

Planning Services

Gateway Determination Report

LGA	Ballina Shire
RPA	Ballina Shire Council
NAME	Rezone Lot 1 and 2 DP 620838 from RU1 Primary Production zone to R2 Low Density Residential zone with a minimum lot size requirement of 600m ² (15 homes)
NUMBER	PP 2017 BALLI 007 00
LEP TO BE AMENDED	Ballina Local Environmental Plan 2012
ADDRESS	9 Byron Bay Road, Lennox Head
DESCRIPTION	Lot 1 and Lot 2 DP 620838
RECEIVED	11/8/2017 additional information received on 26/9/17
FILE NO.	17/11171
QA NUMBER	qA419608
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 rezone Lot 1 and Lot 2 DP 620838 Byron Bay Road, Lennox Head from RU1 Primary Production zone to R2 Low Density Residential zone, and amend the Minimum Lot Size Maps to 600m².

Site Description

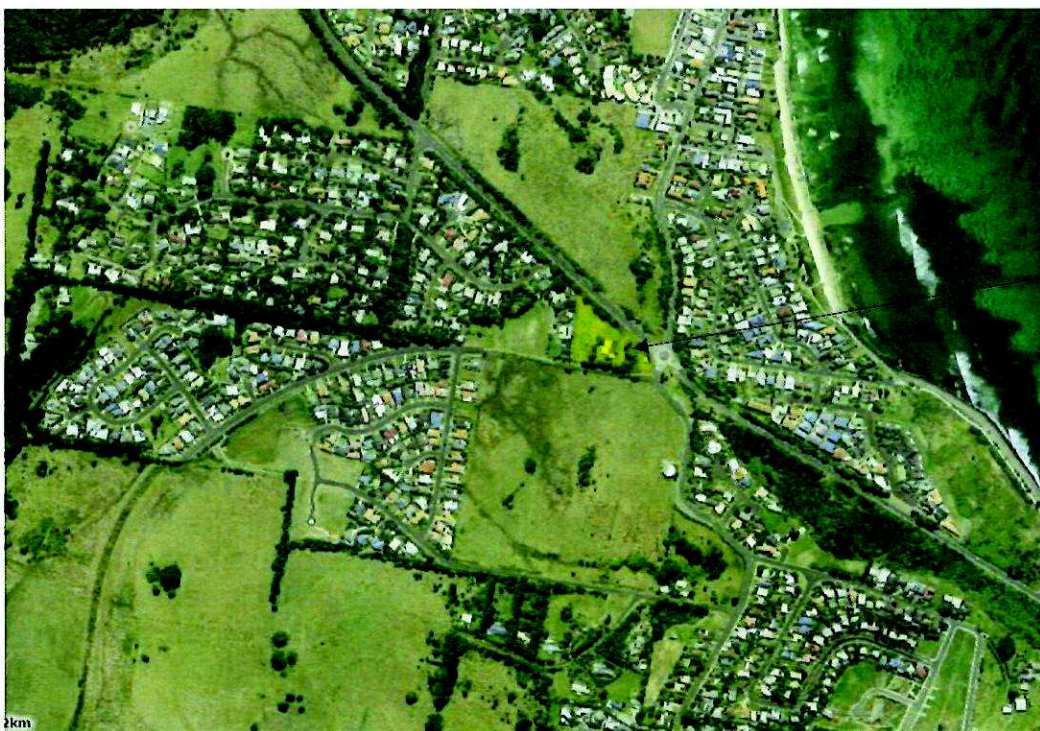
The total area of the land, the subject of the planning proposal is 1.18ha. Lot 2 has an area of 9735m² on which is sited a dwelling house, driveway and other outbuildings. Several mature trees surround the dwelling with the remainder of the property is maintained as mown residential lawn. No primary production pursuits are undertaken on Lot 2. The adjoining property, Lot 1, is in separate ownership, (Telstra) and is 2023m². Mature trees, Telstra infrastructure (an exchange) and hard stand area are located on the allotment. Lot 2 has frontage to Byron Bay Road, from which it gains access, and to Huntley Drive, which is unformed. Lot 1 has frontage to both roads, however, appears to gain access from a short, sealed track along Huntley Drive, primarily to service the Telstra infrastructure at the front of the allotment. Telstra have advised that they wish to pursue the rezoning of the allotment to R2 Low Density Residential zone as part of their divestment strategy. Whilst Telstra have not indicated that the infrastructure will be removed, it is anticipated that this rezoning will facilitate a future decommissioning of the site should emerging technology render the infrastructure excess to requirements. Located on Lot 1, along the short common boundary (approximately 50m) between Lots 1 and 2 are several mature trees. Lot 1 and Lot 2 have a theoretical yield of about 15 lots, which would be reduced by the provision of infrastructure, services and setback requirements.



