

Planning Services

Gateway Determination Report

LGA	Port Macquarie Hastings
RPA	Port Macquarie Hastings Council
NAME	Proposed rezoning part of Lot 2 DP 771931, Mission Terrace, Lakewood from RU1 to R1 and E3 and amend associated development standards.
NUMBER	PP 2017 PORTM 008 00
LEP TO BE AMENDED	Port Macquarie-Hastings LEP 2011
ADDRESS	Mission Terrace, Lakewood
DESCRIPTION	Part of Lot 2 DP 771931
RECEIVED	30 November 2017
FILE NO.	17/13516
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required OR a political donation disclosure statement has been provided
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal OR include details of meetings or communications with registered lobbyists.

INTRODUCTION

Description of Planning Proposal

Rezone 14.65 ha of RU1 Primary Production land on Lot 2 DP 771931, Mission Terrace, Lakewood to R1 General Residential (4.58ha) and E3 Environmental Management (10.07ha) (see figure 3) and amend associated development standards to enable the permanent occupation of existing residential accommodation surplus to a previously associated education establishment.

Site Description

Lot 2 is currently zoned part RU1 Primary Production and part E3 Environmental Management. The site has consent under DA 1999/752 as a Mission Training Facility (educational establishment) with on-site accommodation approved for up to 27 dwellings. The educational establishment is located in a cleared section in the north-western corner of the subject lot. It currently consists of a main office, meeting/dining/teaching building, a large storage shed and 21 detached dwellings. The dwellings range in size from 2 to 4 bedrooms. As technology has improved the need for the students to live on site has diminished, as a result the dwellings have now been vacant for some time.



Figure 1 - Lot 2 DP 771931 (whole of)

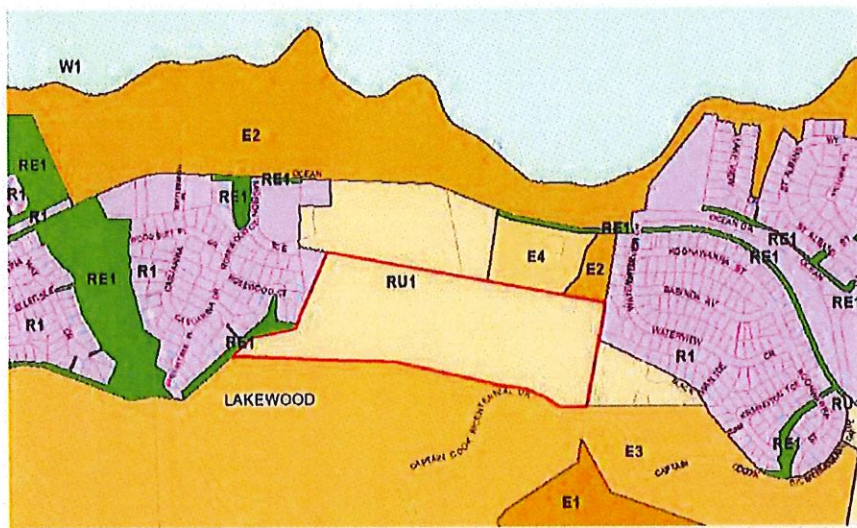


Figure 2 - Current zoning subject site

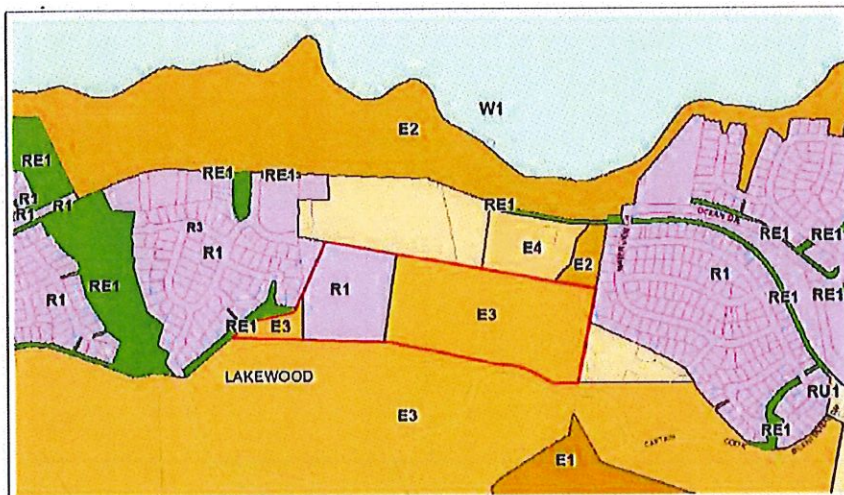


Figure 3 - Proposed zoning subject site

Surrounding Area

The subject site directly adjoins the existing Lakewood urban area, with the township of Laurieton being situated approximately 2.3km to the east. The site adjoins R1 zoned land to the east and west, RU1 / E4 / E2 zoned land to the immediate north and E3 to the south (Figure 2).

