

Planning and Assessment

(IRF21/837)

Gateway determination report

LGA	Mid-Western Regional Council (MWRC)
PPA	MWRC
NAME	Rezone land from zone RU1 Primary Production to zone R5 Large Lot Residential and amend the minimum lot size to 12ha for parts of the land at 194 Hill End Road, Caerleon, Mudgee.
NUMBER	PP-2021-2259
LEP TO BE AMENDED	Mid Western Regional LEP 2012 (MWRLEP 2012)
ADDRESS	194 Hill End Road, Caerleon.
DESCRIPTION	Various Lots at 194 Hill End Road, Caerleon
RECEIVED	18 February 2021
FILE NO.	IRF21/837
POLITICAL DONATIONS	There are no known donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no known meetings or communications with registered lobbyists with respect to this proposal.

1. INTRODUCTION

1.1 Description of planning proposal

The planning proposal seeks to amend Mid-Western Regional Local Environmental Plan (MWRLEP) 2012 as follows-

- rezone parts of subject land from zone RU1 Primary Production to zone R5 Large Lot Residential, and
- amend the minimum lot size (MLS) for parts the subject land from 100 ha and 12ha to 12ha lot size.

The submitted planning proposal facilitated 37 residential lots on the site. The planning proposal was reported to Mid Western Regional Council (MWRC) on 9 December 2020 where Council resolved to only support partial rezoning of the site and partial minimum lot size amendment that will result in approximately 24 lots at 12ha MLS.

1.2 Site and surrounding area description

The subject land is known as 194 Hill End Road, Caerleon and contains 33 parcels with various zones and areas. The land has an area of 898ha and has a frontage to Lower Piambong Road to the north, Gibson's Lane (unformed council road) to the west and Hill End Road to south east. The subject land contains several dwellings, sheds, dams and other ancillary structures. The land is traversed by an elevated vegetated ridge. The land slopes away towards east and western side from the elevated land. The surrounding lands are mainly used for agricultural and grazing purposes although to the south east is the 'Caerleon' urban industrial release area.