Aerial photo of Lot 1 (Telstra site) and Lot 2 (red)

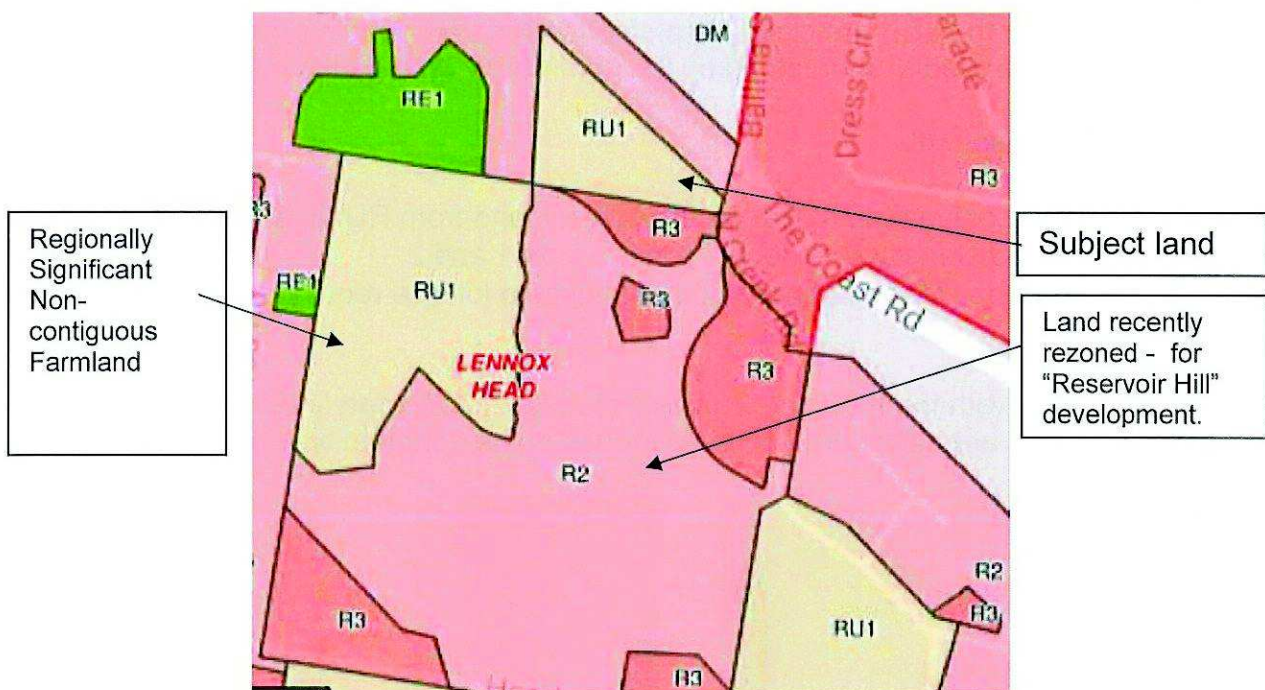
Surrounding Area

To the east of the subject land is R2 Low Density Residential zoned land, with existing residential development adjacent to Lot 2. To the south of the allotment is "Reservoir Hill" being about 10ha of land recently rezoned to R2 and small areas of R3. This land has a minimum lot sizes of 600m². Diagonally opposite the subject land is about 4ha of residual RU1 Primary Production, which like the subject land, is Non-contiguous Regionally Significant Farmland under the Northern Rivers Farmland Protection Project, Final Map 2005.



Subject land

Immediate Lennox Head locality



Adjacent zoning under BLEP 2012

Summary of Recommendation

It is recommended that the Planning Proposal to change the zoning of Lots 1 and 2 DP 620838 Byron Bay Road, Lennox Head from RU1 Primary Production zone to R2 Low Density Residential zone with a 600m² minimum lot size proceed with conditions for the following reasons:

1. That rezoning of the allotments will allow uniform residential land use development in an area suitable for that purpose.
2. The allotments are isolated from other RU1 Primary Production zoned land and cannot be efficiently used for primary production purposes.
3. The rezoning negates the potential for land use conflicts given the proximity of existing residential land and residences.

