

Committee:	ENVIRONMENT, ECONOMIC & COMMUNITY				
Section:	Strategic & Economic Planning				
Date:	11 December 2012				
Item:	12.190/12	REZONING APPLICATION	-	GULMARRAD SOUTH PLANNING PROPOSAL (REZ2012/0002)	

ATTACHMENT**REPORT SUMMARY**

Applicant	Planning Resolutions (Chris Pratt)
Owner	J Bricknell & L Hui-Lien
Subject land	Lot 68, 69 and part Lot 71 DP1156995 and Lot 1020 DP1108597, Major Mitchell Drive, Gulmarrad - refer to copy of location plan at Attachment A
Current Zoning CVLEP 2011	R5 Large Lot Residential
Proposal	• Rezone to R1 General Residential • Remove 4000m² lot size
Date of receipt	9 October 2012 (fees received/receipted) First emailed on 27 September 2012

Council is in receipt of a rezoning application (Planning Proposal) which seeks to rezone land at Gulmarrad (described above), for the purposes of urban residential subdivision. The land is within the Gulmarrad growth area as identified in the Mid North Coast Regional Strategy (p50) and subsequently, its appropriateness generally for residential development has been confirmed by the Maclean Urban Catchment Local Growth Management Strategy (the LGMS), adopted by Council on 16 August 2011.

A review of the proposal has concluded that the proposal has merit and is recommended to be forwarded for a "Gateway Determination" from the Department of Planning and Infrastructure (DOPI).

OFFICER'S RECOMMENDATION

1. That Council, as the relevant planning authority, initiate the Local Environmental Plan "Gateway" process pursuant to Section 55 of the Environmental Planning and Assessment Act 1979 by endorsing the attached Planning Proposal Lot 68, 69 and part Lot 71 DP1156995 and Lot 1020 DP1108597, Major Mitchell Drive, Gulmarrad to rezone the land to R1 General Residential and give effect to achieving the stated purpose of the Planning Proposal document.
2. That Council forward the Planning Proposal to the Department of Planning and Infrastructure requesting a "Gateway" determination, pursuant to Section 56 (1) of the Environmental Planning and Assessment Act.
3. That Council undertake community consultation regarding the Planning Proposal, subject to the determination of the Gateway Process.
4. That Council's delegate exercise any delegation that may be specified and issued by the Gateway determination and Written Authorisation to Exercise Delegation.

5. Upon rezoning of the land, Council proceed to prepare a DCP amendment over the Gulmarrad Urban Release Area in collaboration with the land owners to coordinate integration of key subdivision design principles including vegetation and open space management.

Having declared an interest Cr Baker left the meeting at 6.26pm

**COUNCIL RESOLUTION – 12.190/12
(Crs McKenna/Howe)**

That

1. Council, as the relevant planning authority, initiate the Local Environmental Plan “Gateway” process pursuant to Section 55 of the Environmental Planning and Assessment Act 1979 by endorsing the attached Planning Proposal Lot 68, 69 and part Lot 71 DP1156995 and Lot 1020 DP1108597, Major Mitchell Drive, Gulmarrad to rezone the land to R1 General Residential and give effect to achieving the stated purpose of the Planning Proposal document.
2. Council forward the Planning Proposal to the Department of Planning and Infrastructure requesting a “Gateway” determination, pursuant to Section 56 (1) of the Environmental Planning and Assessment Act.
3. Council undertake community consultation regarding the Planning Proposal, subject to the determination of the Gateway Process.
4. Council’s delegate exercise any delegation that may be specified and issued by the Gateway determination and Written Authorisation to Exercise Delegation.
5. Upon rezoning of the land, Council proceed to prepare a DCP amendment over the Gulmarrad Urban Release Area in collaboration with the land owners to coordinate integration of key subdivision design principles including vegetation and open space management.

Voting recorded as follows:

For: Councillors Williamson, Challacombe, Howe, Hughes, Kingsley, McKenna, Simmons and Toms

Against: Nil

Cr Baker returned to the meeting at 6.27pm

BACKGROUND

The Mid North Coast Regional Strategy was adopted by the State Government in 2009. It identified a number of “growth areas”, being areas that may be suitable to accommodate future growth subject to a more detailed planning assessment through a local growth management strategy. Two of these included Gulmarrad and James Creek. Council subsequently prepared a local growth management strategy for the Maclean catchment (the LGMS), including Gulmarrad/Townsend and James Creek, adopted by Council on 16 August 2011.