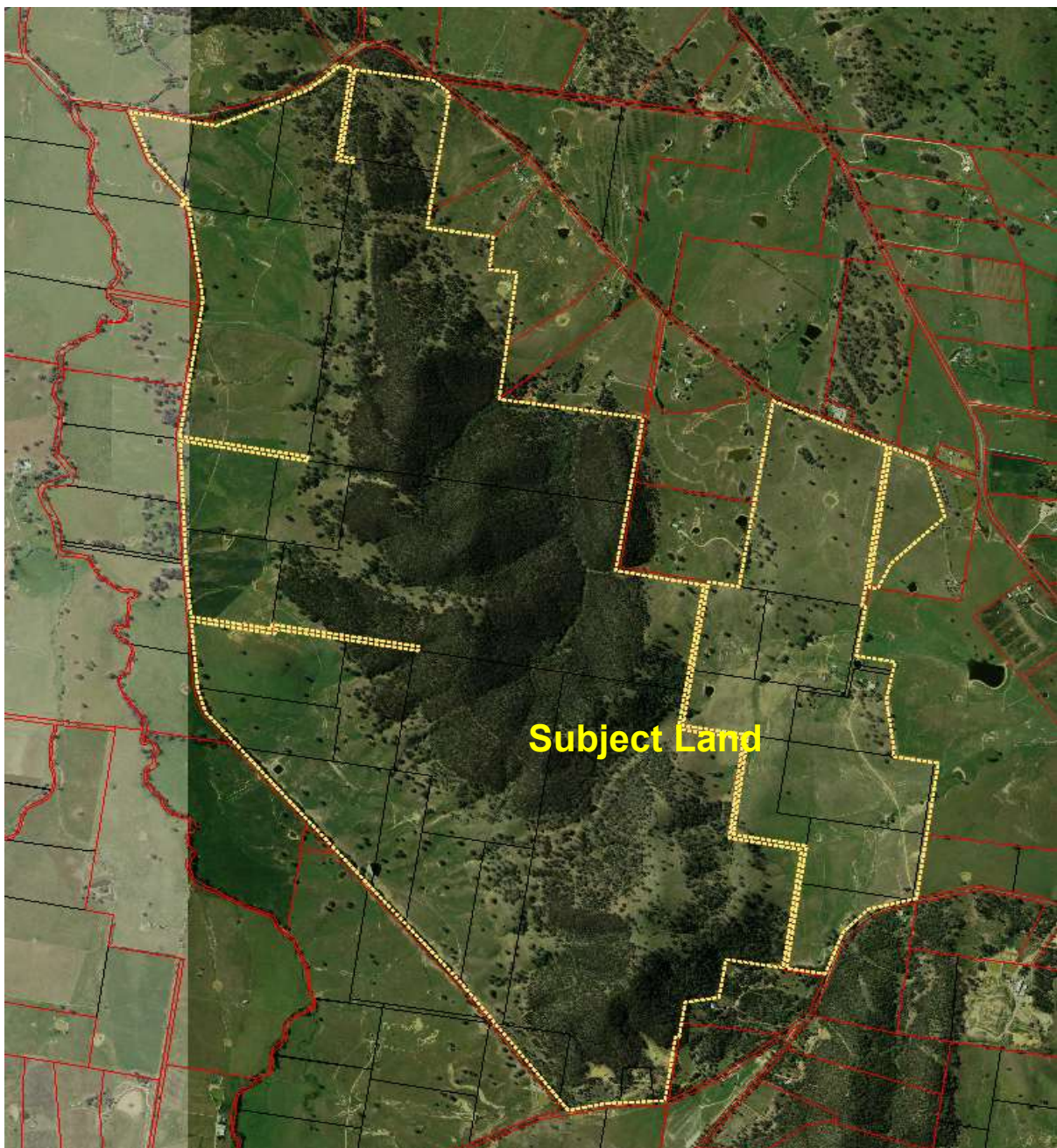


Figure 1: Aerial View of the subject land. Source -ePlanning Spatial Mapping

1.3 Existing planning controls

The subject land is mostly zone RU1 Primary Production land with some E3 Environmental Management and R5 Large Lot Residential zoned land located on the southern side of the land. Likewise, the subject land mostly has a minimum lot size (MLS) of 100ha except for the land zoned E3 (MLS of 400ha) and land zoned R5 (MLS of 12 ha).

1.4 Council recommendation

Council resolved to only support the rezoning of three (3) areas of the sought amendment (Figure 2- areas marked in blue below). The submitted planning proposal would have resulted in lot yield of 37 lots whereby the Council adopted proposal will result in 24 lots at 12ha. Council indicated that the subject land is within close proximity to Mudgee town centre and “opportunity” areas under the Department endorsed Mid-Western Comprehensive Land Use Strategy (CLUS), as such, Council deemed it appropriate to support part of the proposed amendment as the land is likely to form part of future land release strategy.

