

Planning Services

Gateway Determination Report

LGA	Clarence Valley Council
RPA	Clarence Valley Council
NAME	Rezoning of 5 Bridge Street Glenreagh (12 residential Lots)
NUMBER	PP_2017_CLARE_006_00
LEP TO BE AMENDED	Clarence Valley LEP 2011
ADDRESS	5 Bridge Street, Glenreagh
DESCRIPTION	Lots 10 and 11 DP 1185535
RECEIVED	25 July 2017
FILE NO.	17/10466
QA NUMBER	qA416108
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

INTRODUCTION

Description of Planning Proposal

The planning proposal seeks to amend the provisions of Clarence Valley LEP 2011 that relate to Lots 10 and 11 DP 1185535, 5 Bridge Street, Glenreagh. The planning proposal intends to rezone the land from RU2 Rural Landscape to R2 Low Density Residential, apply a nine (9) metre maximum building height to the land and remove the 40 hectare minimum lot size control for the land.

Site Description

The land is approximately 1.8 hectares in size and is currently zoned RU2 Rural Landscape. The land is cleared of significant native vegetation, except for a 9m wide row of trees along the southern boundary of Lot 11. The land contains an existing dwelling on Lot 10 and lot 11 is predominantly maintained as a cleared, and grassed grazing paddock.

Surrounding Area

The land is bounded to the north by existing low density residential development, zoned R2, by the Glenreagh Public School to the east, the former Glenreagh to Dorrigo railway line to the south and public open space being Glenreagh Park which is zoned RE1 Public Recreation to the west.

Summary of Recommendation

Proceed with Conditions for the following reasons:

1. The proposal will enable the development of approximately 12 new residential lots at Glenreagh.
2. The site is relatively unconstrained and constitutes a logical extension of the Glenreagh village.
3. The inconsistencies with the strategic planning framework are considered to be of minor significance.

PROPOSAL

Objectives or Intended Outcomes

The Statement of objectives adequately describes the intention of the planning proposal. The

proposal intends to amend Clarence Valley LEP 2011 to enable the subject land to be developed for low density residential purposes.

Explanation of Provisions

The explanation of provisions adequately addresses the intended method of achieving the objectives of the planning proposal. The proposal intends to:

1. amend the Land Zoning Map to rezone the subject land from RU2 Rural Landscape to R2 Low Density Residential;
2. amend the Lot Size Map to remove the 40 hectare MLS that applies to the land; and
3. amend the Height of Buildings Map to apply a 9m maximum building height to the land.

Mapping

The planning proposal contains maps which adequately show the subject land and the current zone. Council notes in its cover letter that maps which show the proposed zones and other planning controls have not been prepared by the consultant who prepared the planning proposal. However, Council will prepare maps which clearly and accurately show the proposed zone changes and the changes to the planning controls for the land and include them in the planning proposal prior to community consultation. It is considered that the Gateway determination should include a condition requiring amendment of the planning proposal prior to community consultation to include the necessary maps. Maps which comply with the Standard Technical Requirements for SI LEP Maps will need to be prepared before the LEP is made.

NEED FOR THE PLANNING PROPOSAL

The proposal is not the result of a specific study or report.

The planning proposal states that the intended development outcome for the site would be approximately 12 low density residential lots similar to the estate of Lilli Court immediately to the north of the site.

Consistent with other R2 zoned land in the local government area (LGA) the planning proposal intends to apply a 9m maximum building height to the land proposed to be zoned R2.

The proposal also seeks an amendment to the minimum lot size map to remove the existing 40 hectare minimum lot size over the land and apply no minimum lot size to the land once zoned R2. This is consistent with the approach for other R2 zoned land in the Glenreagh village. Lot sizes will be set based on the constraints of the land such as the need for area to dispose of effluent on site.

The proposal to rezone the land and amend the minimum lot size is the best means of achieving the intent of the proposal which is to enable the development of the land for low density residential purposes.

STRATEGIC ASSESSMENT

State

The proposal is not inconsistent with the NSW State Plan.

Regional / District

NORTH COAST REGIONAL PLAN 2036

The planning proposal includes discussion regarding the consistency with the North Coast Regional Plan 2036 (the 'NCRP'). The NCRP identifies the urban growth area of Glenreagh. The subject land is outside of this urban growth area however the proposal includes an assessment against the Urban Growth Area Variation Principles in the NCRP.