PROPOSAL

Objectives and Intended Outcomes

The objective of the Planning Proposal is:

1. To amend Ballina LEP 2012 by applying an R2 Low Density Residential zone to Lot 1 and Lot 2 together with a 600m² minimum lot size requirement.

The intended outcomes of the Planning Proposal are:

1. To enable land proposed to be zoned for residential purposes be considered for subdivision.
2. To more appropriately zone land that may no longer be needed for infrastructure purposes.

Explanation of Provisions

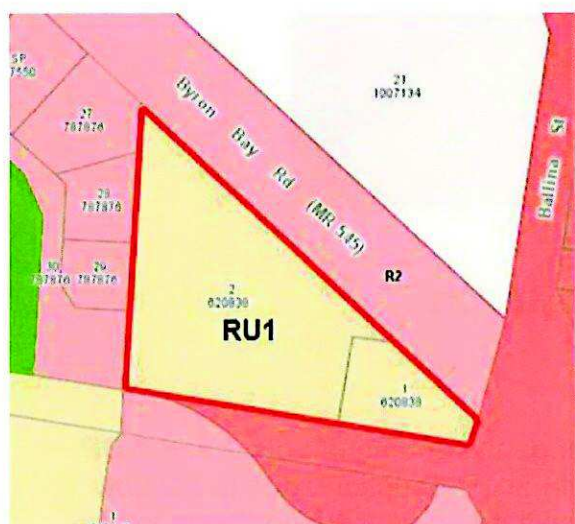
The amendments to the LEP are clearly explained within the Planning Proposal and contain sufficient detail to be readily understood by the community during the consultation phase.

The Planning Proposal will:

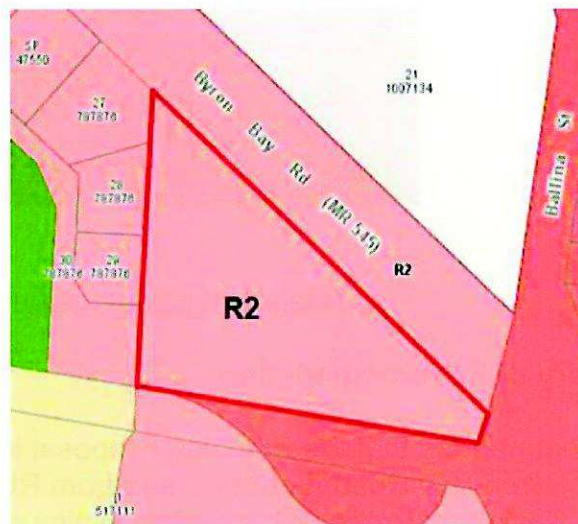
- amend the Land Zoning Map to rezone the subject land from RU1 Primary Production and apply an R2 Low Density Residential zone to Lots 1 and 2;
- to amend the Lot Size Map to apply a 600m² minimum lot size requirement to Lot 1 and 2.

Mapping

The maps provided with the Planning Proposal clearly and accurately reflect the proposed changes. The maps are considered suitable for use in the community consultation phase.



Existing RU1 zone



Proposed R2 Zone

NEED FOR THE PLANNING PROPOSAL

A planning proposal for the rezoning of the land is the only means by which the land may be subdivided for residential purposes down to the proposed areas. The subject land is not of sufficient area to make commercial agriculture economically feasible.

The proposal to rezone the land is the most appropriate means of achieving the intent of the planning proposal.

STRATEGIC ASSESSMENT

State

The proposal is consistent with the NSW State Plan.

Regional / District

Lots 1 and 2 are within the Urban Growth Area of the North Coast Regional Plan 2036, and the Planning Proposal is consistent with that Plan. The omission of the subject land from the 2012 Ballina Shire Growth Management Strategy was reported to, and accepted by Council as an error at its July 2017 Ordinary Meeting as part of its decision to support this Planning Proposal. If this omission had not occurred the land would have been included in the 2012 Ballina Growth Management Strategy. The Planning Proposal would be consistent with the intent of the Strategy had the subject land not been omitted from the mapping.

