

Planning Services

Gateway Determination Report

LGA	Richmond Valley
RPA	Richmond Valley Council
NAME	Rezoning of land at Hills Road, Rileys Hill from RU1 Primary Production to RU5 Village (70 homes, 0 jobs)
NUMBER	PP_2018_RICHM_001_00
LEP TO BE AMENDED	Richmond Valley LEP 2012
ADDRESS	Hills Road, Rileys Hill
DESCRIPTION	Lot 100 DP 1201719
RECEIVED	8 January 2018
FILE NO.	EF18/275
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 part of Lot 100 DP 1201719, Hills Road, Rileys Hill, from RU1 Primary Production to RU5 Village and change the minimum lot size from 40 hectares to 600m² to enable the land to be developed for residential purposes.

Site Description

The land is 8.2 hectares in size located on the southern edge of the Rileys Hill village. The land is vacant and comprises predominantly cleared grazing land. A map of the subject land, outlined in red, is at Figure 1.

Surrounding Area

The land is located on the western side of the Pacific Highway, south west of the village of Broadwater and north of Woodburn. The subject land is bounded to the south by farm land, to the east by Broadwater National Park to the north by the residential area of Rileys Hill village and to the west by the disused Rileys Hill Quarry.

Summary of Recommendation

It is considered that the planning proposal has merit and it is recommended that the Gateway determination be issued subject to conditions for the following reasons:

- the land is identified for urban investigation purposes in the North Coast Regional Plan 2036;
- the proposal will provide for an estimated 70 additional residential lots in the Richmond Valley LGA; and
- subject to further site investigations it appears that the constraints of the site can be managed to enable residential use of the land.

Mapping

The planning proposal includes maps which show the location of the subject land, the contours of the land and a subdivision concept plan. An aerial photograph is also included. Council has provided draft LEP maps which show the proposed zone and MLS for the land.

It is considered that the planning proposal should include maps which show the current and proposed zones and MLS for the land, especially since only part of the land is proposed to be rezoned. Given that the final zoning configuration will be determined after the site investigations are complete, it is recommended that a condition be placed on the Gateway determination requiring the planning proposal to be amended to include the maps.

NEED FOR THE PLANNING PROPOSAL

The planning proposal has arisen as a result of a request from the land owner. The land has been identified as 'Investigation area – urban land' in the North Coast Regional Plan 2036.

The planning proposal is not supported by any site investigations at this stage. Instead the proposal acknowledges that further site investigations will be undertaken if a Gateway determination is issued which allows the proposal to proceed.

The rezoning of the land and changing the MLS is the best means of enabling the land to be developed for residential purposes.

STRATEGIC ASSESSMENT

State

NSW State Priorities

The proposal is not inconsistent with any of the eighteen State priorities being actioned by the State Government.

Regional / District

North Coast Regional Plan 2036

The proposal is consistent with the directions and actions of the North Coast Regional Plan 2036 (NCRP). The proposal is consistent with action 1.1 to focus future urban development to mapped urban growth areas as the land is located within the urban growth area boundary for Rileys Hill and is mapped as 'Investigation Area – Urban Land'.

The proposal will also deliver additional housing opportunities within the Richmond Valley LGA (Action 22.1).

The consistency of the proposal with the actions relating to the protection of areas of high environmental value and Aboriginal cultural significance remain unresolved until the relevant site investigations have been completed.

While the proposal still requires a number of site investigations to be undertaken to determine the final configuration of the proposed RU5 zone with regard to the constraints of the land, it is considered that the identification of the land as an investigation area for urban land in the NCRP 2036 is sufficient preliminary justification for the Gateway determination to be issued, conditional on these site investigations being undertaken.

It is recommended that the Gateway determination be conditioned to require the relevant site investigations to be undertaken and the planning proposal amended as necessary prior to community consultation occurring.

Local

Richmond Valley Council does not have a residential growth management strategy which applies to land in the Broadwater/Rileys Hill area.

Section 117(2) Ministerial Directions

The following S117 Directions are relevant to the planning proposal 1.2 Rural Zones, 1.3 Mining, Petroleum Production and Extractive Industries, 1.5 Rural Land, 2.1 Environment Protection Zones, 2.2 Coastal Protection, 2.3 Heritage Conservation, 2.4 Recreation 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, 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land, 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, 6.3 Site Specific Provisions.