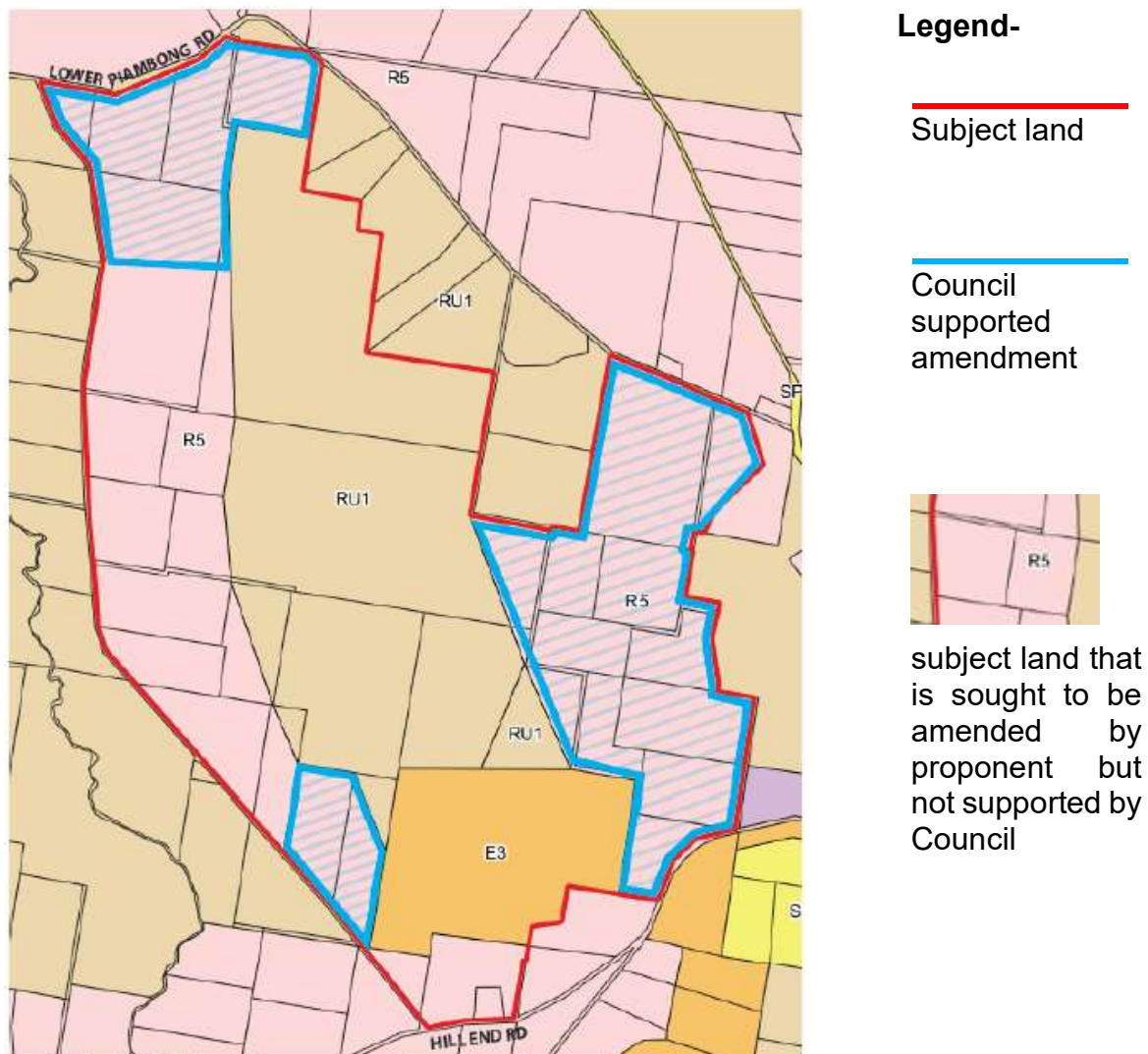


Figure 2: Subject land, proposed amendment and amendment supported by Council.
Source- Mid-Western Regional Council report, December 2020

2. PROPOSAL

2.1 Objectives or intended outcomes

The objectives of the proposal are contained on page 65 of the Council report. The proponent (page 19 of planning proposal) intends the planning proposal is to facilitate creation of large lot rural residential subdivision and housing at 194 Hill End Road, Caerleon.

2.2 Explanation of provisions

The proposed explanation of provisions are contained on page 65 of the Council report. The proposal intends to achieve the objectives by amending the Land Zoning Map (LZN_006) and Lot Size Map (LSZ_006) under MWRLEP 2012.

2.3 Mapping

The proposal contained new map sheets however, due to Council supporting only part of the sought amendments, the maps will need to be reproduced with the new zoning and new MLS implemented as indicated by Council.

