

**Amendment to Upper Hunter Local Environmental Plan 2013 - Mareeba Road, Scone
(Parkville East)**

Proposal Title : **Amendment to Upper Hunter Local Environmental Plan 2013 - Mareeba Road, Scone (Parkville East)**

Proposal Summary : **The Planning Proposal investigates whether to rezone part of the subject land (20.5ha) from RU4 Primary Production Small Lots to R5 Large Lot Residential under the Upper Hunter Local Environmental Plan 2013.**

The rezoning will permit the subdivision of five allotments with an area of approximately 4ha each, leaving a rural residue of 12.3ha without a dwelling entitlement.

PP Number : **PP_2012_UPHUN_004_00** Dop File No : **12/11148**

Proposal Details

Date Proposal Lodged with DOP : **03-Jul-2012** Date Proposal Uploaded to Public Website : **09-Jul-2012**

Proposal Assessment

Is Public Hearing Required by PAC? **No**

Agencies Requested to Consult : **NSW Department of Primary Industries
- Agriculture
Transport for NSW - Sydney Trains**

Gateway Determination

Decision Date : **27-Jul-2012** Gateway Determination : **Passed with Conditions**

Due Date of LEP : **03-Feb-2015**

Implementation

Implementation Start Date : **03-Aug-2012** Exhibition Duration : **29**

Agency consultation consistent with recommendation : **Yes**

If No, comment : **The Gateway determination required Council to consult the NSW Department of Primary Industries (Agriculture), Transport NSW (Railcorp- ARTC) and the NSW Rural Fire Service.**

Agency Objections : **Yes**

If Yes, comment : **NSW Department of Primary Industries (Agriculture)**

The Department of Primary Industries (Agriculture) does not support the proposed rezoning. The rezoning is not strategically justified and class 3 agricultural land should be protected from urban encroachment and associated land use conflicts.

They recommend that a shire wide strategic agricultural assessment should be undertaken to determine the resource implications for agriculture, particularly intensive agriculture and the potential for land use conflicts with surrounding land activities. Rural residential subdivision should not undermine sound strategic planning, increase land use conflicts or impose additional restrictions on surrounding agricultural activities.

The Department requested further advice from the Department of Primary Industries (Agriculture) about the potential land use conflicts with surrounding agricultural land uses. The Department of Primary Industries (Agriculture) advised that the adjoining poultry sheds and piggery should be taken into consideration in determining the potential land use conflicts, given the opportunity for redevelopment or expansion. The Department of Primary Industries (Agriculture) contacted John Pace who owns the adjoining poultry farm. Mr Pace advised that they are planning to replace the cages and upgrade the farm in the next 12-18 months. He is concerned about this rezoning proposal and its potential to impact on their future investment in the egg laying facility.

The Department of Primary Industries (Agriculture) does not agree with the proponent's agronomist report prepared by Mr Ross Watson, who advises that the subject land is not suited to intensive agricultural cropping or farming activities. It is considered that the subject land has agricultural potential and the opportunity for cropping may be further enhanced through the use of fertilisers, organic matter and other farming techniques.

Transport NSW (Railcorp- ARTC)

Council consulted Railcorp in accordance with the Gateway determination. No response has been received.

Access to the site is via Mareeba Road over an existing railway crossing. Railcorp is considered unlikely to object to the rezoning because it is a controlled railway crossing with boom gates.

NSW Rural Fire Service

The NSW Rural Fire Service raise no objection to the planning proposal. Bushfire requirements will be resolved at the development application stage.

Documentation consistent
with Gateway :

Yes

If No, comment :

GATEWAY DETERMINATION ASSESSMENT

1. Gateway Determination

A Gateway determination was issued on 27 July 2012 to proceed with the rezoning, subject to preparing a number of studies and consulting with a number of public authorities including the NSW Department of Primary Industries (Agriculture). It required Council to assess the planning proposal against its locational criteria in Table 11 of the Upper Hunter Land Use Strategy and the settlement principles of the draft Strategic Regional Land Use Plan.