The LGMS forms the basis for decision making within the growth area and hence should provide direction on Council’s decision on this specific Planning Proposal. The merits of Gulmarrad as a development area, including this specific site, are addressed in detail by the LGMS.

The rezoning application/planning proposal request has more specifically requested *“that Council support the Planning Proposal for the Gulmarrad Residential Land (south) and forward the Planning Proposal to the Department of Planning and Infrastructure to seek a Gateway Determination”*. It further requests *“that Council request in the Gateway submission to the Department:*

- (a) determination that no further studies are required prior to placing the Planning Proposal on public exhibition, and*
- (b) an exhibition period for the Planning Proposal of 28 days”.*

The prime objective sought by the submitted rezoning application or Planning Proposal document is to seek a rezoning of the land to enable standard residential development. It proposes that this objective will be achieved by :

- “(a) Amending the Clarence Valley LEP 2011 Land Zoning Map to include the land in the R1 General Residential zone*
- (b) Amending the Clarence Valley LEP 2011 Drinking Water Catchment Map/Flood Planning Map/ Coastal Risk Planning Map/ Riverbank Erosion Planning Map/ Urban Release Area Map - so that it becomes part of the “Gulmarrad Urban Release Area”, consistent with the adjoining land to the north.*
- (c) Amending the Clarence Valley LEP 2011 Buildings Map – Sheet HOB_011J to specify a maximum building height limit of 9 metres, consistent with the adjoining land to the north.*
- (d) Amending the Clarence Valley LEP 2011 Minimum Lot Size Map – Sheet LSZ_011 to specify no minimum lot size specified under the provisions of the LEP”.*

The site comprises a considerable part of the Gulmarrad growth area (see Attachments A and B). Included with the rezoning application/planning proposal request is a conceptual subdivision/roading layout which indicates a possible urban lot yield of 173 to 191 lots. This is included as Attachment C. Any Gateway determination issued may also specify additional matters to be addressed as part of the exhibition/consultation and plan making process.

It is also important to make clear that the subject land enjoys the benefit of a still valid approval for a 43 lot rural residential subdivision (DA 2004/0720). The consent included clearing of the road corridors and building areas. The consent has been commenced with creation of four lots and clearing of road corridors and some of the building areas. The remainder of the land could continue to be developed under the existing development application (DA).

A review of the proposal has concluded that it:

- complies with the requirements for a planning proposal under section 54 of the Act and with both the former and current guide to preparing local environmental plans issued by DOPI.
- has planning merit and is consistent with the strategic context provided by the Mid North Coast regional Strategy and the Maclean Urban Catchment LGMS, and is therefore recommended to be forwarded for a “Gateway Determination” from DOPI.

Should Council be supportive of the rezoning application/planning proposal request the next step is to refer the matter to the Planning Gateway requesting permission for exhibition. That process will also determine the Gateway’s further agency consultation and any further detailed investigation /documentation requirements as well as whether or not the Plan making process will be delegated to Council. Refer also to plan making delegations under **ISSUES** below.

ISSUES

The planning proposal is predominantly in accord with the LGMS. However, issues are still evident and need to be considered. The detail of most of the issues can be addressed and resolved at the DA stage.

1. Engineering – strategic and development issues

Road & driveway widths appear to be less than would be required under Council's suite of engineering standards ("NRDC"). It is expected that compliance with relevant standards would be addressed and resolved at the DA stage. On the positive side the proposed layout integrates with and provides interconnectivity with the already zoned Lot 355 to the north.

Stormwater design and management will need to be best practice and therefore will need to comply with NRDC as part of the DA including demonstrating that the subdivision will not adversely impact ground water. A stormwater strategy will need to be developed, considering all land in the catchment.

There will need to be consultation with Transport for NSW, local bus operators and Department of Education and Services in relation to the bus and school bus service provision to the new area.

All cul-de-sacs within the development area require Cul-de-sac heads not hammerhead turning areas as shown on the plans.

