

Planning Proposal under section 55 of
the *Environmental Planning &
Assessment Act 1979*

Amend to *Richmond Valley* *LEP 2012* to Permit Educational Establishments in Zone RU1



RPA:	Richmond Valley Council
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Table of Amendments

Version	Amendment	Date
1.0	Original Planning Proposal – Submitted for Gateway Determination	9/01/2014



Planning Proposal

Amend Richmond Valley LEP 2012 to Permit Educational Establishments in Zone RU1



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Exhibition Information

This Planning Proposal is proposed to be undertaken under Section 73A of the *Environmental Planning and Assessment Act 1979*, and seeks to have the need for community consultation waived because the proposal had been exhibited in the *Draft Richmond Valley LEP 2010* but was unwittingly omitted from that draft instrument in error.

Planning Proposal

This is a Planning Proposal prepared under section 55 of the *Environmental Planning and Assessment Act 1979*, in relation to a proposed amendment to the *Richmond Valley Local Environmental Plan 2012*. It has been prepared by Richmond Valley Council (the Relevant Planning Authority (the RPA)), and will be used to describe the purpose of the amendment when dealing with the NSW Department of Planning and Infrastructure (DoP&I).

Background

Proposal	This Planning Proposal is to amend the <i>Richmond Valley Local Environmental Plan 2012</i> by permitting "Educational establishments", with development consent, in Zone RU1 Primary Production.
Property Details	This Planning Proposal will apply to all land within Zone RU1 Primary Production under the <i>Richmond Valley Local Environmental Plan 2012</i> .
Applicant Details	Richmond Valley Council
Land Owner	Various
Brief History	The <i>Draft Comprehensive Richmond Valley Local Environmental Plan 2010</i> (the Certified Draft Plan) was granted a Section 65 Certificate on 16 August 2010. The Certified Draft Plan was publicly exhibited for 8 weeks in 2010 and included, within the Land Use Table (LUT), permissibility for "<i>Educational establishments</i>", with development consent, in Zone RU1 Primary Production. Unfortunately, sometime between exhibition and adoption under section 68, the term was omitted from the Land Use Table for Zone RU1 thus prohibiting the land use in that zone. This omission was not as a result of a conscious decision of Council or the Department to amend the Draft Plan. This Planning Proposal seeks to reversal this error by way of an amendment under section 73A of the Act. In this regard, Council is seeking a waiver to the need for Agency and community consultation, owing to the fact that: - the Certified Draft Plan, identifying <i>Educational establishments</i> as permissible in Zone RU1, had already been through Agency consultation (s.62) and public exhibition (s.66); and - the change was unintentional.

Part 1 – Objectives or Intended Outcomes

The intended outcome from this Planning Proposal is to correct an administrative error that arose during the drafting of the *Richmond Valley Local Environmental Plan 2012*. This error made “*Educational establishments*” prohibited in the Land Use Table to Zone RU1 Primary Production.

Part 2 – Explanation of Provisions

It is proposed to amend the Land Use Table within the *Richmond Valley Local Environmental Plan 2012* by inserting the term “; Educational establishments” after “Dwelling houses” in item 3 of the matter relating to Zone RU1 Primary Production. This will result with the insertion of the term Educational establishment into the “Permitted with consent” column for Zone RU1.

Part 3 – Justification

Section A – Need for the planning proposal

The *Draft Comprehensive Richmond Valley Local Environmental Plan 2010* (the Certified Draft Plan) was granted a Section 65 Certificate on 16 August 2010. This Draft subsequently became the *Richmond Valley Local Environmental Plan 2012*, commencing on 21 April 2012.

The Certified Draft Plan identified “*Educational establishments*” as permissible with development consent in the Land Use Table to Zone RU1 Primary Production. The Certified Draft Plan was publicly exhibited for 8 weeks, from 6 September 2010 to 29 October 2010.

Unfortunately, the term “*Educational establishments*” was unwittingly omitted from item 3 to Zone RU1 Primary Production, thus making this land use prohibited in that zone. This error arose sometime between public exhibition of the Certified Draft Plan, and Council’s adoption of a modified Draft LEP, on 19 April 2011, under section 68 of the Act. A check of all records relating to modifications made at the section 68 stage, as well as by the Department post exhibition, could not find a conscious decision to prohibit the land use. As such it can be confirmed that this change did not result from:

- amendments to the Standard Instrument LEP;
- a review of submissions;
- a decision of Council; or
- post s.68 amendments by the Department of Planning and Infrastructure.