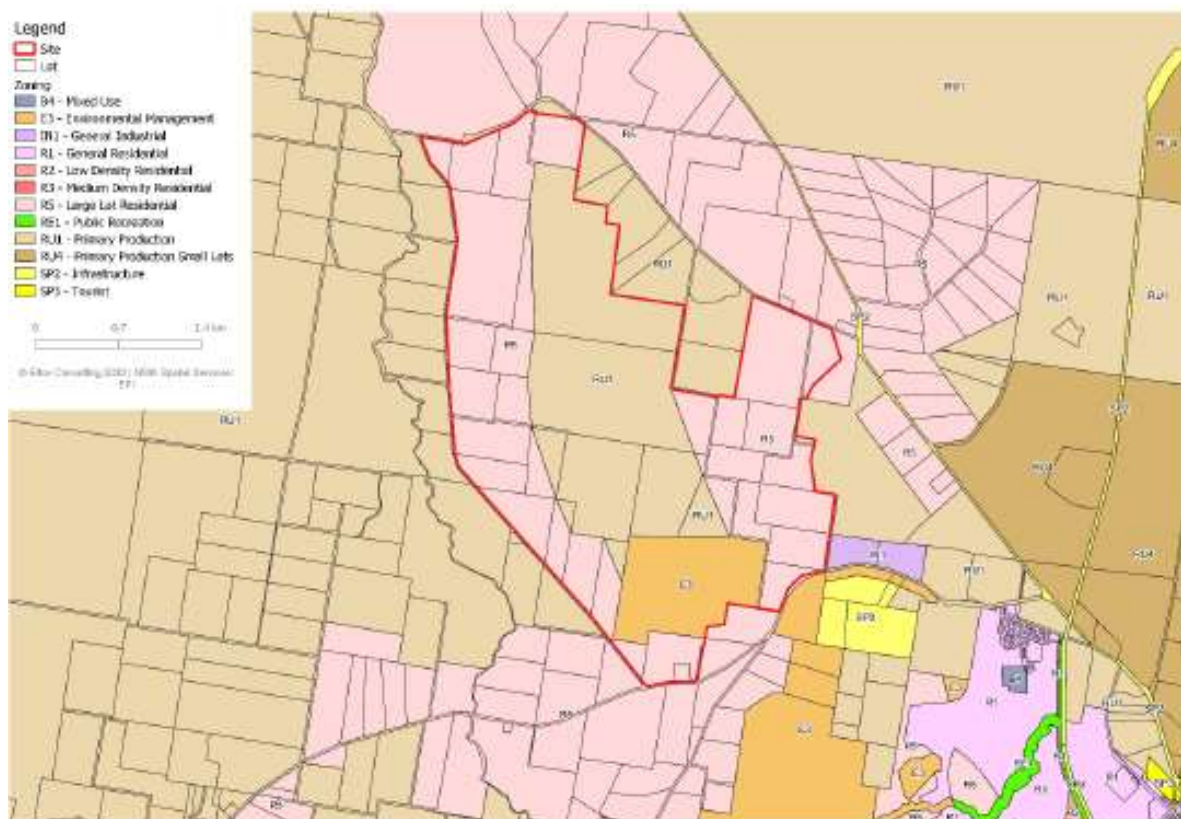


Figure 3: Prepared Maps for zoning will need to be updated to reflect council supported amendment. Source- Planning proposal report, 2020

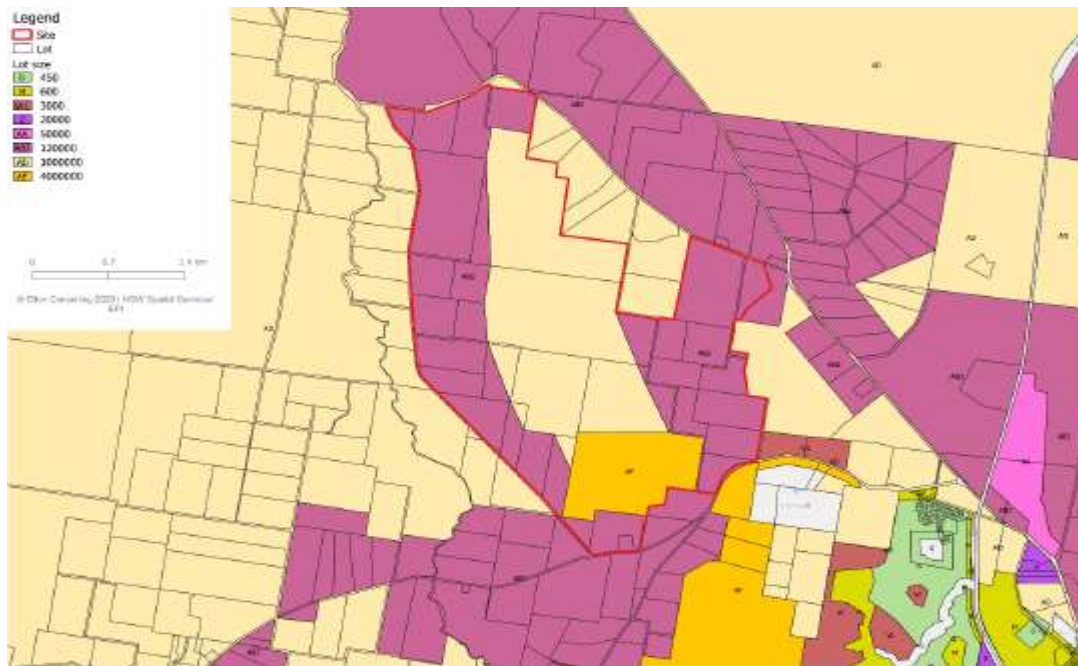


Figure 4: Prepared Maps for minimum lot size will need to be updated to reflect council supported amendment. Source- Planning proposal report, 2020

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal seeks to increase the density of residential land use by permitting development of large residential lots for part of the subject site.