Upgrading of local services, in particular sewerage treatment capacity and transfer systems will be required at the expense of developers. This issue has been addressed in the LGMS. Environmental assessment of augmenting the Woodford Island sewage treatment plant capacity to accommodate urban development at Gulmarrad has been undertaken and approved. This provides for adequate treatment capacity to accommodate the population yields recommended by the LGMS. Some upgrading of critical intersections in the road network will also be required however the Pacific Highway upgrade and proposed Maclean interchange provides an opportunity for improved connectivity across the Highway corridor in the long term.

The LGMS flagged the need for what amounted to be a servicing strategy over the whole of the identified Gulmarrad growth area. It states:

"There is no requirement for the staging of rezoning and developing this land. However, the land cannot be rezoned without a binding commitment in place to provide necessary infrastructure, particularly sewage treatment and transport infrastructure, water supply and local road capacity".

However it is considered that such strategy is not necessary prior to or as part of the rezoning process continuing. A servicing strategy and staging program can be made a requirement of the DA process for both the current proposal and the adjoining Lot 355.

Refer also to comments by Council's Civil Strategic Section under "**CONSULTATION**" below.

2. Water/sewer Servicing issues

Water – The servicing of the land/release area (Bricknell parcel and Lot 355) for water supply should be relatively straightforward as a water main is being planned in the near future down Major Mitchell Drive.

The servicing of the land/release area for sewerage services poses more of a problem at present as Council has no plans at this stage to upgrade the sewerage infrastructure in the locality and therefore to do so would be at developer's expense.

As indicated in general engineering issues in 1. above a servicing strategy and staging program can be made a requirement of the DA process for both the current proposal and the adjoining Lot 355.

A contribution will be required to the augmentation of the sewerage treatment plant (STP).

3. Biodiversity/environmental issues

The Planning Proposal has considered biodiversity and flora/fauna issues and is accompanied by a detailed *"Flora and Fauna Assessment, Lot 71 in DP1156995, 33 Major Mitchell Drive, Gulmarrad"* prepared by D & D Environmental Consultants. Refer to Appendix D of the Planning Proposal document. The Planning Proposal application is accompanied by a conceptual subdivision/roading layout which indicates a possible urban lot yield of 173 to 191 lots. In addition to this the conceptual urban layout also provides for 3.4 hectares of retained forest that includes key habitat trees in an area shown on the plan as "active park/conservation open space". This also includes a 20m wide corridor along the northern and western boundaries.

The Planning Proposal notes the conclusion of the D & D Environmental Consultants flora and fauna assessment as follows:

"The Site was thoroughly searched for flora and fauna habitat on March 27 2012. No threatened flora or fauna species listed under either the TSC Act or the EPBC Act were recorded on the Site. However, potential habitat for 16 threatened fauna species is present. To mitigate any impact on potential threatened species from using the site an area of 3 ha of significant vegetation will be retained and consolidated along the northern and western boundaries of the site to be used as a corridor."

"The proposal is unlikely to significantly impact on threatened or migratory species listed under the TSC Act and or EPBC Act. Therefore, a Species Impact Statement is not required under the TSC Act, nor does the proposal require referral to Commonwealth Department of Environment Water Heritage and the Arts prior to development consent".

Further, the flora and fauna assessment recommends 12 measures to mitigate the potential impacts of the proposed development (pp 21 – 23 of the assessment). One of the recommended measures is that *"a Vegetation Management Plan will need to be developed to direct any necessary remedial work in the conservation area and to enable its long-term management"*. At this stage there is no indication as to how and who will manage, raising the all important question of the proposed tenure of the "conservation open space" in particular. Council should not accept any land intended or required to fulfil biodiversity conservation or offsetting functions without the proponent being able to demonstrate that what is ultimately proposed at detailed subdivision design is adequate to fulfil this function.

The detail for biodiversity conservation does not have to be resolved during the rezoning of the subject site it would be desirable for the 2 landowner parties in this future urban precinct to collaborate to resolve an overall urban lot and roading layout that produces a better biodiversity outcome than presented at present by existing conceptual layouts, whilst still achieving the 700 dwelling target identified in the Strategy for the Gulmarrad Growth Area. Again, this can be addressed at the pre – DA stage for both sites or as part of the DA process for each site.