1. Is the planning proposal a result of any strategic study or report?

No.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes.

Section B – Relationship to Strategic Planning Framework

3. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

Yes.

4. Is the planning proposal consistent with the local council's Community Strategic Plan or other local strategic plan?

Yes.

5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

Table 1 outlines all State Environmental Planning Policies (SEPPs) and whether they are applicable and consistent. Where there is an inconsistency it will be further explained, including justification for the inconsistency, immediately following Table 1.

Table 1. Consideration of State Environmental Planning Policies

	Applicable	Consistent
SEPP No 1-Development Standards	No	
SEPP No 6-Number of Storeys in a Building	No	
SEPP No 14-Coastal Wetlands	No	
SEPP No 15-Rural Landsharing Communities	No	
SEPP No 21-Caravan Parks	No	
SEPP No 22-Shops and Commercial Premises	No	
SEPP No 30-Intensive Agriculture	No	
SEPP No 33-Hazardous and Offensive Development	No	
SEPP No 36-Manufactured Home Estates	No	
SEPP No 44-Koala Habitat Protection	No	
SEPP No 60-Canal Estate Development	No	
SEPP No 55-Remediation of Land	No	
SEPP No 62-Sustainable Aquaculture	No	
SEPP No 64-Advertising and Signage	No	
SEPP No 65-Design Quality of Residential Flat Development	No	
SEPP No 71-Coastal Protection	No	
SEPP (Affordable Rental Housing) 2009	No	
SEPP (Building Sustainability Index: BASIX) 2004	No	
SEPP (Exempt and Complying Development Codes) 2008	No	
SEPP (Housing for Seniors or People with a Disability) 2004	No	

	Applicable	Consistent
SEPP (Infrastructure) 2007	Yes	Yes
SEPP (Major Development) 2005	No	
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	No	
SEPP (Rural Lands) 2008	Yes	Yes
SEPP (Temporary Structures and Places of Public Entertainment) 2007	No	
SEPP (State and Regional Development) 2011	No	

Discussion of Applicable SEPPs and Reasons for Consistency/Inconsistency

SEPP (Infrastructure) 2007

Consistent – Division 3 of Part 3 provides for Educational establishments. Clause 27 identifies prescribed zones for which educational establishments can be granted consent, they being Zone: RU2, RU4, RU5, RU6, R1, R2, R3, R4, R5, B1, B2, B3, B4, B5, B6, B7, B8, SP1, SP2 and E4. The expansion of existing educational establishments are permissible on any land.

The proposed amendment is not inconsistent with the iSEPP. The *Richmond Valley LEP 2012* has not adopt Zone RU2, with Zone RU1 covering all rural lands. As such without the amendment there would be no opportunity to establish schools in rural areas of the LGA.

6. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

Table 2 outlines all Section 117 Directions (s117) and whether they are applicable and consistent. Where there is an inconsistency it will be further explained, including justification for the inconsistency, immediately following Table 2.

Table 2. Consideration of S117 Directions

	Applicable	Consistent
1. Employment and Resources		
1.1 Business and Industrial Zones	No	
1.2 Rural Zones	Yes	Yes
1.3 Mining, Petroleum Production and Extractive Industries	No	
1.4 Oyster Aquaculture	No	
1.5 Rural Lands	Yes	
2. Environment and Heritage		
2.1 Environment Protection Zones	No	
2.2 Coastal Protection	No	
2.3 Heritage Conservation	No	
2.4 Recreation Vehicle Areas	No	