The assessment against the Urban Growth Area Variation Principles in Appendix C of the planning proposal concludes that the variation to the urban growth area boundary is justified. It is considered that the proposal is consistent with the Urban Growth Area Variation Principles for the following reasons:

1. the proposal is generally consistent with the strategic planning framework and the minor inconsistencies with action 1.4 of the NCRP and S117 Directions 1.2 and 1.5 are of minor significance, as discussed later in this report.
2. the proposal does not require major upgrades to infrastructure. Existing water, power, and telecommunications infrastructure is considered to be sufficient for the eventual residential use of the site. Road access will be upgraded as necessary when the land is developed.
3. the site is not mapped as significant farmland nor does it contain matters of heritage significance.
4. the land is not located within the coastal area defined by the NCRP. The land is not flood prone nor subject to erosion, steep slopes, or acid sulfate soils.
5. the land is mapped as being bushfire prone being the vegetation along the southern boundary of the site, however it is expected that this constraint will be able to be adequately addressed at development application stage.
6. the proposed low density residential use of the site is not expected to result in unacceptable land use conflict with the surrounding residential, education or recreation land uses.
7. the subject land is contiguous with the existing Glenreagh urban growth area and at only 1.8 hectares in size is considered to be minor in nature.

The proposal contains an assessment of the directions and actions in the NCRP. The only action which the proposal is inconsistent with action 1.1 which provides that future urban development shall be located in mapped urban growth areas. While the proposal is inconsistent with this direction it has addressed the Urban Growth Area Variation Principles and the inconsistency is considered to be justified.

Action 18.2 of the NCRP states:

Undertake Aboriginal cultural heritage assessments to inform the design of planning and development proposals so that impacts to Aboriginal cultural heritage are minimised and appropriate heritage management mechanisms are identified.

While the planning proposal does not include an Aboriginal cultural heritage assessment the proponent has undertaken an AHIMS search. It is considered that given the historical use of the land for residential and grazing purposes a formal Aboriginal cultural heritage assessment is not required however a site inspection by a suitably qualified or experienced person and consultation with the Local Aboriginal Land Council should be undertaken. It is recommended that this should be a condition of the Gateway determination.

The proposal does not display any other significant inconsistencies with the actions of the NCRP.

Local

Clarence Valley Settlement Strategy

The proposal is not inconsistent with the Clarence Valley Settlement Strategy (the CVSS). The CVSS notes that expansion of the Glenreagh village should avoid the quarry to the north of the village and the agricultural land to the east and west. The proposal achieves this being located to the south west of the village and north of the old railway line. The proposal, which will yield approximately 12 residential lots, is not expected to increase the population of the village to an extent that local services will be strained.

The planning proposal also contains an assessment of the proposal against the Council's relevant strategies. No inconsistencies with these strategies have been identified.

Section 117(2) Ministerial Directions

The following S117 directions are applicable to the proposal, 1.2 Rural Zones, 1.5 Rural Land, 2.1 Environmental Protection Zones, 2.3 Heritage Conservation, 2.4 Recreational Vehicle Areas, 3.1 Residential Zones, 3.2 Caravan Parks and Manufactured Home Estates, 3.3 Home Occupations, 3.4 Integrating Land Use and Transport, 4.4 Planning for Bushfire Protection, 5.10 Implementation of Regional Plans, 6.1 Approval and Referral Requirements, 6.2 Reserving Land for Public Purposes, and 6.3 Site Specific Provisions.

The proposal is considered to be inconsistent with directions 1.2, 2.1, 2.3, 3.1, 4.4 and 5.10.

Direction 1.2 Rural Zones is relevant to the planning proposal. The direction provides that a planning proposal shall not rezone land from rural to residential. The proposal seeks to rezone the land from RU2 to R2. The direction provides that a planning proposal may be inconsistent with the direction if it is consistent with a regional plan or is of minor significance.

As discussed previously the subject land is outside of the urban growth area for Glenreagh however an assessment against the Urban Growth Area Variation Principles has concluded that the variation is justified. Additionally, the small area of the land (1.8 hectares) constitutes a minor development. The proposal is therefore considered to be of minor significance and justified in accordance with the terms of the direction.

Direction 1.5 Rural Land is relevant to the planning proposal. The planning proposal identifies an inconsistency with this direction. As discussed in the next section of this report, the proposal is not inconsistent with the Rural Planning Principles in the Rural Lands SEPP and therefore the proposal is not considered to be inconsistent with the direction.

Direction 2.1 Environmental Protection Zones is relevant to the planning proposal. The direction provides that a planning proposal shall contain provisions to facilitate the protection and conservation of environmentally sensitive areas. The planning proposal does not include a flora and fauna assessment to identify any environmentally sensitive areas though the vegetation in the south of the site is mapped as High Environmental Value vegetation. It is considered that a flora and fauna assessment of the vegetation on the land should be undertaken and until such time as this has occurred any inconsistency of the proposal with the direction remains unresolved.

Direction 2.3 Heritage Conservation is relevant to the planning proposal. The direction provides that a planning proposal must contain provisions which facilitate the conservation of items and places of heritage significance. The proposal states that the Aboriginal Heritage Information Management System (AHIMS) shows no records of Aboriginal sites or objects on the site.

