

13.11 PLANNING PROPOSAL LEP-0011 - SID LANE'S PLANNING PROPOSAL TO REZONE LAND AT ELLEMS BRIDGE ROAD, WOODVIEW (PIORA) FOR RURAL RESIDENTIAL PURPOSES (PROPOSED LOTS APPROXIMATELY 1 HECTARE)

Reference: Land Use and Planning - Planning; P1002919; P70662

Prepared by: Planning Officer

RECOMMENDATION

Recommended that:

1. Council conditionally support Planning Proposal LEP-0011 to rezone part Lot 2 DP1170052 and Lot 1 DP449328 located at the corner of Ellems Bridge Road and the Bruxner Highway at Woodview (Piora) on the stipulation the applicant resolves any matters deemed relevant within a Gateway Determination issued by the Department of Planning and Infrastructure.
2. Council not seek delegation to determine this proposal.

151013/ 15 RESOLVED (Cr Sullivan/Cr Mustow)

That the above recommendation be adopted.

FOR VOTE - All Council members voted unanimously.

ABSENT. DID NOT VOTE - Cr Hayes

Executive Summary

By recommending conditional support, some certainty may be provided to the owner/proponent following deliberation concerning this proposal. Council maintains that the following issues remain outstanding which the proponent argues have been satisfied:

- Land in this vicinity has been identified for later stages within the 'Richmond River Rural Residential Strategy' and areas recognised within earlier release stages have not been exhausted. Council is currently processing a number of other rural residential developments which satisfy the intended supply for this style of lots for at least the next five years.
- Situating sensitive rural residential development in proximity to a regionally significant quarry closer than stipulated within relevant guidelines and advice provided. The Woodview Quarry utilises blasting for extraction and there exists a very real potential for the future resource to be compromised. R5 – Large Lot Residential development located nearby risks being negatively impacted. Regional listing means the resource is particularly valuable and warrants protection.

Community Strategic Plan Links

Focus Area 5 - Rural and Urban Developments - Long Term Goal 5.1 (Strategies 5.1.4 and 5.1.5).

Budget Implications

The Planning Proposal process is accounted to the applicant as per Council's Revenue Policy and likely to have little or no impact in relation to the budget.

Report

The land proposed for rezoning identified as part Lot 2 DP1170052 and Lot 1 DP449328. The land is located at the corner of Ellems Bridge Road and the Bruxner Highway at Woodview (Piora) just over 10km West of Casino.