The subject land adjoins land zone R5 Large Lot Residential with an MLS of 12ha. The planning proposal would allow the land to be developed for large lot residential purposes with the same development controls of the nearby area. It is agreed that proposal is the best means for achieving the intended outcomes.

4. STRATEGIC ASSESSMENT

4.1 State

There are no State strategies applicable to the proposal.

4.2 Regional

The planning proposal provides it is consistent with the objectives of the Central West and Orana Regional Plan (CWORP) 2036 which identifies Mudgee as a strategic centre due its proximity to Newcastle. The proposed amendment will enable rural residential development within close proximity to strategic centres while increasing housing diversity and choices in an orderly manner. The planning proposal will give effect to

- Direction 22: Manage growth and change in regional cities and strategic and local centres
- Direction 25: Increase housing diversity and choice
- Direction 28: Manage rural residential development

4.3 Local

Mid-Western Regional LSPS (Our Place 2040) is the local strategic planning framework for Mid-Western Regional Council. The LSPS identifies twelve priorities focused around Mid-Western's communities, environmental, economy and governance. This planning proposal gives direct effect to priority 2: Make available diverse, sustainable, adaptable and affordable housing options through effective land use planning, by facilitating creation of approximate 24 large lot residential style blocks located near similar zones and within close proximity of the town centre and employment lands.

Mid-Western Regional Comprehensive Land Use Strategy (MWCLUS) (endorsed by the Department on 1 August 2011) provides direction and guides future land use changes in the Mid Western Regional local government area by identifying land suitable to meet the growing need for housing in the area. The MWCLUS considers detailed constraints and opportunity analysis and suggests "opportunity" areas which are identified areas within close proximity to the town centres (pages 24 and 25, planning proposal). Land in nearby "Caerleon" was identified as suitable strategic land to provide for future housing. The subject site is located between two land release area (Refer to Figure 5 for Areas B and F) and subject site proposed to have amended zoning and MLS mostly contains opportunity land and Class 3 otherwise unconstrained rural land.

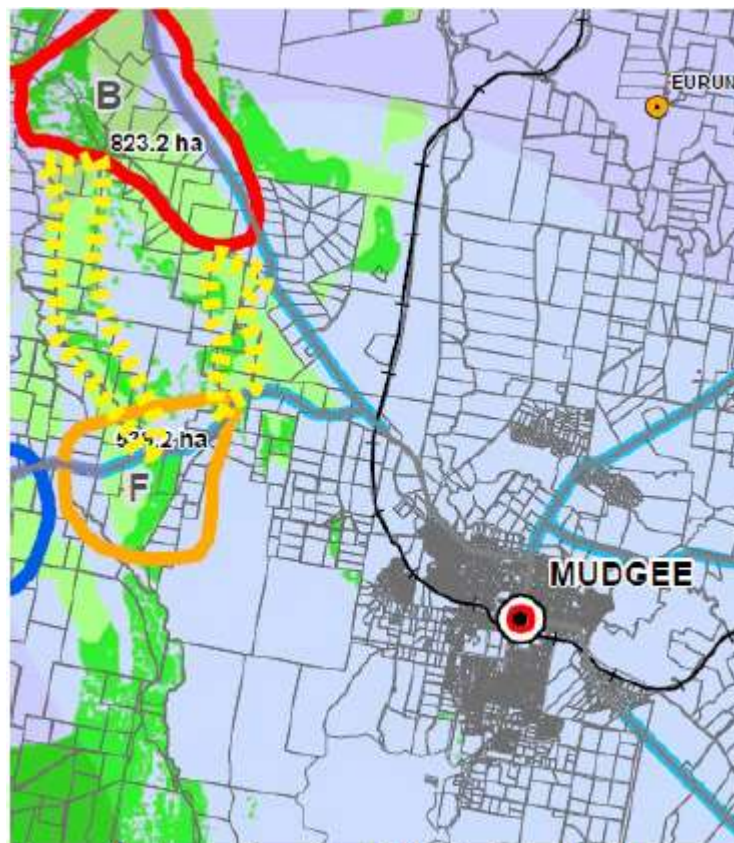


Figure 5: Rural lifestyle opportunities within 15 km of Mudgee. Source: Mid-Western Regional CLUS

