

Planning Services

IRF18/5604

Gateway determination report

LGA	Cabonne Shire Council
PPA	Cabonne Shire Council
NAME	Rezone land from RU1 to R5 to enable subdivision for approx. 19 lots
NUMBER	PP_2018_CABON_002_00
LEP TO BE AMENDED	Cabonne LEP 2012
ADDRESS	75 Belgravia Road, Mullion Creek
DESCRIPTION	Lot 650 DP 788871
RECEIVED	10/10/2018
FILE NO.	IRF18/5604
POLITICAL DONATIONS	There are no known donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no known meetings or communications with registered lobbyists with respect to this proposal

INTRODUCTION

Description of planning proposal

The proposal intends to rezone one lot from RU1 Primary production to R5 large lot residential and change minimum lot size from 100ha to 2ha to enable a large lot residential subdivision.

Site description

The site is Lot 650 DP 788871, located at 75 Belgravia Road, Mullion Creek, which is approximately 15km north-east of the city of Orange. The lot is 41.3ha in size and contains scattered trees, one dam and one existing dwelling house in the north-eastern corner. The lot has direct frontage to Belgravia Road which is a sealed local road.

Existing planning controls

The site is currently zoned RU1 under the Cabonne LEP 2012. Figure 1 below shows an extract from the Cabonne LEP 2012 maps highlighting the site.

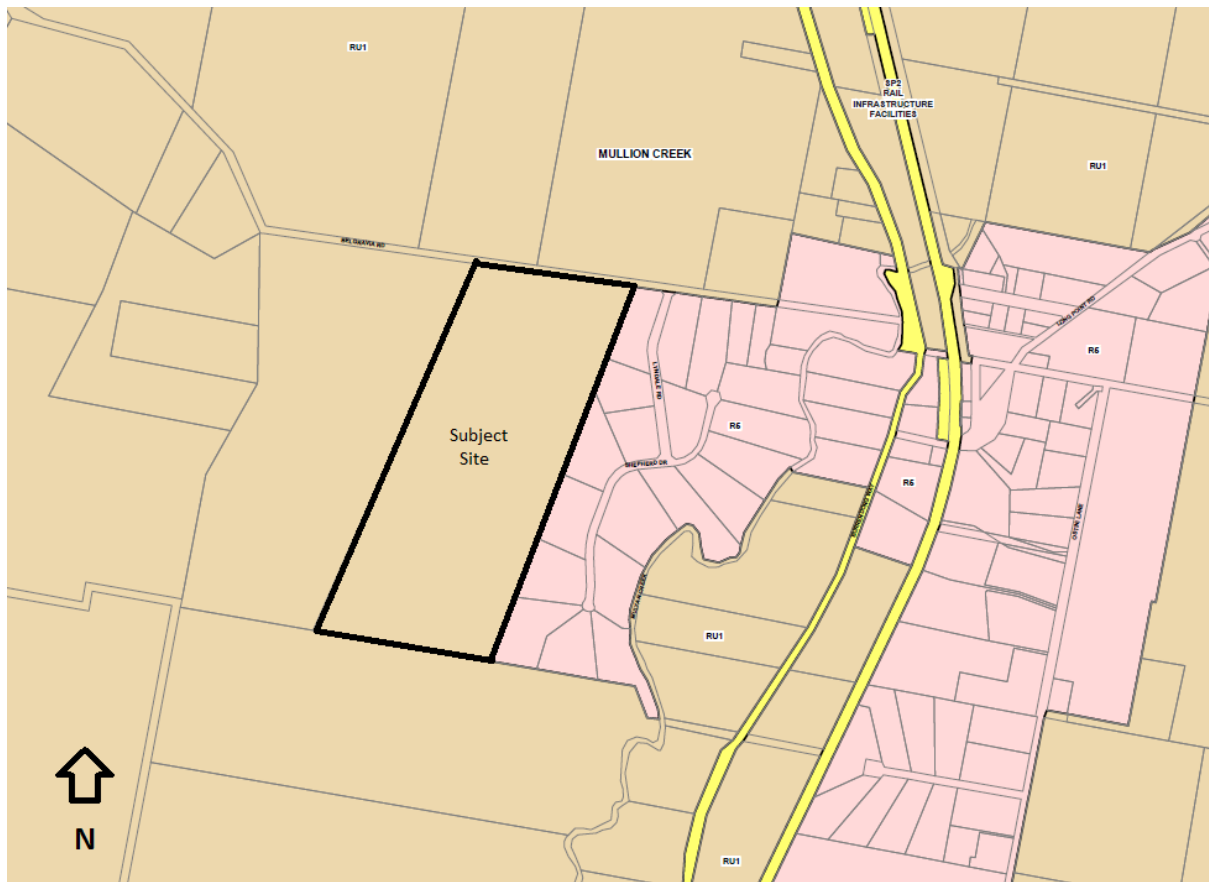


Figure 1: Extract from Cabonne LEP showing existing zoning

Surrounding area

The site borders existing and established zone R5 to the east and zone RU1 to its other boundaries. It is located on the edge of the Mullion Creek locality. Surrounding uses include rural residential, grazing and farming. See Figures 1 and 2 for detail.



