (Consent Authority) and General Terms of Approval (Integrated Approval Body)

Please Note: It should be understood that this consent in no way relieves the owner or applicant from any obligation under any covenant affecting the land.

ADMINISTRATIVE CONDITIONS

1. That the development be carried out in accordance with the application, Statement of Environmental Effects, accompanying information, plans listed in the approval and any further information provided during the process unless otherwise amended by the following conditions.
2. No dwelling has been approved as part of this subdivision application. A separate development application is required to be lodge with Council for any future development or demolish of dwellings.
3. That a Subdivision Certificate Application be lodged to Council for approval.
4. That the subdivision release fee, Registered Surveyors Plans (original & 11 copies) along with associated 88B instrument if applicable, be submitted to Council for finalisation following the compliance with all conditions of this consent.
5. The Council's Environment and Development Department should be contacted to arrange the appropriate rural address numbers to be allocated to the subdivision.

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

Planning Agreement

6. Pursuant to section 80A(1) of the Environmental Planning and Assessment Act the draft Planning Agreement that relates to the Development Application, the subject of this consent must be finalised and paid prior to the issue of the Subdivision Certificate.

Environmental Protection

7. Prior to the issue of the Subdivision Certificate, Council is to be provided with a report from the Upper Macquarie County Council indicating:
 - Noxious plants are under adequate management; or
 - Noxious plant management has been undertaken and adequate control measures are in place; or
 - Noxious plants are not a concern for the property.
8. The applicant shall ensure that during the construction works all measures are taken to eliminate/suppress any dust nuisance emanating from the site.

Engineering Requirements

9. The proposed access driveways off Upper Nile Road for proposed Lot 7, Lot 8 and Lot 9 are to provide a minimum entry splay of 6.0 metres in width, tapering back into a minimum of 4.0 metre wide internal access road. Each access driveway shall have a minimum of 150mm of DGG-20 road base applied and compacted providing a smooth transitional surface and is to be (2) two-coat bitumen sealed (14/7mm pre-coated aggregate) from the edge of Upper Nile Road to the boundary of each property or alternatively concreted. Where access is existing, the access must be upgraded to this standard.
10. The proposed access driveways off Nile Road for proposed Lot 1, Lot 2, Lot 3, Lot 5, Lot 6 and Lot 10 are to provide a minimum entry splay of 6.0 metres in width, tapering back into a minimum 4.0 metre wide internal access road. Each access driveway shall have a

minimum of 150mm of DGB-20 road base applied and compacted providing a smooth transitional surface from the edge of Nile Road to the boundary of each property. Where access is existing, the access must be upgraded to this standard.

11. Where road side stormwater drainage is present, a minimum 450mm diameter pipe is to be installed at the new or upgraded access, with headwalls attached on each side of the piped culvert in order to maintain road side stormwater drainage. The pipes are to be of a reinforced concrete standard with precast headwalls with a minimum cover of 300mm (class 4). The pipes and headwalls are to be formed in such a way as to not obstruct the flow of water through any existing table drains.
13. Council accepts no responsibility for the upgrade or maintenance of the Crown Road which will serve as access to Lot 11 and Lot 12. This will be entirely the responsibility of the parties gaining access from the Crown Road and as such, the permission of the Crown shall be gained.

Utilities

15. The applicant shall consult with authorised telecommunications and electricity authorities for the provision of telephone and electricity services to each allotment. Confirmation of connection or a 'Notification of Arrangement' is to be lodged from each authority with Lithgow City Council prior to the release of a final 'Subdivision Certificate'.

Section 68 Application

16. A separate application under Section 68 of the Local Government Act 1993 is to be submitted to and determined by Council for the installation of any Onsite Wastewater Management System on proposed Lots 1, 3 and 5 to 12.
17. Prior to release of subdivision certificate, a separate application under Section 68 of the Local Government Act 1993 is to be submitted to and approved by Council for the installation/upgrade of the Onsite Wastewater Management System serving the existing dwelling on proposed Lot 2.

RURAL FIRE SERVICE (RFS) REQUIREMENTS

Asset Protection Zones

18. At the issue of subdivision certificate and in perpetuity, the land surrounding the existing dwelling(s) on proposed Lot 2, to a distance of 20 metres, shall be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

Water and Utilities

19. Water, electricity and gas are to comply with the following requirements of section 4.1.3 of 'Planning for Bush Fire Protection 2006'.
 - In recognition that no reticulated water supply exists, a 20,000 litre water supply shall be provided for fire fighting purposes.
 - The water source shall be made available or located within the inner protection area (IPA) and away from the structure.
 - A hardened ground surface for truck access is to be supplied up to and within 4 metres of the water source.
 - A 65mm metal Storz outlet with a gate or ball valve shall be provided.
 - Above ground tanks are manufactured of concrete or metal and raised tanks are to have their stands protected. Plastic tanks shall not be used.
 - Underground tanks shall have an access hole of 200mm to allow tankers to refill direct from the tank. A hardened ground surface for truck access is to be supplied within 4 metres

of the access hole.

- Tanks and associated fittings on the hazard side of the building shall be provided with adequate shielding to mitigate the impact of flame contact and radiant heat and provide safe access for fire fighters.
- All associated fittings to the tank shall be noncombustible.
- Pumps are to be shielded from the direct impacts of bush fire.
- Pumps to supply water for fire suppression activities shall be a minimum 5hp or 3kW and petrol or diesel powered.

Design and Construction

20. The existing building on proposed Lot 2 is required to be upgraded to improve ember protection. This is to be achieved by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen mesh with a maximum aperture of 2mm. Where applicable, this includes any sub floor areas, openable windows, vents, weepholes and eaves. External doors are to be fitted with draft excluders.

ADVISORY NOTES

Threatened Species

- AN1. No Threatened Species or Endangered Ecological Community listed under the Threatened Species Conservation Act 1995, the Environment Protection and Biodiversity Conservation Act 1999 or the associated Regulations are to be cleared as result of this Approval. This includes for fencing or accessways.

Catchment Management Authority Clearing Approvals

- AN2. That any proposed clearing of native vegetation may require approval from the Catchment Management Authority. Prior to the removal of any native vegetation it is suggested that you contact the Catchment management Authority for advice.

Flooding

- AN3. Any future dwellings on proposed lots 7 and 10 are to be located within the recommended building envelope. Any variation to the building envelope may require a flood study to be undertaken.