Furthermore, council's decision to partially support the planning proposal is guided by the principles for land suitability factors (section 2.2.3 MWCLUS) where the available

land must be within close proximity of existing towns, village and rural centres and developed within one kilometre from the main road (sealed local arterial, sub-arterial and collector road). Hill End Road is a sub-arterial road and Lower Piambong Road is a local road. Due to Lower Piambong Road servicing several future opportunity/land release areas, council has considered this road to have same significance as a main road and supports amendment for lots which are near this road. The council supported proposed amendments are considered consistent with the MWCLUS. It is noted that the MWCLUS should be reviewed however it still provides a solid base for future land use planning for MWRC.

Mudgee and Gulgong Urban Release Strategy (MGURS) (endorsed by the Department on 25 January 2015) is focussed primarily on the release of residential land uses. The study acknowledged the existing industrial area in “Carleon” (18) and the proposed industrial area (18C) (refer to Figure 6) which are located within close proximity to the subject land. The subject land is not identified as a potential urban release area or suitable for large lot residential development. Although land on Hill End Road is identified as one of the options for large lot residential development to accommodate growth beyond 2035, it is not identified as a potential urban release area or suitable for large lot residential development under this strategy. The proposed amendments will support the existing and future industrial area by providing housing options for the local workers. Considering the subject land is identified for future consideration and located close proximity to employment land, the inconsistency is justified as identified in the MWCLUS.