Refer also to comments by Council's Environment and Open Spaces Section under **"CONSULTATION"** below.

In essence, the LGMS balanced the perhaps competing objectives of providing the dwelling outcomes required by the Mid North Coast Regional Strategy against the broader and more Gulmarrad specific biodiversity objectives of Council's Biodiversity Management Plan. The LGMS identified the key habitat linkages being to the east of the site and given the status of existing consents on the land, effectively gave priority to the urban outcomes. Notwithstanding, resolution of habitat linkages through the development application process is warranted within and consistent with that overall urban context.

4. Plan making delegations

On 2 November 2012 the Minister for Planning and Infrastructure made significant changes to improve plan making processes including delegating the making of some local environmental plans to councils.

The matter of the plan-making changes is the subject of a separate report to Council in this business paper (Item 12.188/12).

Although this Planning Proposal constitutes a spot rezoning consistent with an endorsed strategy plan, hence making plan making delegations under the new arrangements possible, such delegation could not be automatically exercised by Council as the proposed upzoning does not conform to all of the surrounding land use zones – only Lot 355 to the north currently zoned R1. Council should indicate to the DOPI that it is prepared to accept plan making delegations that DOPI may issue.

Subject to its decision in relation to the report entitled **NEW DELEGATIONS AND INDEPENDENT REVIEWS RELATED TO PLAN-MAKING UNDER PART 3 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979** (Item 12.188/12) Council should indicate that it wishes, in this specific instance, to accept and exercise the any delegation Authorisation for this matter should delegation be issued by the Gateway Determination and the Authorisation. Such acceptance should be predicated on the reasonableness of any conditions or requirements that may be specified any determination and Authorisation and on any issues arising from the consultation process that may require amendment to the Planning Proposal outside of the terms of delegation.

5. Conclusion

The Planning Proposal supporting and outlining a request to rezone the land from R5 Large Lot Residential to R1 General Residential is consistent with a range of relevant pre-requisite statutory considerations and strategies including:

- Maclean Urban Catchment Local Growth Management Strategy
- Mid North Coast Regional Strategy
- Section 117 Directions and State Environmental Planning Policies

There are no insurmountable issues that prevent the Planning Proposal from progressing to the next stages i.e. to the Gateway for consideration of a Gateway Determination.

The LGMS has identified that the land can be readily and efficiently serviced, the key issue in this respect being coordination of those services, particular sewer, between the two landholdings comprising this Urban Release Area. The development of a servicing strategy at the pre - DA stage or as part of the DA will provide some confidence as to how the land can be developed and serviced in a cost efficient manner and how such costs can be funded and apportioned between the development parties. Ideally such strategy should be undertaken in respect of the whole growth area encompassing both the subject property and the adjoining Lot 355 to the north. In this regard

the respective landowner parties should be encouraged to collaborate in the preparation of a servicing strategy for this future urban precinct as part of the DA process.

Although the detail for biodiversity conservation does not have to be resolved during the rezoning of the subject site it would be desirable for the 2 landowner parties in this future urban precinct to collaborate to resolve an overall urban lot and roading layout that produces a better biodiversity outcome than presented at present by existing conceptual layouts, whilst still achieving the 700 dwelling target identified in the Strategy for the Gulmarrad Growth Area. Again, this can be addressed at the pre – DA stage for both sites or as part of the DA process for each site.

CONSULTATION

Internal consultation with Council's relevant sections provides the following comment:

Civil Strategic Section

Road & driveway widths appear to be less than would be required under Council's suite of engineering standards ("NRDC") – at the DA stage and beyond it will be necessary for subdivision layout and design to comply with all necessary subdivision metrics and standards.

Stormwater design and management will need to be best practice and therefore will need to comply with NRDC. It will need to be demonstrated that the subdivision will not adversely impact ground water. A stormwater strategy will need to be developed, considering all land in the catchment.

Bus services – will need to consult with Transport NSW as well as the local bus companies about being able to provide bus services including school buses to the new area.

A servicing strategy should be provided prior to finalisation of rezoning integrating this land with the already zoned "Lanai" parcel to the north.

All cul-de-sacs within the development area require Cul-de-sac heads not hammerhead turning areas as shown on the plans.