The proposal is considered to be inconsistent with directions 1.2, 1.3, 2.1, 2.3, 3.1, 4.1, 4.3 and 4.4 as discussed below.

Direction 1.2 Rural Zones is relevant to the planning proposal. The direction provides that a planning proposal must not rezone land from a rural to a residential zone. The planning proposal seeks to rezone the subject land from RU1 Primary Production to RU5 Village. The RU5 Village zone is a zone which allows more intensive low density residential development than rural zones. The direction provides that a proposal may be inconsistent with the direction if it is in accordance with a Regional Plan. The subject land is located within the urban growth area and mapped as 'Investigation Area – Urban Land' in the North Coast Regional Plan 2036. The inconsistency of the proposal with the direction is therefore considered to be justified in accordance with the terms of the direction.

Direction 1.3 Mining, Petroleum Production and Extractive Industries is relevant to the planning proposal. The direction provides that an RPA must consult with the Director General of the Department of Primary Industries to identify potential extractive industries in the vicinity of the proposal and take into account issues that may lead to land use conflict between the extractive industry and the proposed land use.

The subject land is located east of the Rileys Hill Quarry, an identified regionally significant armour rock quarry. The subject land is located within the transition area around the quarry.

The RPA will need to consult with the NSW Division of Resources and Geoscience. Investigations into the potential impacts of the quarry operations, including blasting, noise and vibration impacts on the use of the land for residential purposes have not been undertaken. Preliminary advice from the Division of Resources and Geoscience indicates that the quarry is flooded though may still contain some residue resource. While it is not known if the quarry will be operational again it is considered that a land use conflict risk assessment should be prepared to address potential land use conflict issues that may arise should the quarry become operational again. Until these investigations and consultation are complete, any inconsistency of the proposal with the direction remains unresolved.

Direction 2.1 Environment Protection Zones is relevant to the planning proposal. The direction provides that a planning proposal must facilitate the protection and conservation of environmentally sensitive areas. The proposal seeks to rezone the subject land from rural to a village zone, however no ecological investigations have yet been undertaken for the site and the site is mapped as containing high environmental value vegetation despite the fact that aerial photography shows the majority of the site being cleared land. It is

considered that until the ecological investigations have been completed the suitability of a village zone for the land is not known and any potential inconsistency of the proposal with the direction remains unresolved. It is recommended that the Gateway determination requires the preparation of an ecological assessment for the site to determine whether any areas of vegetation on the site should be protected by an environmental zone.

Direction 2.3 Heritage Conservation is relevant to the planning proposal. The direction provides that a planning proposal must facilitate the protection and conservation of Aboriginal cultural heritage and historical heritage. The proposal seeks to rezone the subject land from rural to a village zone however no Aboriginal cultural heritage assessment has yet been undertaken for the site. It is considered that until the Aboriginal cultural heritage investigations have been completed the suitability of a village zone for the land is not known and any potential inconsistency of the proposal with the direction remains unresolved. It is recommended that the Gateway determination requires the preparation of an Aboriginal cultural heritage assessment for the site to determine whether any areas of the site are unsuited to the proposed village zone.

Direction 3.1 Residential Zones is relevant to the planning proposal. The direction provides that a planning proposal shall reduce the consumption of land on the urban fringe. The planning proposal seeks to rezone rural land on the edge of the Rileys Hill village to enable it to be developed for residential purposes.

The direction provides that a proposal may be inconsistent with the direction if it is in accordance with a Regional Plan. The subject land is located within the urban growth area and mapped as 'Investigation Area – Urban Land' in the North Coast Regional Plan 2036. The inconsistency of the proposal with the direction is therefore considered to be justified in accordance with the terms of the direction.

Direction 4.1 Acid Sulfate Soils is relevant to the planning proposal. The direction provides that a planning proposal must not permit an intensification of land uses on land identified as having a probability of containing acid sulfate soils.

The subject land is mapped as containing class 2 and class 5 acid sulfate soils. An acid sulfate soils study has not been undertaken for the land at this stage. It is recommended that the Gateway determination require an acid sulfate soils study to be prepared prior to community consultation. The Richmond Valley LEP 2012 contains provisions (Clause 6.1) which require development consent for certain work on land mapped as containing acid sulfate soils and that the application be supported by an acid sulfate soils management plan. Therefore, even though a study of the subject land has not yet been undertaken, it is considered that the inconsistency of the proposal with the direction is of minor significance and therefore justified in accordance with the terms of the direction.