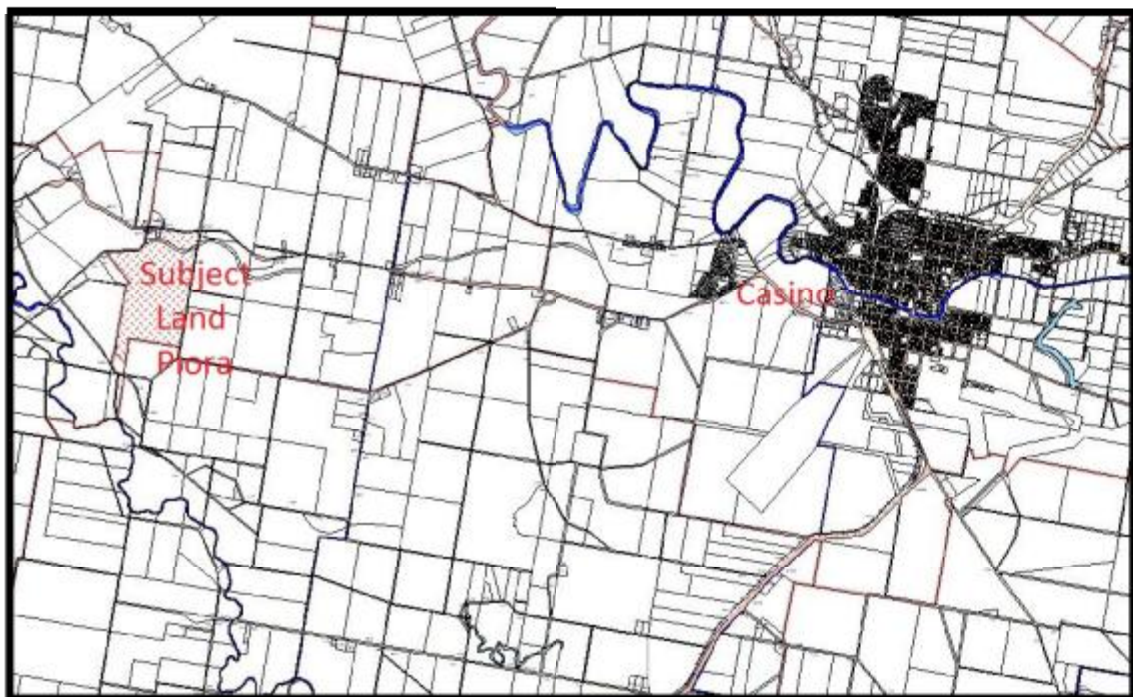


Figure 1: Showing the location of the land - Subject of the Planning Proposal for rural residential development.

Large tracts of land are identified within the Richmond River Rural Residential Development Strategy 1999 and the area at Piora is identified within a later stage or 'Western Sector' of the Casino/Rural catchment district. Principles upon which the Strategy were based at the time require settlements to be "close to existing settlements which already have services and community facilities, or can otherwise be efficiently and economically serviced."

Land utilised for Rural Residential development has been concentrated in the North Casino area where existing tracts of land are identified and opportunity exists in areas already serviced. The development of rural residential land at Piora represents initiating another precinct of rural residential development in an area which does not have the advantage of utilising existing infrastructure, services and facilities.

The Planning Proposal seeks to rezone land on the northernmost area of land closest to the intersection of the Bruxner Highway and Ellems Bridge Road. A concept plan accompanying the proposal illustrates approximately 54 hectares to be rezoned as R5 – Large Lot Residential, from the present RU1 – Primary Production zoning under the Richmond Valley Local Environmental Plan (LEP).

Preliminary plans for potential subdivision of the land proposes around 32 lots. Figure 2 shows a concept plan which indicates a number of the lots will be within close proximity to the highway (buffer area) which will be subject to road noise.

Council's owned and operated Woodview Quarry is located diagonally adjacent to the site north of the subject land proposed for rezoning. The 500 metre buffer shown on the concept plan is measured from the current quarry working face.