Environment and Open Spaces Section

Council's Biodiversity Management Plan and the Mid North Coast Regional Strategy encourage rezonings on land that is cleared to minimise the environmental impacts of developments. Council's adopted Biodiversity Plan is based on a net gain in vegetation not a loss. The Biodiversity Plan also recognises that there is a "pinch point" at Gulmarrad in connectivity of remnant native vegetation.

The Gulmarrad Controls chapter of Council's Residential Zones DCP recognises drainage corridors that act as wildlife corridors but is based on rural residential layout. The corridors were obviously not premised on the basis of a higher intensity of development. Given that the proposed rezoning will intensify development and that further Native vegetation will be cleared contrary to Council's plan and the Mid North Coast regional plan it is incumbent on the proponent to provide some meaningful offset or ameliorative solutions as part of the proposal.

Given that there is an existing development approval that was approved before the adoption of the Biodiversity Management Plan for a rural residential subdivision and much of the vegetation will be cleared a reasonable outcome would be for the proponent to make provision for the connectivity through the development. The width of the current corridor proposed is not sustainable given the setback to urban blocks and it needs to front a road and not the back of small lots and be

incorporated with the adjoining lot to be meaningful. This would then also allow the corridor to be included in the road reserve and taken into public ownership subject to endorsement of Council.

In summary the main points/issues are:

1. The proposed bushland/wildlife corridors needs to be wider and integrated with the adjoining rezoning layout.
2. Proposed bushland/wildlife corridors and vegetation needs to be separated from residential blocks by a road to not only provide some certainty of its sustainability but also provide buffer to dwellings to reduce Council's liability for ongoing tree maintenance.
3. Council should consider accepting dedication and management of the "active park and conservation open space" (including proposed bushland/wildlife corridors) ONLY if it can be demonstrated that it is the best conservation/biodiversity outcome across the whole release area.

Public consultation

Public consultation and other key stakeholder consultation has not yet occurred but will occur following the issue of a Gateway Determination.

The author of the Planning Proposal request/document has indicated *"that the planning proposal be advertised for 28 days in accordance with Section 4.5 of "A guide to preparing local environmental plans". The proposal is not a "low impact planning proposal" under the guide as the proposal represents a significant change in local land use and character, even though this change is supported by the Maclean LGMS"*. As the new LEP guidelines have the same criterion as the old LEP guidelines the comments in relation to advertising/exhibition are agreed with.

A suggested consultation strategy is as follows:

Consultation item	Comment
Exhibition and consultation period	28 days
Notification	i. notification in writing to affected and adjoining landowners, unless the planning authority is of the opinion that the number of landowners makes it impractical to notify them ii. notification on Council's website
Advertising	Placement of an advertisement in a newspaper that circulates in the area (Daily Examiner and Lower Clarence Review) affected by the Planning Proposal
Public Authority and other stakeholder consultation	▪ Office of Environment and Heritage ▪ Roads and Maritime Services ▪ Department of Education and Communities ▪ Essential Energy ▪ Transport for NSW ▪ NSW Rural Fire Service

Ultimately the DOPI's Gateway Determination will specify the nature, extent and detail of community consultation.

SUSTAINABILITY ASSESSMENT**Summary Statement**

The LGMS recognises that there are many competing desirable planning objectives due to past development and zoning decisions and the characteristics of the physical environment. It is also influenced by broader economic and social factors. In this context, a “perfect” planning outcome is not realistic and hence the strategy took a balanced approach which in some cases trades off competing objectives. It endeavoured to make those trade offs transparent. This Planning Proposal is considered in this context and implements the key planning outcome recommended by the LGMS.

Ecology

The development outlined in the Planning Proposal document will have impacts upon existing native vegetation which the LGMS (section 2.2.7/ p72) says *“is relatively isolated and does not have significant connectivity”*. It also states that *“the limited biodiversity value of the vegetation needs to be balanced against the overall planning benefits associated with the ability to create a cohesive, viable community at this site”*.

Although the detail for biodiversity conservation does not have to be resolved during the rezoning of the subject site it would be desirable for the 2 landowner parties in this future urban precinct collaborate to resolve an overall urban lot and roading layout that produces a better biodiversity outcome than presented at present by existing conceptual layouts, whilst still achieving the 700 dwelling target identified in the Strategy for the Gulmarrad Growth Area.