	Applicable	Consistent
3. Housing, Infrastructure and Urban Development		
3.1 Residential Zones	No	
3.2 Caravan Parks and Manufactured Home Estates	No	
3.3 Home Occupations	No	
3.4 Integrating Land Use and Transport	No	
3.5 Development Near Licensed Aerodromes	No	
3.6 Shooting Ranges	No	
4. Hazard and Risk		
4.1 Acid Sulfate Soils	No	
4.2 Mine Subsidence and Unstable Land	No	
4.3 Flood Prone Land	No	
4.4 Planning for Bushfire Protection	No	
5. Regional Planning		
5.1 Implementation of Regional Strategies	Yes	Yes
5.2 Sydney Drinking Water Catchments	No	
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	No	
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	No	
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	NA	
5.6 Sydney to Canberra Corridor	NA	
5.7 Central Coast 2008	NA	
5.8 Second Sydney Airport: Badgerys Creek	NA	
6. Local Plan Making		
6.1 Approval and Referral Requirements	No	
6.2 Reserving Land for Public Purposes	No	
6.3 Site Specific Provisions	No	
7. Metropolitan Planning		
7.1 Implementation of the Metropolitan Plan for Sydney 2036	NA	

Discussion of Applicable s117s and Reasons for Consistency/Inconsistency

1.2 Rural Zones

Objective: to protect the agricultural production value of rural land.

Consistent – This Planning Proposal will neither rezone, nor increase the permissible density within a rural zone.

1.5 Rural Lands

Objective: to protect the agricultural production value of rural land.

Consistent – This Planning Proposal will affect land within an existing rural zone. As such it must be consistent with the Rural Planning Principles listed in *SEPP (Rural Lands) 2008*.

Clause 7 of the Rural Land SEPP provides 8 Rural Planning Principles. Each is listed below with comments:

- (a) *the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*

Not Inconsistent

- (b) *recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*

Not inconsistent

- (c) *recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*

Not inconsistent

- (d) *in planning for rural lands, to balance the social, economic and environmental interests of the community,*

Consistent – This Planning Proposal provides for the educational interests of the community.

- (e) *the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*

Not inconsistent

- (f) *the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*

Not inconsistent

- (g) *the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*

Consistent – the ability to provide for educational establishments in rural areas is important to ensure these areas are adequately serviced.

- (h) *ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

Not inconsistent

5.1 Implementation of Regional Strategies

Objectives: to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies.

Consistent – The *Far North Coast Regional Strategy* identifies education as one of several great employment opportunities (p.7). It further cites the *Regional Industry and Economic Plan (2005)* which identifies education as one key industry sector with growth opportunities.

Inconsistent – An action from Chapter 7 – Settlement and housing, (p.29) provides that LEPs should generally locate major health and educational facilities in urban areas.

Justification of inconsistency – This Planning Proposal is of minor significance and does not undermine the overall intent of the Regional Strategy. This is because educational establishments are an essential service. Quite often there is insufficient opportunity for schools to establish within existing urban boundaries due a lack of available land. Developing educational establishments represents a major investment, as such considerable planning takes place to justify the need for the school, to find an appropriate location, and to ensure that transport and other infrastructure are available. Furthermore, Council has fielded a development enquiry, which is how this error was detected, for the establishment of an agricultural boarding school which would need to be sited on several hundred hectares on rural land, and obviously within Zone RU1.

Section C - Environmental, social, and economic impact

7. Is there any likelihood that critical habitat or threatened species populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

No.

8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

No.

9. How has the planning proposal adequately addressed any social and economic effects?

Educational establishments are essential infrastructure for our community. They often occupy large areas of land and are located to best benefit the community they will service. Due to limited available land in existing urban zones, it is essential that provision for such services be provided within rural areas. Pre-planning of these services will result in their placement in the most suitable location, having regard to land use conflict, flooding, bushfire, essential services (water, sewer, telecommunications), transport etc. Furthermore, the merits consideration of a development application will ensure that schools are not inappropriately located.

Section D - State and Commonwealth interests

10. Is there adequate public infrastructure for the planning proposal?

NA.

11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

During Agency consultation of the *Draft Richmond Valley LEP 2010* the Department of Primary Industries made a submission, dated 18 December 2008 (Ref. 03/3227 OUT08/14626), expressing that “*Caution needs to be applied in enabling childcare centres and schools in the RU1 zone due to the potential for land use conflict and the potential for restrictions being placed on adjoining*



agricultural or primary industry enterprises.” They also raised concerns with permitting waste management facilities, sewerage systems and crematoriums in the Zone RU1 for similar reasons, but strangely recommended that industries should be permitted. This advice was not necessarily consistent with the Department of Planning and Infrastructure’s policies with regard to planning in rural zones.