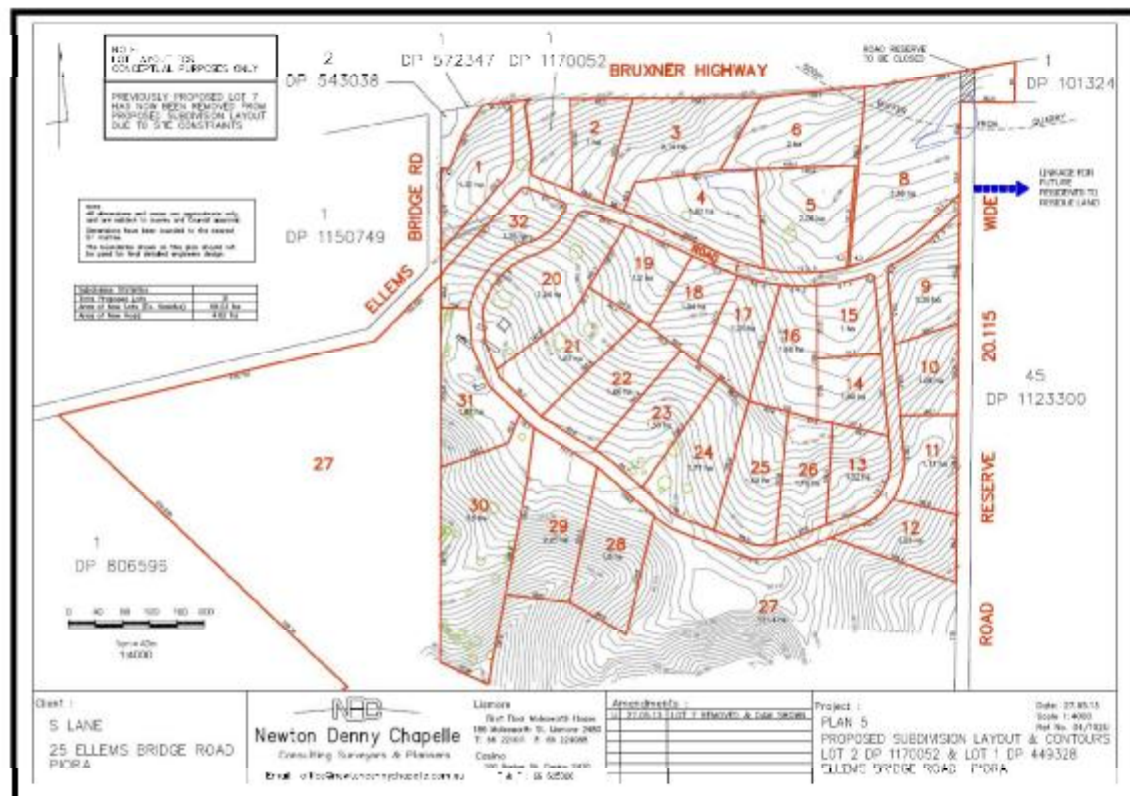


Figure 2: Concept plan showing a possible lot yield and configuration for rural residential development at Ellems Bridge Road Piora.

The small portion of land (Lot 1) is located where the road is shown on the plan which was previously State Rail owned and was reserved for an abandoned historic rail line. The rail corridor is listed as having an un-locatable owner, possibly deceased, however it is feasible for the proponent to rectify this matter to purchase through negotiation with the Department of Lands and Council.

The Woodview Council quarry has been identified and mapped as a regionally significant basalt resource by the NSW Department of Trade and Investment – Mineral Resources Branch. Woodview Quarry has been identified by the branch to contain a valuable basalt resource of approximately 1.75M tonnes with a potential to produce 30,000 to 40,000 tonnes of coarse aggregate per annum for

over 40 years. Council presently owns and operates the quarry and it represents a valuable source of income and resources.

Regionally significant resources (as identified above) are required to be assessed against a particularly stringent set of guidelines set by the Department of Planning and Infrastructure.

The Section 117(2) Direction 1.3 – Mining, Petroleum Production and Extractive Industries was issued on 19 July 2007. 'The direction requires that Council consult NSW Department of Trade & Energy Division when preparing Local Environmental Plans (LEPs) that may restrict or prohibit the potential development of mineral, coal, petroleum and extractive resources.'

The overriding concern and outstanding issue between Council and the proponent is that a satisfactory buffer has not been presented within the proposal and there is particular potential for future land use conflict issues to arise.

Consultation

Council engaged in preliminary consultation with the NSW Department of Trade and Investment – Resources and Energy Division as the matter concerning the close proximity to the Woodview Quarry was recognised to be the main issue and concern relating to the proposal. The Section 117 Direction specifies referral to this agency.

In addition, the proposal and associated 'Land Use Conflict Risk Assessment' (LUCRA) was assessed internally by Council's Environmental Health section. In both instances it was concluded that the applicant had not provided a sufficient buffer distance between the proposed rural residential lots and the existing Woodview Quarry.

It was argued by the applicant that the LUCRA within the report addresses the 1000 metre transition zone from the quarry; however this point had been disputed by both assessments on the following grounds:

- The applicant has provided for much less than 500 metres as a buffer. Particularly when the following information is taken into account the buffer distance shown is well under 500 metres. The buffer distance of 500 metres shown is largely inadequate based upon Guidelines within the 'Living and Working in Rural Areas' guidelines (the commonly accepted reference for buffers). The handbook recommends an absolute minimum buffer of 1000 metres. Council and NSW Department of Trade and Investment – Resources and Energy Division measure the location of the proposed rural residential lots to be well under 500 metres distance when it is taken into account future excavations and the potential for the face of the quarry to move within the site over time.
- The consent for the quarry is applicable to the whole of the land parcel and the resource is not limited to the present area of extraction. Consent for extractive industries generally applies over the whole of the lot over which consent has been granted and it is unreasonable to expect the quarry will not expand when it is a viable ongoing resource. The buffer distance for

quarrying activities is most generally accepted by practitioners and agencies to be measured from the property boundary of the land on which the quarry is operating. Council's Manager Civil Operations (at the time of making the statement) confirmed the face of the quarry will move towards the road and the proposed development site as the resource is progressively excavated.