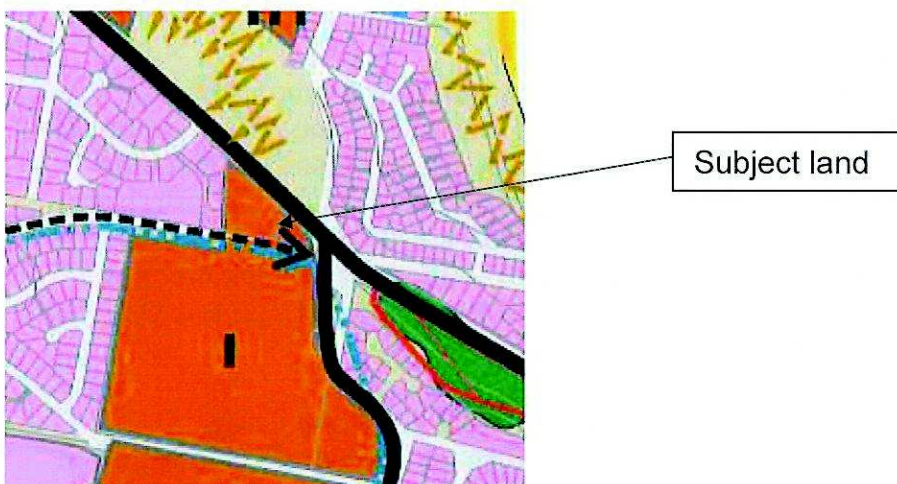
Lots 1 and 2 are mapped as North Coast Important Farmland under the North Coast Regional Plan 2036, and as Non-contiguous Regionally Significant Farmland under the Northern Rivers Farmland Protection Project, Final Map 2005. The planning proposal requires assessment against the Important Farmland Interim Variation Criteria. The Planning Proposal satisfy these criteria:

- It is isolated from other important farmland and incapable of supporting sustainable agricultural production.
- The rezoning will decrease the potential of land use conflict, as it is adjacent to residential properties, with no other existing or potential agricultural activities occurring within proximity.
- The provision of infrastructure will not impose any burden upon Council or State government, and is readily available to service the land.
- No high environmental value, or areas of Aboriginal or historical significance will be effected.
- The Planning Proposal has considered the potential risks associated with development for residential purposes and concludes that they have no impact on the subject land. This is considered an accurate assessment.

Local

The Planning Proposal is consistent with the Locality Objectives for Lennox Head Structure Plan 2004, which identified the subject land as Candidate Release Area I. A substantial area of Candidate Release Area I (about 75%) has already been changed from RU1 zone to R2 and R3 zone. The Plan states that:

"... the Structure Plan recognises that Area I appears to be suited to accommodating future urban development. Should detailed assessment (via the rezoning process) confirm this to be the case residential development comprising a range of low and medium density housing (L1, L2, D & M1 pursuant to DCP No.1) is the preferred use for this site."



Extract from 2004 Lennox Head Structure Plan Map

The Planning Proposal is consistent with the Ballina Shire Community Strategic Plan 2017-2027 by providing more housing opportunities whilst balancing development and implementation of plans with the built and natural environment.

Section 117(2) Ministerial Directions

1.2 Rural Zones

The Planning Proposal seeks to rezone about 1.18ha of RU 1 Primary Production zoned land to R2 Low Density Residential zoned land which is inconsistent with the Direction. However, it is mapped as within the identified Urban Growth Area Map of the North Coast Regional Plan 2036, and the inconsistency is justified in accordance with the terms of the Direction.

1.5 Rural Lands

The Planning Proposal affects land within an existing RU1 Primary Production but is considered consistent with the Rural Planning Principles listed in State Environmental Planning Policy (Rural Lands) 2008. Therefore, the Planning Proposal is consistent with this Direction.

2.2 Coastal Protection

The planning proposal applies to the Coastal zone and is consistent with the terms of the Direction.

2.3 Heritage Conservation

The planning proposal is inconsistent with the Direction as it does not contain provisions that facilitate the conservation of the matters identified in 4(a), 4(b) and 4(c) of the Direction. However, these inconsistencies are justified in accordance with the terms of the Direction as heritage conservation is covered by the compulsory clause 5.10 Heritage Conservation within the Ballina LEP 2012.