It is considered that further investigation of potential Aboriginal cultural heritage, other than an AHIMS search is warranted for land being rezoned from rural to residential. As such it is recommended that the Gateway determination require a site inspection by a suitably qualified or experienced person and consultation with the Local Aboriginal Land Council. It is therefore considered that any inconsistency of the proposal with this direction cannot be resolved until these further investigations have been completed.

Direction 3.1 Residential Zones is relevant to the planning proposal. The direction provides that a planning proposal must include provisions which reduce the consumption of land on the urban fringe. The proposal is inconsistent with this direction as it proposes to rezone urban land on the edge of the Glenreagh village to residential.

The direction provides that a proposal may be inconsistent with this direction if it is justified by a regional plan or is of minor significance. The planning proposal has demonstrated that the proposed rezoning is consistent with the Urban Growth Area Variation Principles contained in the North Coast Regional Plan and being of only 1.8 hectares in size is considered to be of minor significance. The inconsistency of the proposal with the direction is therefore considered to be justified in accordance with the terms of the direction.

Direction 4.4 Planning for Bushfire Protection is relevant to the proposal. Part of the subject land is identified as being bush fire prone. The direction provides that the RPA must consult with the Commissioner of the NSW Rural Fire Service, and the draft plan must include provisions relating to bushfire control. Consultation with the RFS is required after a Gateway Determination is issued and before public exhibition and until this consultation has occurred the inconsistency of the proposal with the direction remains unresolved.

Direction 5.10 Implementation of Regional Plans is relevant to the planning proposal. The direction provides that a planning proposal must be consistent with the North Coast Regional Plan 2036. As discussed previously in this report the inconsistencies of the proposal with the NCRP have been justified and are considered to be of minor significance. It is therefore considered that the inconsistency of the proposal with the direction has been justified in accordance with the terms of the direction.

The proposal is otherwise consistent with S117 Directions.

State Environmental Planning Policies

The proposal lists the State environmental planning policies (SEPPs) applicable to the land. Many SEPPs apply to the subject land and the proposal is not inconsistent with these SEPPs.

SEPP 55 Remediation of Land

Part of the subject land was previously used for grazing purposes. The planning proposal includes a preliminary assessment of the potential for the site to be contaminated in accordance with the provisions of SEPP 55. Council has identified that the preliminary investigations are insufficient and has indicated further investigations are necessary. Council's reasons for this are detailed in the Council report that accompanied the planning proposal and are considered to be reasonable. It is considered that additional investigations can be undertaken after a Gateway determination has been issued and it is recommended that the Gateway determination contain a condition requiring this preliminary investigation to be undertaken before community consultation.

SEPP (Rural Lands) 2008

The proposal applies to rural land and therefore the Rural Planning Principles in SEPP (Rural Lands) 2008 are relevant to the proposal. The planning proposal contains an assessment against the rural planning principles. The proposal is not considered to be inconsistent with the rural planning principles for the following reasons:

1. the land is not mapped as regionally significant farmland by the Mid-North Coast Farmland Mapping Project 2008;
2. the land is not currently used for productive agricultural purposes and its conversion to residential will not diminish the importance of rural lands and agriculture in the area, nor will it result in adverse social or economic impacts as a result of it no longer being available for agricultural purposes;
3. the small size of the land (1.8 hectares) and its location adjoining an existing educational facility, recreation areas and low density residential development means that its potential for productive agricultural uses is limited;
4. the proposal will not result in adverse impacts on natural resources, water resources or biodiversity. The land does not contain significant native vegetation, and is located south of the existing village away from the quarry north of the village; and
5. the proposal will not have an adverse impact on existing services or infrastructure in Glenreagh and will not generate an unreasonable demand for additional infrastructure in the village.

The proposal is consistent with other State environmental planning policies.

SITE SPECIFIC ASSESSMENT

Social and Economic

The proposal to rezone the subject land to residential will result in the eventual development of approximately 12 residential lots. The increase in population from this development is expected to be around 30 people and while this is expected to have a small positive economic impact for businesses in the Glenreagh village and surrounding areas, it is not expected to have an adverse social impact.

Environmental

The land currently constitutes cleared grazing land with a strip of native vegetation approximately 9m wide along the southern boundary. This vegetation is separated from further vegetation to the south by Railway Street and the abandoned railway line. The proposal does not intend to remove

this vegetation. While the proposal is not expected to have an adverse impact on critical habitat or threatened species, populations or ecological communities or their habitats, no flora or fauna investigations have been prepared to inform the proposal. Council has not indicated that flora and fauna investigations for the proposed rezoning of the site will be required.

The vegetation along the southern boundary of the subject land is mapped as High Environmental Value vegetation in the North Coast Regional Plan. As such it is appropriate that flora and fauna investigations for the land are undertaken to determine if a residential zone is appropriate over the existing vegetation. The NSW Office of Environment and Heritage should also be consulted.