Direction 4.3 Flood Prone Land is relevant to the planning proposal. The direction provides that planning proposal must not permit a significant increase in the development potential of flood prone land.

The lower portions of the subject land are flood prone and identified as "Rare Low Hazard – Extreme Flood Fringe" by Council's flood study. The land contains elevated areas above the flood planning level however investigations into the potential impacts on the site from a flood event or the impacts from proposed flood mitigation measures have not yet been undertaken. It is considered that until the flood impact investigations have been completed the suitability of a village zone for the land is not known and any potential inconsistency of the proposal with the direction remains unresolved. It is recommended that the Gateway

determination requires the preparation of a flood impact assessment for the site to determine which areas of the site are suited to the proposed village zone.

Direction 4.4 Planning for Bushfire Protection is relevant to the proposal. The land to be zoned RU5 includes land which is bushfire 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.

The consistency of the proposal with the North Coast Regional Plan is discussed previously in this report. It is considered that the proposal is generally consistent with North Coast Regional Plan though the consistency with some actions of the NCRP will require further investigations before they can be resolved.

The proposal is otherwise consistent with the Section 117 directions.

State Environmental Planning Policies

SEPP 44 – Koala Habitat Protection

The planning proposal indicates that the site is predominantly cleared of native vegetation. However, an ecological assessment has not been undertaken for the land and the land is mapped as containing High Environmental Value vegetation in the North Coast Regional Plan 2036. The consistency of the proposal with SEPP 44 cannot be resolved until the ecological investigations for the site have been completed.

SEPP 55 – Remediation of Land

The SEPP requires consideration of the potential contamination of the land. The planning proposal does not include a preliminary site contamination assessment as required by SEPP 55. Until such an assessment has been undertaken any inconsistency of the proposal with the SEPP cannot be resolved. It is recommended that the Gateway determination require a site contamination assessment report to be prepared prior to community consultation.

SEPP (Rural Lands) 2008

SEPP (Rural Lands) 2008 (the 'Rural Lands SEPP') includes Rural Planning Principles for consideration when planning for rural land. It is considered that the proposal is not inconsistent with the Rural Planning Principles in the SEPP Rural Lands for the following Reasons:

1. the land is not mapped as significant farmland;
2. the land is relatively unconstrained and, subject to further site investigations being undertaken, it appears that the constraints can be appropriately mitigated for the land to be used for residential purposes;
3. the proposal is not expected to have an adverse impact on the supply of natural resources since advice from the Division of Resources and Geoscience is that the Rileys Hill quarry is no longer operational;
4. Council has advised that it is expected that adequate infrastructure will be available for the proposed village expansion, subject to an infrastructure servicing plan being prepared; and

5. the land is located within the growth area boundary for Rileys Hill and identified for urban investigation in the North Coast Regional Plan 2036.

SITE SPECIFIC ASSESSMENT

Social

The proposal is not expected to have any adverse social impacts. The proposal will rezone an area of land on the edge of the Rileys Hill village to enable expansion of the village residential area. The proposal will in this regard have a positive social impact by providing additional housing opportunities in Rileys Hill.

Environmental

The planning proposal notes that no ecological investigations have yet been undertaken for the site. The site is mapped as containing high environmental value vegetation despite the fact that aerial photography shows the majority of the site being cleared land. It is considered that until the ecological investigations have been completed the suitability of a village zone for the land is not known. It is recommended that the Gateway determination requires the preparation of an ecological assessment for the site to determine whether any areas of vegetation on the site should be protected by an environmental zone.

Economic

The proposal is expected to have positive economic impacts by releasing more land for the construction of new dwellings in the Richmond Valley LGA. The multiplier effect associated with increased population is also expected to benefit businesses in the vicinity of the Rileys Hill village.

Infrastructure

The planning proposal indicates that the Rileys Hill village is currently serviced with all necessary infrastructure and that this infrastructure could be extended to service the proposed RU5 zoned land. However, the Council report indicates that investigation for the provision of future essential infrastructure for Rileys Hill needs to be undertaken, particularly in relation to sewerage and water supply. It is therefore recommended that the planning proposal require the preparation of an infrastructure servicing plan prior to community consultation.