Discussions with the Department of Planning and Infrastructure, at the time this submission was received, indicated that it had no major issue with permit educational establishments in Zone RU1, citing that this was a matter for Council to determine.

Part 4 – Mapping

There is no mapping associated with this Planning Proposal.

Part 5 – Community Consultation

It is proposed that no further community consultation be required for this Planning Proposal as the intent is to introduce a permissibility that had already been through community consultation as part of the preparation of the Comprehensive Richmond Valley LEP.

Part 6 – Project Timeline

Table 3. Estimated timeline for preparing amending Local Environmental Plan

Milestone	Timeline	
	Start	Finish
Submission to Gateway	Jan 2014	Jan 2014
Timeframe for government agency consultation (pre and post exhibition as required by Gateway determination)	NA	
Commencement and completion dates for public exhibition period*	NA	
Notice of Public Hearing	NA	
Public Hearing*		
Timeframe for consideration of submissions & prepare Report on Public Hearing	NA	
Report to Council post Exhibition	NA	
Date of submission to the Department to finalise the LEP	NA	
Timeframe for Parliamentary Counsel's Opinion and drafting of LEP	Feb 2014	Feb 2014
Anticipated date RPA will make the plan (under delegation)**	Late Feb 2014	
Anticipated date RPA will forward to the department for notification.	Late Feb 2014	

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Attachment 1 – Gateway Determination

A copy of the Gateway Determination for this Planning Proposal will be included in this Attachment.

At the time of preparation of this version of the Planning Proposal there had been no Gateway Determination.

Attachment 2 – Information Checklist

STEP 1. Required for all Proposals

- | | |
|---|---|
| • Objectives and intended outcome | • Explanation of provisions |
| • Mapping (including current and proposed zones) | • Justification and process for implementation (including compliance assessment against relevant section 117 direction/s) |
| • Community consultation (agencies to be consulted) | |

STEP 2. Matters – Considered on a Case by Case Basis

PLANNING MATTERS OR ISSUES	To be considered	N/A
Strategic Planning Context		
• Demonstrated consistency with relevant Regional Strategy	☒	☐
• Demonstrated consistency with relevant Sub-Regional strategy	☐	☒
• Demonstrated consistency with or support for the outcomes and actions of relevant DG endorsed local strategy	☐	☒
• Demonstrated consistency with Threshold Sustainability Criteria	☐	☒
Site Description/Context		
• Aerial photographs	☐	☒
• Site photos/photomontage	☐	☒
Traffic and Transport Considerations		
• Local traffic and transport	☐	☒
• TMAP	☐	☒
• Public transport	☐	☒
• Cycle and pedestrian movement	☐	☒
Environmental Considerations		
• Bushfire hazard	☐	☒
• Acid Sulfate Soil	☐	☒
• Noise impact	☐	☒
• Flora and/or fauna	☐	☒
• Soil stability, erosion, sediment, landslip assessment, and subsidence	☐	☒
• Water quality	☐	☒
• Stormwater management	☐	☒
• Flooding	☐	☒
• Land/site contamination (SEPP55)	☐	☒

PLANNING MATTERS OR ISSUES	To be considered	N/A
• Resources (including drinking water, minerals, oysters, agricultural lands, fisheries, mining)	☐	☒
• Sea level rise	☐	☒
Urban Design Considerations		
• Existing site plan (buildings vegetation, roads, etc)	☐	☒
• Building mass/block diagram study (changes in building height and FSR)	☐	☒
• Lighting impact	☐	☒
• Development yield analysis (potential yield of lots, houses, employment generation)	☐	☒
Economic Considerations		
• Economic impact assessment	☐	☒
• Retail centres hierarchy	☐	☒
• Employment land	☐	☒
Social and Cultural Considerations		
• Heritage impact	☐	☒
• Aboriginal archaeology	☐	☒
• Open space management	☐	☒
• European archaeology	☐	☒
• Social & cultural impacts	☐	☒
• Stakeholder engagement	☐	☒
Infrastructure Considerations		
• Infrastructure servicing and potential funding arrangements	☐	☒
Miscellaneous/Additional Considerations		
•		

Attachment 3 – Evaluation Criteria for the Delegation of plan making functions

Checklist for the review of a request for delegation of plan making functions to councils.