Figure 2: The subject site (Source: Geolyse PP report via six maps)

Summary of recommendation

Proceed with conditions – the proposal is for additional large lot residential lands adjacent to an existing and developed zone R5 area within the rural locality of Mullion Creek. The lot was identified in the Blayney Cabonne Orange Sub-Regional Land Use Strategy (BCO) for future zone R5 expansion, subject to site specific assessment. Conditions include consultation with relevant authorities being Department of Industry (Water), NSW Rural Fire Service, Local Land Services Central Tablelands and Office of Environment and Heritage for comment on groundwater and surface water quality implications, bushfire risk assessment and biodiversity issues. Overall the site is considered appropriate to proceed.

PROPOSAL

Objectives or intended outcomes

The objective is to rezone the land from RU1 to R5 (LLR) and reduce the minimum lot size from 100ha to 2ha to enable subdivision of the site.

Explanation of provisions

This proposal intends to amend the Cabonne LEP 2012 by rezoning the lot to R5. A future development application would follow this change to the LEP to permit a subsequent subdivision.

Mapping

Changes to two LEP maps will be required being LZN_004C and LSZ_004C. Figure 3 below shows the area to be rezoned and resulting LEP maps. This map is adequate for community consultation.

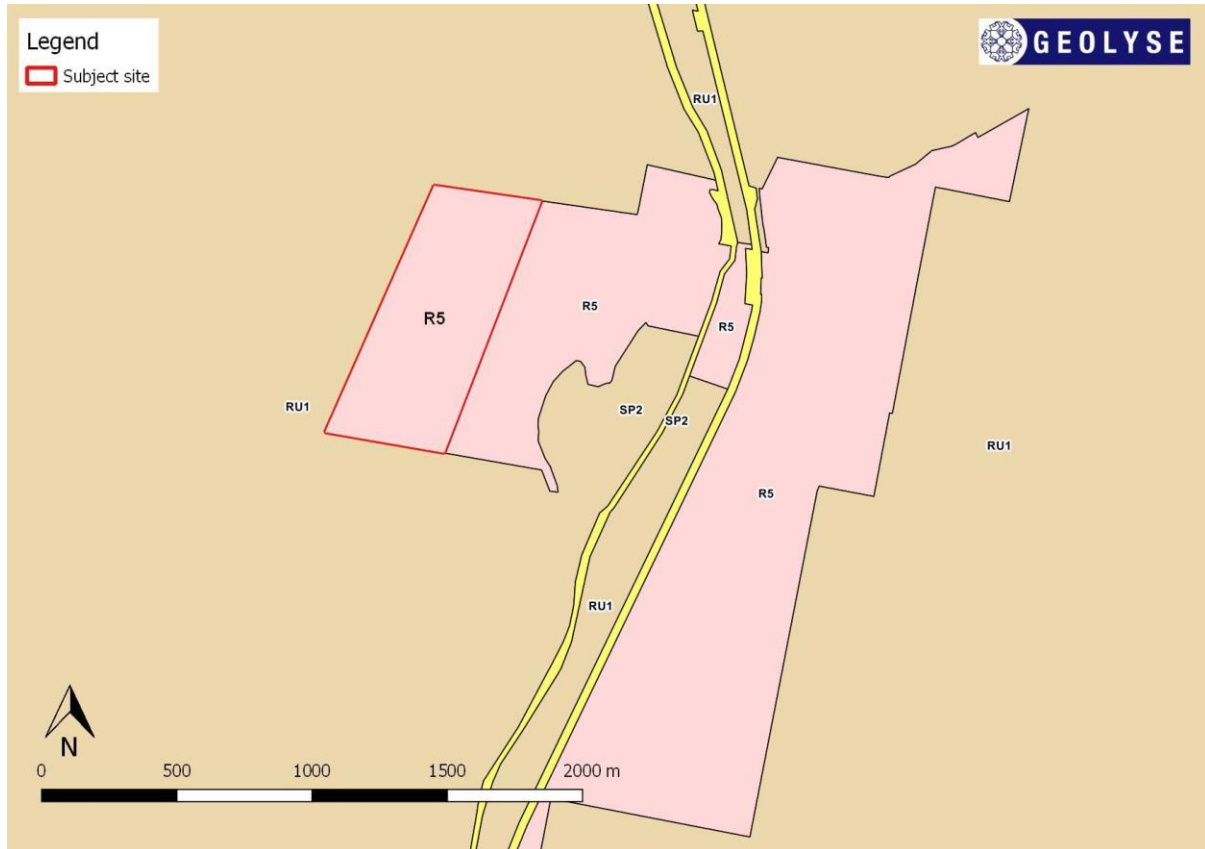


Figure 3: Subject site shown as proposed new zoning (source: extract from Geolyse PP)

NEED FOR THE PLANNING PROPOSAL

The site was identified in the Blayney, Cabonne and Orange Sub-Regional Rural and Industrial LUS 2008 (BCO) as Strategy Area 5b (SA 5b) as it was to supplement and abut existing lifestyle development at Mullion Creek. The BCO was endorsed by the Department on 30 June 2011 and is currently under review. According to the LUS, *'all parts of the Mullion Creek SA fall within lands whose assessment produced a Constraint Level of 2 in the weighted criteria assessment'* which ultimately recommended that although a bushfire risk is present with the scattered timbers in the area, *'..the ability for new lifestyle lots to incorporate bush fire risk mitigation measures from the PBP Guidelines, it is considered that further rural lifestyle subdivision and development could be pursued in these locations'* (GHD, 2008).

Council also mentions the site's inclusion in the above Sub-Regional LUS and supports the rezoning of the site. Council adds that this lot is separated from the remainder of SA 5b as Belgravia Road dissects the lot from the remaining area. As such, it can be considered separately to the development of other lands in the investigation area. In supporting the proposal, Council notes that the take-up rates

of Large Lot Residential (LLR) land identified in the Strategy have been faster than anticipated over the past 10 years which further justifies the release of more land.

STRATEGIC ASSESSMENT

State

The proposal generally complies with the intent of the state strategic planning framework, in that it is a site which has already been set aside in a strategic land use plan for future LLR development.