The proponent has consistently maintained that an old measure of a 500 metre buffer distance from the working quarry face is sufficient and has not provided sound argument as to why any concessions should be made to the generally accepted standard. Nothing within the LUCRA provides sound reasoning as to why concessions to the standard could be relaxed and when the standard 1000 metre buffer is applied to the development, the whole of the proposal is shown to be affected (see figure 3).

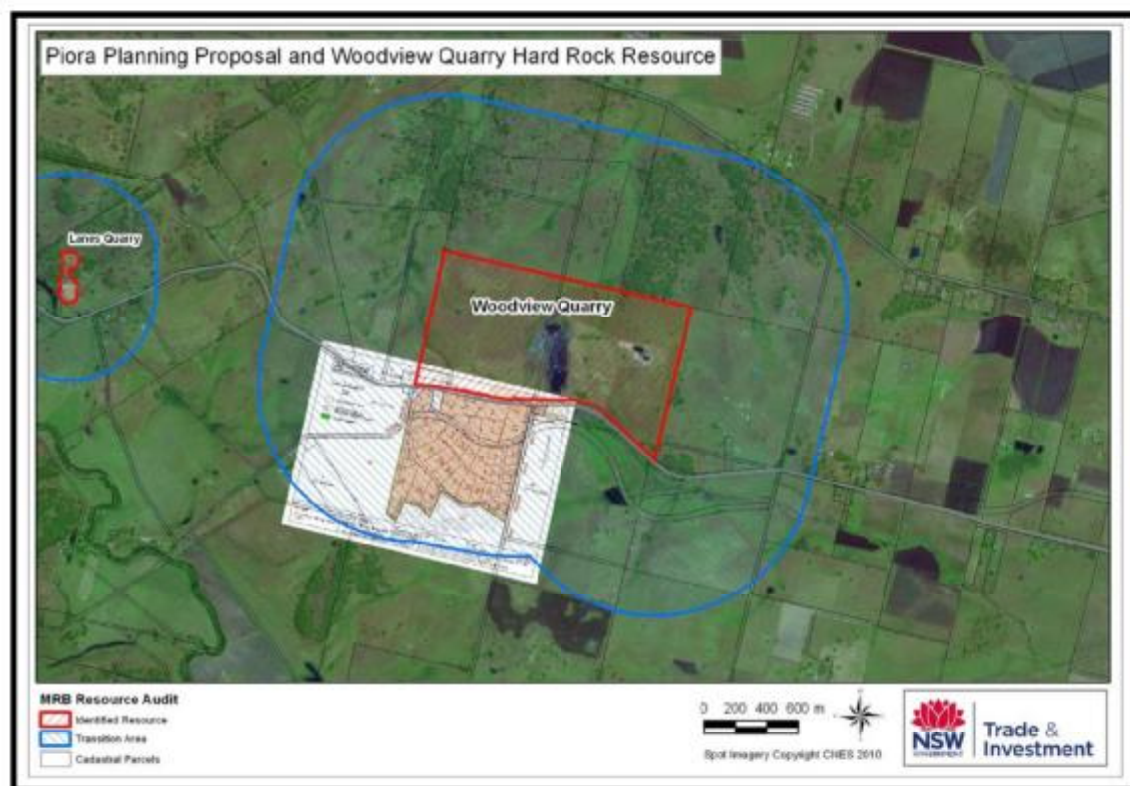


Figure 3: Diagram provided by the NSW Department of Trade and Investment showing the standard minimum buffer distance of 1000 metres as the minimum required for development near quarries using blasting. The whole of the proposed development area is within the zone of influence indicated (Transition Area).

It appears the only justification given by the proponent for locating the proposed development within close proximity to the Woodview Quarry is that the developments can 'co-exist'. In a meeting with the General Manager and in electronic correspondence following, the proponent made statements to the effect that because the Tuckombil Quarry in Ballina Shire can co-exist with residential development within less than 500 metres then the same can be managed at Woodview. Through making enquiries at Ballina Council and through the Environmental Protection Authority it became apparent the reason

Tuckombil Quarry is reviewing its blasting and other operating regimes in response to a long history of complaints received from neighbouring residents. The implications of complaints received have been detrimental to the working operations of the quarry and similar conflicts have arisen concerning North Coast quarry expansion and operation such as with 'Champions' in the Lismore Shire.