The site is located just outside the Urban Growth Area Boundary for Port Macquarie-Hastings Council in the North Coast Regional Plan 2036 (NCRP) (Figure 4).

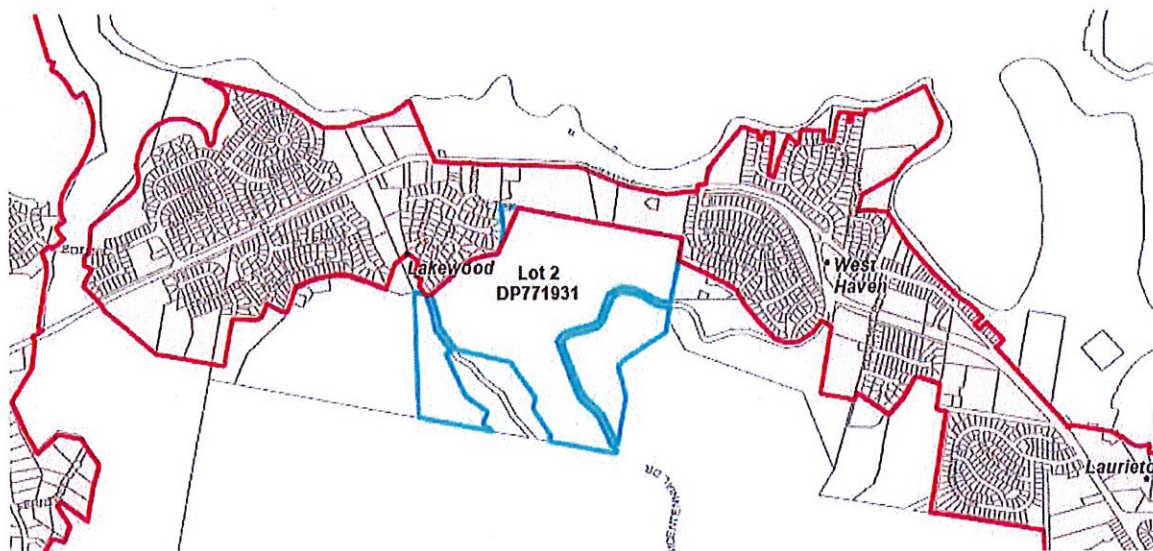


Figure 4 – Urban Growth Boundary – North Coast Regional Plan 2036

Summary of Recommendation

The proposed rezoning amendment should proceed subject to conditions. The planning proposal is supported as it is reflective of the natural attributes and existing development on the site and will facilitate the meaningful on-going utilisation of the existing infrastructure on the land. The planning proposal will also help to protect the highly vegetated residue area by rezoning it to E3 Environmental Management.

PROPOSAL

Objectives or Intended Outcomes

The statement of objectives adequately describes the intention of the planning proposal. The proposal seeks to:

- permit residential occupation and development of part of Lot 2 DP 771931 currently utilised for an educational establishment; and
- protect ecological values on the remainder of the land.

Explanation of Provisions

The explanation of the provisions adequately addresses the intended changes to Port Macquarie-Hastings LEP 2011. The planning proposal seeks to:

- amend the Land Zoning Map (LZN) to change the zoning of part of the site from RU1 Primary Production to part R1 General Residential and part E3 Environmental Management;
- amendment to the Lot Size Map (LSZ) to permit:
 - a minimum lot size (MLS) of 450m² for that part of the site zoned R1 that is at, or below RL30m AHD; and

- A MLS of 2ha for that part of the site proposed to be zoned R1 that is at, or above RL30m AHD;
- amendment to the Height of Buildings Map (HOB) to permit:
 - a maximum HoB of 8.5m for that part of the site proposed to be zoned R1 that is at, or below RL30m AHD;
 - a maximum HoB of 5.4m for that part of the site proposed to be zoned R1 that is at, or above RL30m AHD;
- amendment to the Floor Space Ratio Map (FSR) to permit a maximum FSR of 0.65:1 for that part of the site proposed to be zoned R1.