Economic

The proposal is for additional land supply and urban development which should create a settlement and settlement pattern more capable of creating a “critical mass” of development to encourage the efficient and local provision of a range of commercial and social infrastructure that is unlikely to be achieved within a rural residential development framework.

Social & Cultural

The development resulting from this proposal is consistent with the urban framework established by the LGMS which in part seeks to establish a settlement pattern that enhances the ability to provide access to existing and new human services within the physical, servicing and environmental constraints.

Human Habitat & Infrastructure

The additional land supply and urban development resulting from this proposal will establish a settlement pattern that is efficient in terms of infrastructure provision and one that creates healthy, strong communities. In particular, it seeks to minimise the urban footprint and create a new residential neighbourhood that is well connected to the existing settlement hierarchy and minimises the immediate and long term costs of service provision. The Planning Proposal is central to the LGMS’s preferred outcome.

Governance

The LGMS implements at a local level the identified outcomes from the Mid North Coast Regional Strategy and Council’s adopted LGMS. More broadly, rezoning of this land will complete the rezoning process for the Gulmarrad Urban Release Area and will mean that four of the five major urban release areas identified under the Mid North Coast Regional strategy will have been rezoned and available for detailed design and development applications (i.e. Junction Hill, Clarenza, West Yamba, Gulmarrad – the fifth at James Creek awaiting a servicing strategy).

Guiding Sustainability Principles

The following guiding sustainability principles are relevant to this issue:

- Protecting ecological processes and biodiversity.
- Supporting social and intergenerational equity.
- Promoting ecologically sustainable development.
- Encouraging community involvement and awareness.
- Taking a precautionary and anticipatory approach.
- Focusing on continuous improvement.

OPTIONS

1. That Council, as the relevant planning authority, initiate the Local Environmental Plan “Gateway” process pursuant to Section 55 of the Environmental Planning and Assessment Act 1979 by supporting and preparing a Planning Proposal Lot 68, 69 and part Lot 71 DP1156995 and Lot 1020 DP1108597, Major Mitchell Drive, Gulmarrad to rezone the land to R1 General Residential and give effect to achieving the stated purpose of the Planning Proposal document.
2. That Council forward the Planning Proposal to the Department of Planning and Infrastructure requesting a “Gateway” Determination, pursuant to Section 56 (1) of the Environmental Planning and Assessment Act.
3. That Council undertake community consultation regarding the Planning Proposal, subject to the determination of the Gateway Process.
4. That Council’s delegate exercise any delegation that may be specified and issued by the Gateway Determination and Written Authorisation to Exercise Delegation.
5. That Council, as the relevant planning authority, decline the request to support and progress the Planning Proposal and advise the Applicant of Council’s decision. This option would need to articulate reasons why the proposal should not proceed. The consequence of this is likely to be that the existing rural residential development application that has already been activated will continue and the broader long term planning objectives of the adopted LGMS will be significantly compromised. It is noted however, that this option is available to the land holder irrespective of whether the Planning Proposal proceeds.
6. That Council defer the Planning Proposal pending the preparation of a servicing strategy. This option is not considered necessary as the key servicing issues, as addressed by the LGMS, are readily resolvable at development application stage, albeit most efficiently achieved through collaboration with the adjoining land holding to the north.
7. Upon rezoning of the land, Council proceed to prepare a DCP amendment over the Gulmarrad Urban Release Area in collaboration with the land owners to coordinate integration of key subdivision design principles including vegetation and open space management.

The preferred options are Options 1 – 4 and 7.

FINANCIAL IMPLICATIONS

There are no anticipated financial implications at this stage from the rezoning process.

Des Schroder

DEPUTY GENERAL MANAGER – ENVIRONMENTAL & ECONOMIC

Prepared by staff member: David Morrison/Terry Dwyer

Approved/Reviewed by Manager: David Morrison

Section: Strategic & Economic Planning

Attachment:

- A – Location plan
- B – Plan indicating Gulmarrad growth area
- C - Concept subdivision/roading layout
- D – Planning Proposal (without appendices)