Regional / District

The proposal, as above, generally complies with the Central West and Orana Regional Plan. Direction 28 of the Plan specifically relates to this Proposal – see below.

Direction 28: Manage rural residential development. This direction highlights that rural residential development is a popular lifestyle housing option driven by the desire for a rural lifestyle, particularly close to regional cities and strategic centres.

It also highlights the potential land use conflict that can arise from this land use with productive agriculture, industry or resource lands.

Action 28.1 provides 3 directives of where rural residential should be suitably located:

- *close to existing urban settlements to maximise the efficient use of existing infrastructure and services, including roads, water, sewer and waste services, and social and community infrastructure;*
- *to avoid and minimise the potential for land use conflicts with productive, zoned agricultural land and natural resources; and*
- *to avoid areas of high environmental, cultural or heritage significance, regionally important agricultural land or areas affected by natural hazards.*

The subject land is located adjacent to Mullion Creek which is a small rural locality containing rural residential lots. Water and sewer is not provided to the locality. The closest urban settlement to the subject land for provision of other services and facilities is 13km to Orange with the subject land being located in the Cabonne Council area.

The rezoning of the subject land will permit rural residential development adjacent to an existing lifestyle lot subdivision to the east and future planned lifestyle subdivisions to the north.

Action 28.2 requires the support to be given to new rural residential development, only where it is supported strategically in a local housing strategy.

Enable new rural residential development only where it has been identified in a local housing strategy prepared by Council and approved by the Department of Planning and Environment

The land has been earmarked for future rural residential development in a Department-endorsed Strategy, being the abovementioned BCO.

Action 28.3 requires land use conflicts to be managed that can result from the cumulative impacts of development.

Manage land use conflict that can result from cumulative impacts of successive development decisions.

Co-locating this rural residential development with an existing rural residential area will assist in managing land use conflict on the borders of the development.

Local

The BCO is the local Department endorsed Strategy which highlights the future use of this lot for LLR. The lot is part of Strategy Area 5b, adjacent to the existing Mullion Creek rural residential development and located on a sealed road, being Belgravia Road.

Section 9.1 Ministerial Directions

The following Ministerial Directions apply to the proposal.

Direction 1.2 – Rural Zones

This Direction applies as the proposal affects land within an existing rural zone (RU1). The objective of this direction is to protect the agricultural production value of the land.