The Glenreagh Flood Study September 2013 indicates that the subject land is not subject to flooding at either the 1:100 year ARI or at the Probable Maximum Flood level. The site is not mapped as containing acid sulfate soils.

The land is mapped as being bushfire prone. A bushfire assessment report has not yet been undertaken for the site though the planning proposal indicates one could be provided post Gateway determination.

The rezoning of the land is likely to result in increased traffic movements though it is expected that the impact of these increased traffic movements will be able to be addressed through the upgrade of the existing road network at development application stage.

Infrastructure

The subject land has sufficient infrastructure available for the intended low density residential development. No state significant infrastructure will be necessary to service the proposal.

CONSULTATION

Community

The planning proposal states that the proposal is considered to be a low impact planning proposal due to the small scale of the proposal, its consistency with Council's settlement strategy and the fact it does not propose to reclassify land.

The Council report suggests the proposal is not a low impact proposal and nominates a 28 day consultation period.

In accordance with "A Guide to Preparing Local Environmental Plans" (the 'Guide'), it is agreed that the planning proposal is a low impact planning proposal as the inconsistencies with the strategic planning framework are minor and justified, the proposal is consistent with the surrounding land zoning pattern, presents no issues in regard to servicing and does not propose the reclassification of land. The Guide also suggests written notification to the affected and adjoining land owners. It is therefore considered that a community consultation period of 14 days is appropriate and affected and adjoining properties should be notified in writing. However, there is no impediment to Council conducting a longer community consultation.

Agencies

The planning proposal does not indicate what consultation with State agencies is proposed. It is considered that Council should consult with the following State agencies and organisations:

1. NSW Rural Fire Service;
2. NSW Office of Environment and Heritage; and
3. Local Aboriginal Land Council.

TIMEFRAME

The planning proposal does not include a completed project time line. Council's covering letter suggests a nine (9) month time frame would be adequate. To ensure the RPA has adequate time to resolve the issues with the potential site contamination investigations and complete community consultation, reporting, and legal drafting, it is recommended that a time frame of 12 months is appropriate.

It is recommended that the Gateway determination contain a condition requiring a time line be included in the planning proposal.

DELEGATION

The RPA has indicated that it is prepared to accept any plan making delegations should an authorisation to exercise delegation for this proposal be issued. An *Evaluation Criteria For the Delegation of Plan Making Functions* has been provided. The proposal is considered to be of local planning significance since it relates on only 1.8 hectares of land and is generally consistent with the strategic planning framework for the site. It is recommended that an Authorisation for the exercise of delegation be issued to the RPA in this instance.

CONCLUSION

The planning proposal is supported and should proceed for the following reasons

1. The proposal will enable the development of approximately 12 new residential lots at Glenreagh.
2. The site is relatively unconstrained and constitutes a logical extension of the Glenreagh village.
3. The inconsistencies with the strategic planning framework are considered to be of minor significance and justified.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that the inconsistencies of the proposal with S117 Directions 1.2 Rural Zones, 3.1 Residential Zones and 5.10 Implementation of Regional Plans are justified in accordance with the terms of the directions; and
2. note that the inconsistencies with S117 Directions 2.1 Environmental Protection Zones, 2.3 Heritage Conservation and 4.4 Planning for Bushfire Protection are yet to be resolved and will require justification prior to the plan being made.

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

1. Prior to community consultation the following investigations are to be completed and the planning proposal amended as necessary:
 - (a) further investigation of the potential for contamination of the site in accordance with the requirements of the Contaminated Land Planning Guidelines specified in State Environmental Planning Policy 55 - Remediation of Land and to the satisfaction of Council;
 - (b) further investigation for the presence of Aboriginal cultural heritage significance is to be provided in the form of a record of site inspection by a suitably qualified or experienced person and confirmation of consultation with the Local Aboriginal Land Council;
 - (c) a flora and fauna assessment of the site given the presence of mapped High Environmental Value vegetation along the southern boundary; and
 - (d) a bushfire risk assessment.
2. Prior to community consultation the planning proposal is to be amended as follows:
 - (a) the planning proposal is to include maps which show the existing and proposed zones, minimum lot size, and maximum building height. The maps should clearly indicate that the land proposed to be zoned R2 will not have a minimum lot size applying to it; and
 - (b) a completed time line for completion of the planning proposal is to be included.
3. The planning proposal should be made available for community consultation for a minimum of 14 days.
4. Consultation is required with the following public authorities and organisations:

- NSW Rural Fire Service;
 - NSW Office of Environment and Heritage; and
 - Local Aboriginal Land Council
5. The timeframe for completing the LEP is to be 9 months from the date of the Gateway determination.
6. Given the nature of the planning proposal, Council should be authorised to exercise delegation to make this plan.



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