3.1 Residential Zones

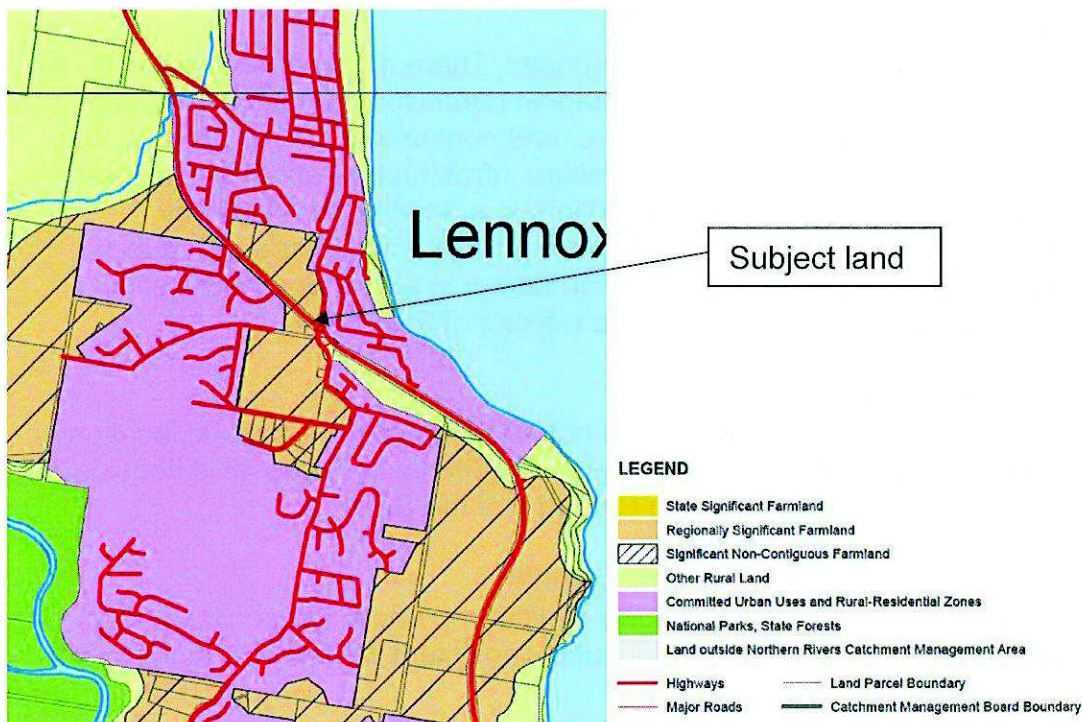
The planning proposal will affect a proposed residential zone (R2 Low Density Residential) and extend the boundary of the adjacent residential R2 Low Density zone. The subject land can be adequately serviced and future subdivision of the land will financially contribute to the provision of utility services and community facilities within the locality. Clause 7.7 of the BLEP 2012 restates the requirements of this Direction. The planning proposal is consistent with this Direction.

3.5 Development near licensed aerodromes

The planning proposal seeks to create a zone near a licensed aerodrome. However, the subject land is not located within an ANEF contour of 20 or greater. The maximum height of a structure within the zone will be 38m, which is below the 46.5 m Obstacle Limitation Surface applicable to this area. There is a requirement to consult with the Department of the Commonwealth responsible for aerodromes and the lessee of the aerodrome, in preparation of the Planning Proposal, which is recommended to be a condition of the Gateway determination. The Planning Proposal will remain inconsistent with this Direction until consultation has been undertaken.

5.3 Farmland of State and Regional Significance on the NSW Far North Coast.

The land is identified as Non-contiguous Regionally Significant Farmland in the Northern Rivers Farmland Protection Project, Final Map 2005. However, as the subject land is mapped "urban growth area" in the North Coast Regional Plan 2036 it is excluded from the application of Direction 5.3.



Extract of Northern Rivers Farmland Protection Project, Final Map 2005

5.10 Implementation of Regional Plans

The North Coast Regional Plan 2036 identifies the subject land as Important Farmland which requires the planning proposal to be assessed against the Important Farmland Interim Variation Criteria of that Plan. Against these criteria the land is considered suitable for other uses because:

- the land is isolated from important farmland and is not capable of supporting sustainable agricultural production.
- there is no increase in the likelihood of conflict and it will not impact on current or future agricultural activities.
- infrastructure is physically and economically available at no cost to Council or the State Government.
- no items of high environmental value, Aboriginal or historical significance exist on the subject land.
- it is not physically constrained by any identified risks incompatible with residential land use. However, the proposal has the potential to yield about 15 allotments, which would require Council to consider the mosquito risk impacts for future subdivisions if more than ten lots were proposed under a development application.

The Planning Proposal is consistent with the North Coast Regional Plan 2036 as it complies with the Important Farmland Interim Variation Criteria of the Plan.

State Environmental Planning Policies

The following SEPPs are relevant to the Planning Proposal.

SEPP (Mining, Petroleum Production and Extractive Industries) 2007

The subject land is identified as a future residential growth area and falls within the definition of the *coal seam gas exclusion zone*. The SEPP prohibits coal seam gas development on or under the subject land.