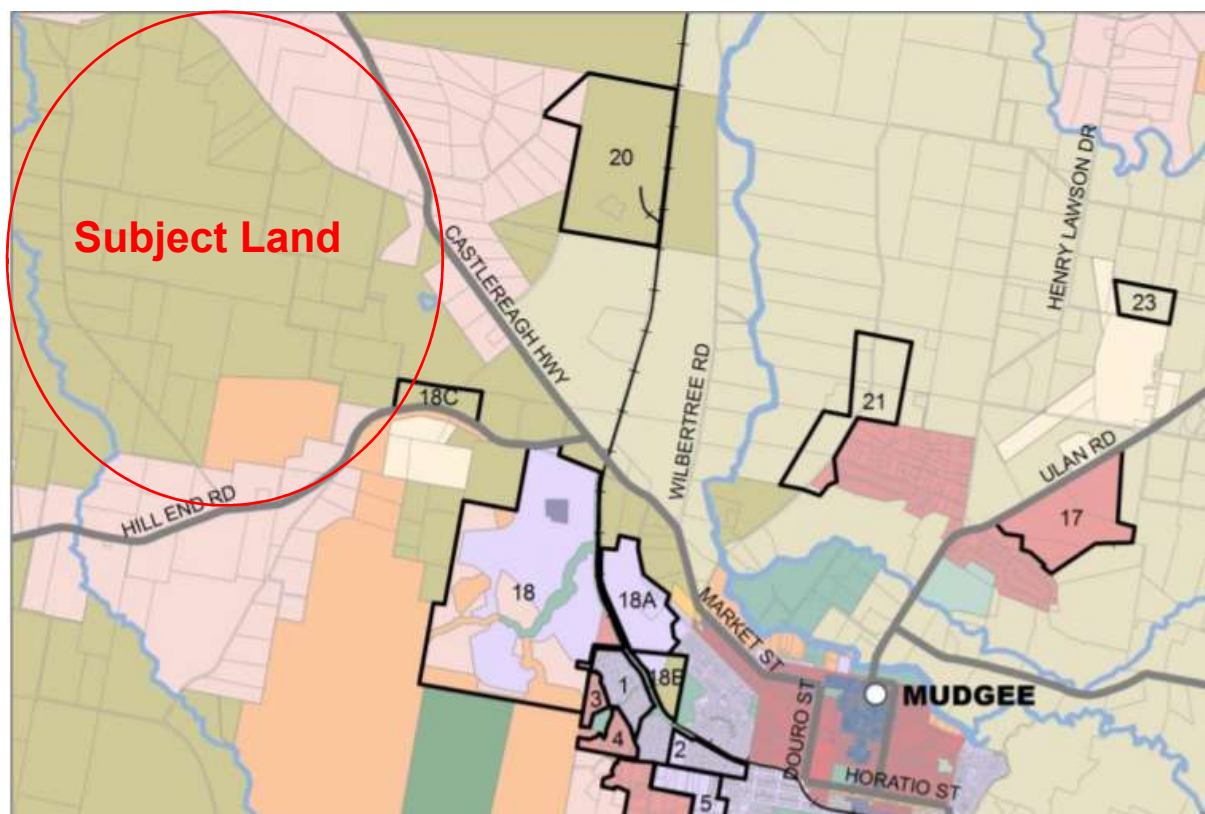


Figure 6: Urban release area around Mudgee. Source: Mudgee and Gulgong Urban Release Strategy

Draft MWRC Strategically Identifying Large Lot Residential Opportunities around Mudgee- (recently exhibited, not endorsed) aims to look for additional potential opportunities for large lot residential living based on the criteria established in the MWCLUS. Area 6 of this draft strategy (Figure 7) is adjoining the subject land to the east and is recommended to be developed with MLS of 5ha and 2ha. The proposal will enable development of the subject land with similar MLS and complement the recommendations of the draft strategy.



Figure 7: Area 6 of the draft strategy and the subject land. Source: Draft MWRC Strategically Identifying Large Lot Residential Opportunities around Mudgee

4.4 Section 9.1 Ministerial Directions

Assessing the proposal, it is determined to be consistent with the following section 9.1 Directions:

- Direction 1.3 Mining, Petroleum Production and Extractive Industries
- Direction 2.1 Environment Protection Zones
- Direction 5.10 Regional Plans

No further work is required in the terms of these Directions.

The proposal is inconsistent at this time with the following Section 9.1 Ministerial Directions:

Direction 1.2 Rural Zones is relevant to this proposal as the subject land is rezoned from a rural zone. The inconsistency is justified as the subject land is considered for large lot living under Council's current Department endorsed land use strategy (MWCLUS). In addition, agricultural uses are permissible for the proposed zone under the MWRLEP 2012.

Direction 1.5 Rural Lands is relevant to this proposal as the subject land is rezoned from a rural zone and is inconsistent with the Direction. The inconsistency is justified as the subject land is considered for large lot living under Council's current endorsed land use strategy (MWCLUS). In addition, agricultural uses are permissible for the proposed zone R5 under the MWRLEP 2012.

Direction 2.6 Remediation of Contaminated Land is relevant to the planning proposal. Council is to obtain and have regard to a report detailing the findings of a preliminary contamination investigation of the land that is carried out in accordance with the contaminated land planning guidelines. This work is required to be undertaken prior to community consultation to demonstrate that the proposed rezoning can proceed.

Direction 4.4 Planning for Bushfire Protection is relevant to the planning proposal. Part of the subject site is indicated to be impacted by bushfire hazards (vegetation category 1, 2 and vegetation buffer). Consultation with NSW Rural Fire Service will be required after a Gateway Determination and prior to community consultation. Until this consultation has occurred the inconsistency of the proposal with the Direction remains unresolved.

4.5 State environmental planning policies (SEPPs)

The planning proposal has provided an assessment of the proposal against the State Environmental Planning Policies on Table 6, page 27 of the planning proposal. Consideration to the following SEPPs are provided regarding the proposed amendments:

SEPP (Koala Habitat Protection) 2020- In accordance to the MWRLEP 2012 sensitive biodiversity mapping and preliminary biodiversity assessment that accompanied the planning proposal, all potential koala habitats are not impacted by this proposal.

SEPP (Koala Habitat Protection) 2021- The preliminary biodiversity assessment that accompanied the planning proposal does not identify any potential impact resulted by this proposal. Consultation with DPIE - Environment, Energy and Science (DEES) during the exhibition will result in detailed consideration of the biodiversity assessment by relevant agency.

SEPP No. 55 Remediation of Land- A preliminary contamination investigation will be required to be undertaken after a Gateway determination and prior to community consultation. Council is to be satisfied that the subject land is fit for the proposed large lot residential purpose.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social and economic

The proposal will provide additional residential development near existing and future employment land in Caerleon, assisting in meeting local and regional dwelling demand while providing a variety of housing options. The planning proposal will also provide residential uses near strategic centres where residents can easily access community service and facilities.