Mapping

The planning proposal includes current and proposed LZN, MLS, HOB and FSR maps which adequately reflect the proposed amendments. These maps are suitable for exhibition purposes.

Amendments to the LZN, MLS, HOB and FSR maps are to be prepared in accordance with the Standard Technical Requirements for Spatial Datasets and Maps prior to finalisation of the LEP.

NEED FOR THE PLANNING PROPOSAL

The planning proposal is not the result of a strategic study or report. At its March meeting, Council considered a request from the landowners for the on-going permanent occupation of the site now that the educational use of the site is no longer required. Council considered the site for inclusion in its Strategic Planning Work Program and resolved to assess the appropriateness of the site for rezoning.

The Planning Proposal is considered to be the best means for achieving the rezoning of the subject land.

STRATEGIC ASSESSMENT

State

The planning proposal does not contain any matters of state significance.

Regional

North Coast Regional Plan 2036

The subject land is not within the mapped Urban Growth Boundary nor is it identified as an investigation area (Figure 4). It is considered by Council to be infill development as the site is currently developed for educational and ancillary residential purposes and is located adjacent to existing residential zoned land. Rezoning of the subject land is considered to be a minor variation to the Urban Growth Boundary and in this regard, is considered to be consistent the NCRP Urban Growth Area Variation principles as follows:

- Policy – The planning proposal is considered to be consistent with the Directions of the NCRP and in particular, the following Directions:
 - Direction 1 - Deliver environmentally sustainable growth. The planning proposal aims to rezone land already developed for urban / residential purposes and as such will not require the clearing and servicing of additional greenfield sites;
 - Direction 23 – Increase housing diversity and choice. Currently 21 of the approved 27 dwellings for the site have been built and range in size from 2 to 4 bedrooms.

- Direction 25 – Deliver more opportunities for affordable housing. The existing dwellings located on the site are part of an educational establishment that is no longer in use. The planning proposal will allow these dwellings, plus an additional 6 to be sold to the general public, in turn providing greater housing stock for the surrounding local area.
- Infrastructure – The planning proposal will require no additional utility infrastructure as the site is already developed, containing 21 of the 27 approved dwellings for the site. In regard to the ongoing provision and management of water, sewerage and utilities, Council have supported the concept plan for a Body corporate management of the land above the 30m contour and confirmed that this can be adequately addressed at the development application stage.
- Environmental and Farmland Protection – The proposed residential zoning will be located only on the cleared, already developed north-western corner of the site. The residual RU1 zoned land will be rezoned to E3 with no development proposed for this area.

The subject land does not contain any mapped important farmland and is heavily constrained by its the heavily timbered nature.

- Landuse Conflict – The subject site is located adjoining existing developed residential land and is considered to be minor infill development to the existing Lakewood and West Haven urban footprint. It is not anticipated that formal residential development of the subject site will create any new landuse conflict with surrounding landuses.
- Avoiding risk – The subject site is not mapped as flood prone or as containing acid sulfate soils. Due to the heavily vegetated nature of the residual land, the site is mapped as bushfire prone and in this regard, some of the dwellings on the eastern side of the development will require upgrades in terms of ember attack, improved formation of the perimeter fire trail and development of a fire management plan. All APZ's are able to be contained within the proposed R1 area of the subject land.

The issue of slope and erodibility of the site has previously been considered by Council in the process of approving the application for the existing development.

- Heritage – The existing developed area does not contain any items/areas of Aboriginal and non-Aboriginal heritage and no areas of indigenous significance are known to exist on the residual portion of the lot. Despite this, Council intends to consult with the Local Aboriginal Land Council.
- Coastal Area – Whilst the subject site is located within the coastal area of Lakewood and West Haven, the proposed development is considered to be minor infill development and will have no detrimental impact on the environmental sensitivity of the area.

It is considered that the Planning Proposal is consistent with the NCRP as it satisfies the Variation Criteria required for development outside the Urban Growth Area.