Ballina Shire is currently assessing an application for a rural residence approximately 250 metres away from the Tuckombil Quarry and has received advice which unmistakably indicates genuine concerns regarding the potential for land use conflict between the conflicting land-uses:

"The Environmental Protection Authority notes that residents located in close proximity to a quarry of this scale (as is proposed in this case) have considerable potential to result in intractable land-use conflict. While the Land use Conflict Risk Assessment supports the proposal for the erection of the dwelling it is noted that conclusions based on limited monitoring can lead to expectations that are not consistent with the reality of long term coexistence of disparate land-uses."

The Section 117 direction and advice from the NSW Trade and Investment clearly states, 'Operating mines and quarries should be protected from sterilisation or hindrance by encroachment of incompatible adjacent development.'

The NSW Department of Primary Industries originally objected when the matter was referred to the agency back in 2007 however these implications the Section 117 Direction were not adequately addressed within early drafts of the Planning Proposal report. The Planning Proposal was amended following requests to consider the quarry more comprehensively as required within correspondence provided to the proponent 14 May 2013.

Justification for the proposal

When this matter was initially presented to Council it was accepted on the proviso that justification is provided by the applicant as to why the later release area should be considered when earlier release areas have not been exhausted as per the Richmond River Rural Residential Strategy. At the time, demand for rural residential lots was quite high and supply was relatively low. Correspondence at the time stipulated that the proposal would always take a lower priority than areas adjacent to those already developed and higher priority within the Strategy. Market forces and the more recent release of rural residential land within higher priority areas means Council is currently processing a number of other rural residential developments which effectively satisfy intended supply for at least the next five years.

Statutory Issues

A Gateway Determination is the process whereby a Planning Proposal is assessed by the Department of Planning and Infrastructure and may be initiated through proponent request. Generally Council would be in a situation where the proposal has been modified to a point where Council can offer full support; however there is opportunity to present a proposal for initial review.

If a conditional Gateway Determination is made, there is opportunity for the applicant to reconsider and resubmit the proposal with appropriate amendments. Alternatively, a Gateway Determination could conclude if all outstanding issues cannot be surmounted.

Conclusion

The Planning Proposal has an extensive history which predates amendments made to the Environmental Planning and Assessment Act, as well as advancements made to guidelines, policies and procedures. The earlier proposal was put before Council when the old system did not rely as heavily on resolving issues before being put before the State Planning Authority. It must be noted, however that the proposal was not sufficiently progressed as to allow the matter to be considered alongside Council's preparation of the Comprehensive Local Environmental Plan which effectively put this and any other rezoning proposal on hold for around five years.

The proponent has requested the matter be presented to Council for determination and Council has opted to recommend conditional support in order to provide some certainty to the owner and applicant as to the significance of outstanding issues and whether there is potential for resolution.

13.12 PLANNING PROPOSAL LEP-0014 - WADE AND MURRELL PLANNING PROPOSAL TO REZONE LAND FOR RURAL RESIDENTIAL PURPOSES (POTENTIAL 56 LOTS, MAJORITY APPROXIMATELY 1 HECTARE - SWAN BAY)

Reference: Land Use and Planning - Planning; P25451, P25452, P1002093, P1001443

Prepared by: Planning Officer

RECOMMENDATION

Recommended that:

1. Council support Planning Proposal LEP-0014 to rezone Lot 4 (Part Lot 13 DP1128557), Lots 91 and 92 DP755603, and part Lot 3 DP1081829 located at Reardons Lane, Swan Bay for Rural Residential purposes post-exhibition.
2. The LEP amendment proceeds as exhibited with no further modification.

151013/ 16 RESOLVED (Cr Sullivan/Cr Humphrys)

That the above recommendation be adopted.

FOR VOTE - All Council members voted unanimously.
ABSENT. DID NOT VOTE - Cr Hayes