The Rileys Hill village is accessed from the intersection with the Pacific Highway at Broadwater. While this section of the existing Pacific Highway will be under the control of Council when Broadwater is bypassed with the new Pacific Highway Upgrade, it is considered appropriate that the Roads and Maritime Services be consulted on the proposal.

CONSULTATION

Community

The planning proposal does not nominate a period of community consultation for the proposal. It is considered that since the proposal relates to a new greenfield release area which has the potential to double the size of the Rileys Hill village, that a community consultation time frame of 28 days is appropriate.

Agencies

The proposal does not nominate which State agencies will be consulted. It is considered that the Council should consult with the following State agencies and organisations:

- NSW Rural Fire Service;
- NSW Roads and Maritime Service;
- NSW Office of Environment and Heritage;
- NSW Division of Resources and Geoscience; and

- The Local Aboriginal Land Council;

TIMEFRAME

The planning proposal does not include a project timeline though Council has advised that it is estimated the planning proposal would be completed by January 2019. It is considered that since extensive site investigations are required for the proposal that an 18 month time frame for the completion of the planning proposal is appropriate.

DELEGATION

Council has requested that it be issued with an authorisation to exercise delegation for making of the plan. The proposal is considered to be a local matter as it relates to land which is identified for urban investigation in the North Coast Regional Plan 2036. It is recommended that an authorisation to exercise delegation be issued to Richmond Valley Council in this instance.

CONCLUSION

It is considered that the planning proposal has merit and it is recommended that the Gateway determination be issued subject to conditions for the following reasons:

- the land is identified for urban investigation purposes in the North Coast Regional Plan 2036;
- the proposal will provide for an estimated 70 additional residential lots in the Richmond Valley LGA; and
- subject to further site investigations it appears that the constraints of the site can be managed to enable residential use of the land.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree any inconsistencies with Section 117 Directions 1.2 Rural Zones, 3.1 Residential Zones, and 4.1 Acid Sulfate Soils are minor and/or justified in accordance with the terms of the directions; and
2. note that the inconsistencies with Section 117 Directions 1.3 Mining, Petroleum Production and Extractive Industries, 2.1 Environment Protection Zones, 2.3 Heritage Conservation, 4.3 Flood Prone Land and 4.4 Planning for Bushfire Protection are unresolved until further consultation and investigations have been undertaken and these directions may require further 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. Prior to community consultation the following site investigations are to be undertaken and the planning proposal amended if necessary to reflect the outcomes of the site investigations. The site investigations are to be included in the material used for community consultation:
 - (a) an ecological assessment;
 - (b) a preliminary site contamination assessment including soil sampling as appropriate and to the satisfaction of Council;
 - (c) an Aboriginal cultural heritage assessment;
 - (d) an assessment of the potential impacts of the Rileys Hill Quarry operations, including a land use conflict risk assessment for potential blasting, noise, traffic and vibration impacts, should the operation of the quarry be resumed;
 - (e) a traffic impact assessment;

- (f) a flood study;
 - (g) a bushfire hazard risk assessment;
 - (h) an infrastructure servicing plan; and
 - (i) an acid sulfate soils assessment.
2. Prior to community consultation the planning proposal is to be amended as follows:
 - (a) the content of the planning proposal is to be amended in accordance with the results of the site investigations require by Condition 1 of this Gateway determination;
 - (b) maps which show the current and proposed zone and minimum lot size for the land are to be included within the planning proposal; and
 - (c) a project time line is to be included in the planning proposal.
 3. Once the site investigations required by Condition 1 have been undertaken and the planning proposal has been amended in accordance with Condition 2, the planning proposal is to be forwarded to the Department for approval of the form of the proposal for community consultation in accordance with section 57(2) of the Act.
 4. The planning proposal should be made available for community consultation for a minimum of 28 days.
 5. Consultation is required with the following public authorities:
 - NSW Rural Fire Service;
 - NSW Roads and Maritime Service;
 - NSW Office of Environment and Heritage;
 - NSW Division of Resources and Geoscience; and
 - The Local Aboriginal Land Council.
 6. The timeframe for completing the LEP is to be 18 months from the date of the Gateway determination.
 7. Given the nature of the planning proposal, Council should be authorised to exercise delegation to make this plan.



9/2/18

Tamara Prentice
Team Leader, Northern



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Jeremy Gray
Director Regions, Northern
Planning Services

Contact Officer: Paul Garnett
Senior Planner, Northern Region
Phone: 6641 6607