SEPP No. 44 Koala Habitat Protection

The subject land is neither potential nor core koala habitat.

SEPP No. 55 Remediation of Land

The proposed land is to be used for residential purposes. There is no knowledge of its use for any of the activities listed in Table 1 of the Managing Land Contamination Planning Guidelines. Lot 2 has a historical use for agriculture, and contamination likely to that use should be investigated. Lot 1 has been used for Telstra infrastructure although its specific uses are unknown. It is recommended that a condition be placed on the Gateway determination, if given, that Council obtain and have regard to a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines, prior to the making of the LEP

SEPP No. 71 Coastal Protection

The subject land is within the Coastal Zone, but is not within a sensitive coastal location or other specified area requiring additional assessment. The Planning Proposal is considered consistent with the matters for consideration in Clause 8 of the SEPP.

State Environmental Planning Policy (Rural Lands) 2008

The provisions of this SEPP have been previously considered under the section 117(2) Direction 1.5 – Rural Lands. The Planning Proposal is consistent with the Rural Planning Principles and this SEPP.

SITE SPECIFIC ASSESSMENT

Social

The Planning Proposal has the potential to have a positive social impact on the locality creating additional residential development in an area that can provided community facilities and services.

Environmental

The subject land has a substantially disturbed natural environment from past use. Other than the provision of additional hard stand areas and increased impervious surfaces, resulting from future residential development, the environmental impact of Planning Proposal is likely to be negligible. Whilst Council has assessed the information currently available to it, and considers it unlikely that the development for residential purposes will cause any direct adverse impacts, it has advised that a detailed ecological assessment of the sites flora and fauna characteristics will be submitted post Gateway determination and prior to public exhibition. It is recommended that this condition be imposed on the Gateway determination, if granted.

Economic

The Planning Proposal will have a positive economic impact on the locality through the provision of housing and jobs generated in the building and construction industry. Long term economic benefit may result from the goods and services required by the future residents if sourced locally.

CONSULTATION

Community

Council advised it will place the Planning Proposal on public exhibition for 28 days, advertise in the local paper, notify adjoining landowners, place the documents on Council's web page and its Customer Service Centre and at various local libraries. The Planning Proposal is considered low impact and the Department's Guide to Preparing Local Environmental Plans requires a 14 day consultation period. Council may extend the consultation period at its discretion.

Agencies

Council advised it will consult with the Office of Environment and Heritage, the Department of Primary Industry (Agriculture) and the relevant airport authorities. A condition will be imposed upon the Gateway determination, if granted, to consult with these authorities.

TIMEFRAME

The timeline proposed by Council is 7 months. As this initial timeframe will include the December – January period, it is recommended that the timeframe be 9 months, to allow for any delays experienced during the consultation or exhibition stages.

DELEGATION

Council has requested written authority to exercise delegation to make the Plan and it is recommended that this be given.

CONCLUSION

The Planning Proposal is supported to proceed with conditions for the following reasons:

1. That rezoning of the allotments will allow uniform residential land use development in an area suitable for that purpose.
2. The allotments are isolated from other RU1 Primary Production zoned land and cannot be efficiently used for primary production purposes.
3. The rezoning negates the potential for landuse conflicts given the proximity of residential land.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree any inconsistency with Section 117 Directions 1.2 Rural Zones and 2.3 Heritage Conservation are justified with the terms of the Direction.
2. Note that the consistency with Section 117 Direction 3.5 Development Near Licensed Aerodromes 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. Council is to obtain and have regard to a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines, prior to the plan being made.
2. Council is to obtain and have regard to a detailed ecological assessment of the sites flora and fauna characteristics, prior to public consultation.
3. Community consultation is required under sections 56(2)(c) and 57 of the Act as follows:

- (a) the Planning Proposal is classified as low impact as described in A guide to preparing local environmental plans (Department of Planning and Environment 2016) and must be made publicly available for a minimum of 14 days;
- (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in Section 5.5.2 of A guide to preparing local environmental plans (Department of Planning and Environment 2016).
4. Consultation is required with the following public authorities/organisations under section 56(2)(d) of the Act and/or to comply with the requirements of relevant Section 117 Directions:
- Civil Aviation Safety Authority
Lessee of the aerodrome
Office of Environment and Heritage
Department of Primary Industries (Agriculture)
- Each public authority/organisation is to be provided with a copy of the Planning Proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.
5. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
6. The timeframe for completing the LEP is to be 9 months following the date of the Gateway determination.

T. Prentice 13/10/17
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