Local

Whilst the subject area is not specifically identified in the Port Macquarie-Hastings Urban Growth Management Strategy 2011-2031 for urban expansion, it represents a minor infill area that is consistent with the provisions of the strategy and will be in keeping with surrounding residential development. The rezoning of the residue land from RU1 to E3 will also help protect a significant area of vegetation and preserve a green corridor between Queens Lake Reserve and North Brother Mountain.

Section 117(2) Ministerial Directions

The proposal is considered to be consistent with all relevant s117 Directions except as follows (noting that the proposal currently incorrectly refers to Direction 5.1 instead of 5.10 and that this should be amended prior to consultation):

Direction 1.2 Rural Zones

The proposal is inconsistent with this direction as it proposes to rezone land from a rural zone to a residential zone. The inconsistency with this Direction is considered to be of minor significance as the area of the site to be rezoned to R1 is already cleared, developed and used as an educational training establishment with onsite residential accommodation. The proposal does not propose to develop outside the footprint of what has already been developed or has approval to be developed. The remainder of the site will be zoned for environmental management purposes as it is heavily vegetated. No loss of viable agricultural land will result from the planning proposal.

Direction 1.5 Rural Lands

The proposal is inconsistent with this direction as it is unable to satisfy all of the Rural Planning Principles or Rural Subdivision Principles under SEPP (Rural Lands) 2008. The inconsistency with this Direction is considered to be of minor significance as no loss of viable agricultural land will result from the planning proposal and the proposal is consistent with a number of the principles such as the provision of opportunities in suitably unconstrained lands for settlement and housing.

Direction 4.4 Planning for Bushfire Protection

The Planning Proposal applies to land that has been mapped as bushfire prone.

The Direction requires Council as the Relevant Planning Authority to consult with the Commissioner of the NSW Rural Fire Service after a Gateway Determination has been issued. Until this consultation has occurred the consistency of the proposal with the Direction remains unresolved

State Environmental Planning Policies

The proposal is considered to be consistent with all applicable SEPP's except SEPP (Rural Lands) 2008 as discussed above in regard to s117 Direction 1.5 Rural Lands. As discussed above this inconsistency is considered to be of minor significance.

SITE SPECIFIC ASSESSMENT

Social/Economic

Positive social and economic impacts can be expected from the proposal through the provision of additional residential housing within the Lakewood, North Haven area. The proposed residential zone adjoins existing residential development and is already adequately serviced as a result of the existing land use. It is not anticipated that any detrimental social impacts will arise from the Planning Proposal.

Environmental

That part of the subject site proposed to be rezoned to R1 is already cleared and developed for educational/residential purposes. No clearing or further development apart from that already approved under the relevant DA is proposed.

The rezoning of the residue land from RU1 to E3 will also help protect a significant area of vegetation and preserve a green corridor between Queens Lake Reserve and North Brother Mountain.

During the Gateway assessment, the Office of Environment and Heritage were provided with a copy of the planning proposal for preliminary comment in regard to potential environmental issues. OEH identified a range of biodiversity issues associated with the vegetated part of the subject site. In summary OEH recommended the following;

- zoning of the residue to E2 Environmental Conservation rather than E3 Environmental Management due to the potential presence of the Powerful Owl and Yellow Bellied Glider based on records on an adjoining lot and North Brother Wattle (a threatened plant) records on the planning area and adjoining land; and
- that the entire lot should be the subject of the planning proposal with the existing E3 Zoned land being rezoned to E2 given the biodiversity values and as it adjoins OEH estate.

The recommendation of OEH to rezone the residue lot from RU1 to E2 (instead of E3) must be considered against LEP Practice Note *PN11-002 Preparing LEP's using the Standard Instrument: standard zones* which provides a framework for selecting zones in terms of purpose and core objectives. The purpose of the E2 Environmental Conservation zone is to protect land that has high conservation values outside the national park and nature reserve system. The use of this zone needs to be justified by appropriate evaluation of the area in terms of meeting the core zone objectives of having high ecological, scientific, cultural or aesthetic values. In this regard, evaluation of such values has not occurred as the planning proposal relates to that part of the lot already developed with the residue being rezoned from RU1 to E3. This rezoning will by default add a considerable level of protection to the biodiversity values that exist within the residue lot and it is considered unnecessary to require the applicant at this stage to undertake rigorous environmental studies to determine whether it is more suitable to an E2 Environmental Conservation Zoning.