The Department issued the Gateway determination based on Council's advice that the subject land was located within the Parkville East rural residential investigation area under the endorsed Upper Hunter Land Use Strategy. However, this advice was incorrect and the investigation area only covers the adjoining, already fragmented rural land.

2. Supporting Studies

Council was advised to prepare a land use risk assessment to determine the potential conflict from the rural residential development on surrounding agricultural activities. The MM Hyndes Bailey Land Use Conflict Risk Assessment dated 7 February 2013 and the Ross Watson Agronomist report dated 17 April 2014 were forwarded to the Department of Primary Industries to comment in accordance with the Gateway determination.

MM Hyndes Bailey Land Use Risk Assessment - Summary of Advice

• Assessment based on the subdivision of eighteen 1ha allotments and a rural

residue of 12.3ha

- The subject land is currently vacant and has been used for intermittent agricultural use;
- The soil type is not suitable for irrigation and cereal crops require too much water to be grown economically;
- The surrounding properties to the North, East and South are used primarily for grazing. Previously, the land to the North was used as poultry farm and the land to the south used as a piggery;
- There is a low potential for disputes and land use conflicts between grazing and rural residential development; and
- The rural residue should be attached to one of the rural residential allotments so that the land can be used for a low key agricultural/equine activity.

Department's Assessment

The Land Use Risk assessment fails to acknowledge the potential land use conflict from agricultural activities such as cropping or other intensive agricultural activities permissible in the rural zone.

The owners of the poultry farm have indicated that they intend to reopen the poultry facility. It is understood that development approval will only be required if they intend to enlarge the poultry facility or make structural alterations to the existing sheds. The piggery sheds may have redevelopment potential for alternative agricultural land uses.

The land use risk assessment suggests that building envelope buffers could be used to address concerns about potential land use conflicts. A detailed buffer assessment has not been prepared and it is considered unlikely to address any odour impacts from the poultry sheds, if they are reopened and only located approximately 500m from Northern boundary.

Ross Watson Agronomist report - Summary of Advice

- Assessment based on the subdivision of five 4ha allotments and a rural residue of 12.3ha. The subdivision was revised to respond to concerns raised by the Department of Primary Industries (Agriculture) on 8 August 2013;
- The subject land is class 3 agricultural lands and is not suited to intensive agricultural cropping or farming activities. It only has potential for occasional cropping in association with extensive pasture phases;
- The piggery and poultry farm has ceased operation. Any future development applications for redevelopment or expansion of these agricultural operations will need to address the potential land use conflict with this proposed rural residential subdivision;
- The rural residential development is unlikely to adversely impact on the low input grazing activities which currently dominate the agricultural activities of the surrounding properties to the north, east and south of the site; and
- The loss of this Class 3 Agricultural lands is insignificant for the Upper Hunter Region.

Department's Assessment

Both of these supporting studies fail to justify the fragmentation of Class 3 agricultural lands. The argument that any new agricultural land uses will have to address potential land use conflicts with the rural residential subdivision is not supported. Large rural allotments should be protected from fragmentation, especially when the land is not required for urban expansion. There is limited demand for rural residential allotments in this locality and the Upper Hunter Land Use Strategy identifies the adjoining, already fragmented rural land for rural residential investigation to yield up to 15 rural residential allotments.

STRATEGIC ASSESSMENT

3. Upper Hunter Strategic Regional Land Use Plan

The subject site is identified as strategic agricultural land and located within the Equine Critical Industry Cluster under the Upper Hunter Strategic Regional Land Use Plan. This land is identified for protection from non-agricultural activities due to its significance and councils should protect this land through their Local Environmental Plans (Action 3.3).