Local Government Area:

Richmond Valley Council

Name of draft LEP:

Richmond Valley Local Environmental Plan 2012 (Amendment No.XX)

Address of Land (if applicable):

NA

Intent of draft LEP:

The intent of this amendment is to correct an omission from the Comprehensive LEP that saw the term “educational establishments” unwittingly removed from the Land Use Table for Zone RU1 Primary Production, resulting in this land use being prohibited in the zone.

Additional Supporting Points/Information:

Nil

Evaluation Criteria for the issuing of an Authorisation

(Note. where the matter is identified as relevant and the requirement has not been met, council is to attach information to explain why the matter has not been addressed)	Council response		Department assessment	
	Y/N	Not relevant	Agree	Not agree
Is the planning proposal consistent with the Standard Instrument Order, 2006?	Y			
Does the planning proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	Y			
Are appropriate maps included to identify the location of the site and the intent of the amendment?		Y		
Does the planning proposal contain details related to proposed consultation?	Y			
Is the planning proposal compatible with an endorsed regional or sub-regional planning strategy or a local strategy endorsed by the Director-General?	No. Has been addressed in the Planning Proposal	Y		
Does the planning proposal adequately address any consistency with all relevant S117 Planning Directions?	Y			
Is the planning proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	Y			

(Note. where the matter is identified as relevant and the requirement has not been met, council is to attach information to explain why the matter has not been addressed)	Council response		Department assessment	
	Y/N	Not relevant	Agree	Not agree
Minor Mapping Error Amendments	Y/N			
Does the planning proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?		NA		
Heritage LEPs	Y/N			
Does the planning proposal seek to add or remove a local heritage item and is it supported by a strategy/study endorsed by the Heritage Office?		NA		
Does the planning proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?		NA		
Does the planning proposal potentially impact on an item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?		NA		
Reclassifications	Y/N			
Is there an associated spot rezoning with the reclassification?		NA		
If yes to the above, is the rezoning consistent with an endorsed Plan of Management (POM) or strategy?		NA		
Is the planning proposal proposed to rectify an anomaly in a classification?		NA		
Will the planning proposal be consistent with an adopted POM or other strategy related to the site?		NA		
Will the draft LEP discharge any interests in public land under section 30 of the <i>Local Government Act 1993</i> ?		NA		
If so, has council identified all interests; whether any rights or interests will be extinguished; any trusts and covenants relevant to the site; and, included a copy of the title with the planning proposal?		NA		
Has the council identified that it will exhibit the planning proposal in accordance with the Department's Practice Note (PN 09-003) Classification and reclassification of public land through a local environmental plan and Best Practice Guideline for LEPs and Council Land?		NA		
Has council acknowledged in its planning proposal that a Public Hearing will be required and agreed to hold one as part of its documentation?		NA		
Spot Rezonings	Y/N			
Will the proposal result in a loss of development potential for the site (ie reduced FSR or building height) that is not supported by an endorsed strategy?		NA		
Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?		NA		

(Note. where the matter is identified as relevant and the requirement has not been met, council is to attach information to explain why the matter has not been addressed)	Council response		Department assessment	
	Y/N	Not relevant	Agree	Not agree
Will the planning proposal deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?		NA		
If yes, does the planning proposal contain sufficient documented justification to enable the matter to proceed?		NA		
Does the planning proposal create an exception to a mapped development standard?		NA		
Section 73A matters	Y/N			
Does the proposed instrument				
a. correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error?;	Y – Insert missing words			
b. address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?; or	Y This has been addressed in the Planning Proposal			
c. deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land?	Y This has been addressed in the Planning Proposal			
(Note. the Minister (or Delegate) will need to form an Opinion under section 73(A)(1)(c) of the Act in order for a matter in this category to proceed).				

Notes.

- Where a council responds 'yes' or can demonstrate that the matter is 'not relevant', in most cases, the planning proposal will routinely be delegated to council to finalise as a matter of local planning significance.
- Endorsed strategy means a regional strategy, sub-regional strategy, or any other local strategic planning document that is endorsed by the Director-General of the department.