Although this planning proposal intends to rezone land from a rural zone to a residential zone, it has been justified in the BCO strategy endorsed by the Department. It is also located adjacent to the existing Mullion Creek rural locality and small lot subdivision which will reduce land use conflict. The proposal is consistent with this Direction and no further work is required.

Direction 1.5 – Rural Lands

This Direction applies because the proposal intends to change the zoning (RU1 to R5) and minimum lot size (100ha to 2ha) on land within a rural zone. This Direction links back to the Rural Planning and Subdivision Principles contained in the SEPP (Rural Lands) 2008. Further detail on this SEPP are provided below in the SEPP section.

A planning proposal may be inconsistent with this Direction if it is justified by an endorsed Strategy. In this case, the Proposal is justified by the BCO and no further work is required in relation to this Direction.

Direction 2.3 – Heritage Conservation

This Direction contains provisions that facilitate the conservation of any items of environmental heritage significance including aboriginal objects and aboriginal places. Although the site does not contain any of these items, a due diligence assessment of the site was carried out to determine the likely existence of sites of Aboriginal heritage significance. No artefacts or items were found during this assessment. This Direction has been considered and no further work is required.

Direction 3.1 – Residential Zones

This Direction applies because the proposal intends to rezone land to residential. Essentially, the Direction intends to ensure that new residential lands are located in areas which can be serviced with existing infrastructure and if not, it needs to be justified in an endorsed Strategy. In this case, the Mullion Creek area is not serviced, however it is justified by the endorsed BCO for future rural residential development. No further work is required in relation to this Direction.

Direction 4.4 – Planning for Bush Fire Protection

This Direction applies because the land is mapped as bushfire prone on the Cabonne Bush Fire Prone Land Map. The applicant conducted a bushfire assessment to support the proposal. A number of recommendations have been put forward in this report to satisfy the requirements of this Direction. In accordance with this direction, this report is to be forwarded by the PPA to the Commissioner of the NSW Rural Fire Service for comment prior to conducting any community consultation.

The requirements of this Direction have been satisfied for this stage of the proposal however consultation is required with NSW RFS prior to community consultation.

State environmental planning policies (SEPPs)

SEPP 44 – Koala Habitat Protection

This SEPP aims to *..encourage proper conservation and management of area of natural vegetation that provide habitat for Koalas..*

Orange City Council is not identified as area of interest Koala Habitat. An ecological assessment of the site was conducted and found that no feed tree species were located on the site as listed in Schedule 2 of the SEPP. The site has therefore been assessed in accordance with this requirements of this SEPP and further assessment is not considered warranted.

SEPP 55 - Remediation of Lands

This SEPP aims to *‘..promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment..’*

An assessment of the site has been carried out as well as research into past uses of the land. No past contaminating activities are considered to have been conducted on the site and no evidence of site contamination could be found. This work satisfies the requirements of SEPP 55 and the Managing Contaminated Land Planning Guidelines which support the SEPP. No further work is required as the planning proposal stage for this issue. Council may require further detailed assessment at the DA stage.

SEPP (Rural Lands) 2008

As mentioned in the Ministerial Directions section under Direction 1.5 Rural Lands, the Rural Planning and Subdivision Principles are to be assessed as part of a rezoning involving Rural Lands. See below the Principles as assessed.

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

The BCO identified opportunities for current and potential productive economic activities on rural lands. As a result, this land was identified for future rural

residential expansion as it co-locates with existing rural residential land. In the meantime, the land can remain to be utilised for grazing purposes.

(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,

The land was assessed in the Sub-Regional BCO in 2008. This Strategy looked at the relationship between rural lands and existing rural residential areas and any trends which require rezonings. One trend identified was the need for additional lifestyle lots within close proximity to Orange and located close to existing settlements. This land was identified for future rural residential expansion partly due to its location adjacent to existing rural residential lands and also due to its relatively limited agricultural use.

(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,

The proposal recognises the significance of rural land to the state by recommending land for future rural residential only where identified in this way by an endorsed Strategy. There is social and economic benefit in developing lands for endorsed purposes as the land has already been flagged as having potential in this regard.

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

Socially, it is appropriate to co-locate LLR land. It also represents an economically sound method of LLR expansion, especially where fragmentation of rural lands has already occurred. Environmentally, the land was assessed by OzArk with an ecological assessment. Preliminary work was undertaken which will inform a full BAM survey. Due to an area of 8.28ha being cleared with this proposal, biodiversity credits will need to be purchased to offset vegetation losses. Overall, as this site has been identified in an endorsed strategy, the required offsets through the DA process will deal with the environmental impacts.