5.2 Environmental

The subject site is identified as bushfire prone. The Preliminary Biodiversity Assessment that accompanied the planning proposal identifies the areas for Koala habitats and threatened ecological communities. Council's support for the reduced area for rezoning strengthens protection of high biodiversity valued area; however the ecological report identifies some other areas as having potential ecological communities (Pages 10 and 13 of the Preliminary Biodiversity Assessment) which were not assessed under this report. Consultation with DPIE - Environment, Energy and Science during public exhibition will be required to further address this issue.

5.3 Infrastructure

The proposal is located within proximity to existing urban infrastructure servicing catchments including connections to existing public road, electricity, water and telecommunications. The planning proposal does not address drinking water availability for the new dwellings, however Council's MWCLUS identifies any lots with 12ha MLS as an agreed area to be able to be adequately serviced by roof water catchment for drinking and farm dams and potential individual bores for non-potable water. Given that the current climate may reduce the reliability of the rainwater availability, consultation with DPIE-Water is required in relation to water supply.

6. CONSULTATION

6.1 Community

A 28-day exhibition period is deemed to be adequate for this planning proposal.

6.2 Agencies

Consultation is required with the following agencies during public exhibition:

- NSW Rural Fire Services
- Department of Planning, Industry and Environment – Environment, Energy and Science
- Department of Planning, Industry and Environment – Water

7. TIME FRAME

The planning proposal provides a timeframe of 6-9 months to complete the planning proposal. The Department supports a nine (9) months timeframe as it is line with the commitment to reduce processing times. It is recommended that if the Gateway

determination is supported that a condition requiring council to exhibit the proposal within four (4) months.

8. LOCAL PLAN-MAKING AUTHORITY

Council has requested to be the local plan-making authority. Council should be authorised to be the local plan-making authority as they have no interests in the land.

9. CONCLUSION

The planning proposal is recommended to proceed with conditions as it:

- Is consistent with relevant region plans, local plans and strategies.
Will provide for additional housing within Caerleon and greater Mudgee area, facilitating utilisation of the land given the location, topography and proximity to strategic centre of the subject site.
- Environmental hazards and impacts can be further investigated through further consultation with public agencies.

10. RECOMMENDATION

It is recommended that the delegate of the Secretary agree that:

- Inconsistencies with section 9.1 Directions 1.2 Rural Zones and Direction 1.5 Rural Lands are justified or are of minor significance as justified by an endorsed land use strategy and no further work is required.
- Inconsistencies with section 9.1 Directions 2.6 Remediation of Contaminated Land and Direction 4.4 Planning for Bushfire Protection will be addressed through further investigation and consultation with relevant agencies.

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

1. Prior to community consultation a revised planning proposal is to be resubmitted that addresses the following:
 - a. Potential contamination - a preliminary contamination investigation to demonstrate to Council that the subject land is suitable or can be made suitable for the proposed large lot residential use;
 - b. Update maps to clearly identify the supported amendment for subject site. In this regard, ensure all maps that form part of the planning proposal must clearly identify the parts subject land supported by Council under this planning proposal;
 - c. Update the planning proposal to clearly identify supported amendments and delete all references to original proposal;

Council is to seek approval from the Department of Planning, Industry and Environment – Western Region prior to undertaking community consultation.

2. The planning proposal is to be publicly exhibited within **four (4) months** from the date of the Gateway determination. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
 - (b) the planning proposal 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 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018).
3. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act:
 - NSW Rural Fire Services
 - Department of Planning, Industry and Environment – Environment, Energy and Science
 - Department of Planning, Industry and Environment – Water

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.

4. A public hearing is not required to be held into the matter by any person or body under section 3.34(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).
5. The planning proposal authority is authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the Act subject to the following:
 - (a) the planning proposal authority has satisfied all the conditions of the Gateway determination;
 - (b) the planning proposal is consistent with section 9.1 Directions or the Secretary has agreed that any inconsistencies are justified; and
 - (c) there are no outstanding written objections from public authorities.
6. Prior to submission of the planning proposal under section 3.36 of the Act, the final LEP maps must be prepared and be compliant with the Department's 'Standard Technical Requirements for Spatial Datasets and Maps' 2017.
7. The time frame for completing the LEP is to be **9 months** following the date of the Gateway determination.



26 March 2021

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