The E3 Environmental Management zone is generally applied to land that has special ecological, scientific, cultural or aesthetic attributes or land highly constrained by geotechnical or other hazards. This zone is also often suitable as a transition between areas of high conservation value and more intensive land uses such as rural or residential.

In the case of the subject site, whilst it contains biodiversity values in terms of being highly vegetated and creating a green corridor between Queens Lake Reserve and North Brother Mountain, it also serves as a transition between the adjoining rural and residential zones. An E3 zone therefore seems the most appropriate given the subject site's location adjoining land currently zoned E3.

Council were consulted on the OEH's recommendations and provided a response from the proponent who stated that whilst the environmental values of the land are not disputed, any such rezoning (to E2) should be based on a general review of all

the E3 and RU1 zone in the locality and that to single out this land owner could be perceived as deliberate action to devalue the land as a pre-emptive measure for acquisition and addition to the adjoining National Park. Having said this, the owner is prepared to enter into negotiations with OEH to sell the E3 land for addition to the National Park, or to establish it as a biobanking site.

It is therefore considered reasonable that the area of site being rezoned from RU1 should have an E3 Zone applied given the nature of both the E2 and E3 zones as detailed in PN11-002 and taking into consideration that the remainder of this land, and the adjoining land is zoned E3. It is however recommended that consultation with OEH take place on a more formal level post Gateway determination to enable further consideration should more detailed information become available.

Infrastructure

The provision and funding of State infrastructure is not necessary for this proposal.

In terms of local infrastructure, it is not expected that the planning proposal will create any increase in demand for additional services as the subject site is predominantly developed and adequately serviced and developer contributions can be levied in accordance with existing plans. It is noted that Council has applied a 2ha minimum lot size to the land above the 30m AHD contour due to servicing issues. Council has identified that the existing houses above the 30m AHD contour will be subdivided using either strata or community title subdivision to ensure the appropriate co-ordination and provision of infrastructure. No objection is raised to this approach.

CONSULTATION

Community

The planning proposal has indicated a 28 day community consultation period. This is considered reasonable.

Agencies

As the land has been identified as bushfire prone and to satisfy s117 directions regarding bushfire, referral to the NSW Rural Fire Service (RFS) will be required as part of the consultation process. Consultation with RFS is required after a Gateway Determination is issued and before public exhibition.

Council has also indicated consultation with the Office of Environment and Heritage and the Bunyah Local Aboriginal Land Council. Consultation with these agencies is considered appropriate.

TIMEFRAME

The planning proposal includes a project time line which suggests a completion time within 9 months. It is considered however that a 12 month period is appropriate considering the discussion with OEH and Christmas period absences.

DELEGATION

As the proposal deals with only matters of local significance, it is recommended that an authorisation to exercise plan making delegation be issued to Council in regard to this matter.

CONCLUSION

The preparation of the rezoning planning proposal is supported as it:

- meets the adequacy criteria by providing appropriate objectives and intended outcomes; a suitable explanation of the provisions and justification for the proposal; outlines appropriate community consultation; provides a project timeline; and an evaluation for the delegation of plan making functions;
- is consistent or justifiably inconsistent with all relevant s117 directions and SEPPs apart from 4.4 Planning for Bushfire Protection (which can only be determined after consultation with the NSW Rural Fire Service);
- is consistent with the North Coast Regional Plan 2036;
- is unlikely to have any detrimental impact on the socio-economic welfare of the Local Government Area; and
- will assist in the protection of a significant area of vegetation and preserve a green corridor between Queens Lake Reserve and North Brother Mountain.

RECOMMENDATION

It is recommended that the delegate of the Secretary:


1. agree the inconsistencies with Section 117 Directions 1.2 Rural Zones and 1.5 Rural Lands are minor and justified; and
2. note that the consistency with Section 117 Direction 4.4 Planning for Bushfire Protection is unresolved and will require justification.

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 is to be updated prior to community consultation to include a consideration of s117 Direction 5.10 Implementation of Regional Plans.
2. The planning proposal should be made available for community consultation for a minimum of 28 days.
3. Consultation is required with the following public authorities and organisations prior to community consultation:
 - NSW Rural Fire Service
 - Office of Environment & Heritage
 - Local Aboriginal Land Council
4. The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.
5. Given the nature of the planning proposal, Council should be authorised to exercise delegation to make this plan.

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