(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,

It has been put forward in the Proposal that a full biodiversity assessment report will be to be carried out in accordance with Part 7 of the BC Act. This would include additional targeted seasonal surveys to ensure that a number of seasonal threatened species are not located on site. The Ecological Assessment mentioned above has supported the site's loss of potential habitat and further assessments in this regard will provide a better picture of impact. This is satisfactory for this stage of the proposed rezoning. Consultation with OEH and LLS will be required.

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

This is the subject of this Proposal as it intends to provide for planned housing expansion in a rural lifestyle setting.

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

Although no (water or sewer) services are available in the vicinity of this lot, it is considered that the site can be serviced by electricity and telecommunications, with water and sewer being provided on site. Belgravia Road is a sealed road which will provide access into the site.

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

As mentioned above, the proposal is consistent with an endorsed BCO Sub-Regional Strategy.

SITE-SPECIFIC ASSESSMENT

Social

Socially, there is a perceived need for additional lifestyle lots within easy commuting distance of Orange. Mullion Creek is a rural locality and contains a school, church and cemetery. The proposal intends to add 18 lots to the area. This would increase the population of Mullion Creek, which is socially positive, particularly if the lots are located adjacent to an area known for lifestyle lots.

Environmental

Environmentally, the proposal has identified some area which require further assessment – being the Ecological Assessment which identified the need to obtain biodiversity offsets for the development. A bushfire assessment also identified works required for a subdivision due to it's location in a bushfire prone area. Contamination has been preliminary assessed as has aboriginal heritage and are not considered requiring further work at this stage.

With a proposed minimum lot size of 2ha, the site identified as groundwater vulnerable and no reticulated water or sewer proposed for the site, the proposal is to be referred to the Department of Industry (Water) for comment prior to proceeding to community consultation. This is to ensure the lot density and potential impacts to groundwater are determined prior to any potential lot layout plans being released for community input. The site is also in the vicinity of two key fish habitat streams which further emphasises the need to consult with the relevant government departments on this subject.

Economic

As a stand-alone rezoning, the proposal meets an apparent shortfall in LLR land in the Orange region. Cumulatively, Cabonne Council will need to look at the potential population increase for Mullion Creek and subsequently build this population projection into future plans for roadworks (particularly toward the regional centre of Orange) and community facilities in the locality. Cabonne Council would also benefit from looking at potential population increases as already put forward in the BCO for the Mullion Creek locality and determine future servicing requirements as part of any addendums to this Strategy. The BCO is currently under review and these issues can be revisited at that stage.

Infrastructure

Provision of state infrastructure is not a consideration for this proposal.

CONSULTATION

Community

Community consultation has not been discussed at large by Council or the applicant, except that it is a requirement that will be carried out. As such, the Proposal is to be placed on public exhibition for the standard term of 28 days in accordance with the EP&A Regulations.

Agencies

Agency consultation has not been highlighted by Council. The following referrals prior to community consultation are required:

- Department of Industry (Water)
- NSW Rural Fire Service (in accordance with Ministerial Direction 4.4)
- Office of Environment and Heritage
- Local land Services Central Tablelands.

TIME FRAME

The proposed timeframe to complete the proposal is 12 months.

LOCAL PLAN-MAKING AUTHORITY

Council has completed the evaluation criteria for delegation of plan making functions so it is assumed that they intend to be the local plan-making authority. Assessment of this criteria complies and as such, Council is recommended to carry out the plan making functions for this proposal.

MAPPING

Adequate mapping is provided for the planning proposal however final LEP maps will be required to comply with the Departments technical guidelines.

CONCLUSION

The planning proposal is supported to proceed with conditions.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions (being Directions 1.2 Rural Zones, 1.5 Rural Lands and 3.1 Residential Zones and 5.10 Implementation of Regional Plans) are justified as the land is earmarked for future large lot residential in an endorsed local planning strategy.
2. Note that the inconsistency with section 9.1 Direction 4.4 Planning for Bushfire Protection requires consultation with NSW Rural Fire Services before consistency can be resolved.

It is recommended that the delegate of the Minister for Planning determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 28 days.
2. Consultation is required with the following public authorities prior to community consultation:
 - Department of Industry (Water)
 - NSW Rural Fire Service
 - Office of Environment and Heritage
 - Local land Services Central Tablelands
3. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.
4. Final LEP mapping is to comply with the Departments LEP guidelines.
5. Given the nature of the planning proposal, Council is to be the local plan-making authority.



25.10.18

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25.10.18

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