One of the key challenges for the region revolves around maintaining and growing agricultural productivity while also supporting the development of other industries that are competing for nearby or even the same land, such as mining, coal seam gas and urban expansion. To assist in the management of potentially competing land uses, strategic agricultural lands, critical industry clusters, coal resources, coal seam gas potential and other mineral resources have been mapped. Any urban investigation areas located within these mapped areas should be justified and address the potential impact on strategic agricultural lands, critical industry cluster or loss of valuable resources. The planning proposal does not adequately address this issue and the land use risk analysis and agronomist report dismiss the fragmentation of Class 3 agricultural lands and future land use conflict with other potential agricultural activities.

Rural residential and lifestyle housing can contribute to the character, economy and social fabric of communities if it is appropriately located. Rural residential housing should occur in close proximity to existing towns and villages and be consistent with the settlement planning principles. The Department's assessment of the planning proposal against the settlement planning principles in the Upper Hunter Strategic Regional Land Use Plan is provided below:-

a) The development will contribute to the diversity of housing types available.

Comment: The planning proposal is inconsistent with this principal. The Upper Hunter Land Use Strategy identifies potential urban investigation areas to provide a variety of housing types to accommodated the projected population increases.

b) The development will be located to maximise the efficiency of essential urban infrastructure, services and facilities, including transport, health and education.

Comment: The planning proposal is inconsistent with this principal. The development is located in an area that has limited access to essential urban infrastructure. The site does not have access to water and sewer. The community raises concerns about the adequacy of the Mareeba Road-New England Highway intersection.

c) The development will respect and respond to the character of the area and the identified settlement hierarchy of the region.

Comment: The planning proposal is inconsistent with this principal. The settlement hierarchy of the Upper Hunter Shire consists of towns (Scone, Aberdeen, Merriwa and Murrurundi), villages (eg Parkville, Wingen) and a number of rural residential estates in close proximity to the towns. This planning proposal will create a rural residential estate outside of the existing established settlement pattern.

d) New residential areas will be planned with streets that make it easy for people to walk and cycle and with recreational open space.

Comment: This settlement principle is not applicable.

e) New residential and rural residential areas will respect environmental and cultural heritage and avoid areas most affected by natural hazards or having high cultural significance.

Comment: The planning proposal is consistent with this principal. There is no record that the land has Aboriginal or European heritage significance. The land has been used for agriculture and is unlikely to contain threatened species or endangered ecological communities.

f) New rural residential areas should minimise the potential for land use conflict with land needed for valuable economic activities, such as valuable agricultural lands and natural resource lands.

Comment: The planning proposal is inconsistent with this principal. The fragmentation of Class 3 agricultural lands to create 5 rural residential allotments is unnecessary and unjustified. The rural residential development creates a potential land use conflict that may also limit the ability of surrounding rural landholders to undertake irrigated agriculture and intensive agriculture (eg poultry, feedlots), which would require larger buffer distances.

g) New rural residential areas should be located adjacent to, or in close proximity to, existing urban centres and be within easy access of relevant infrastructure and services.

Comment: The planning proposal is inconsistent with this principal. The proposed rural residential development does not adjoin the existing village of Parkville and does not have access to water and sewer and limited access to existing community facilities. Council's Upper Hunter Land Use Strategy identifies a potential rural residential investigation area covering an existing fragmented rural area adjoining the existing village of Parkville. It is considered that this locality should be more than adequate to accommodate the projected demand for rural residential development in this locality.

Conclusion

The planning proposal is generally inconsistent with the Settlement Planning Principles. New rural residential areas should be located adjacent to, or in close proximity to, existing centre, towns and villages and be within easy access of relevant infrastructure and services. The identification of new rural residential areas should minimise the potential for land use conflict with valuable agricultural lands and agricultural activities.

4. Upper Hunter Land Use Strategy

The Director General endorsed the Upper Hunter Land Use Strategy on 21 January 2010. The Strategy identifies a number of potential investigation areas to accommodate the projected demand for rural residential development for the next 20-30 years.

The subject land is not identified as a potential rural residential investigation area. Council's decision to support the rezoning on the basis that "the dotted investigation areas in the Upper Hunter Land Use Strategy represent a concept rather than an empirical designation, and should therefore be allowed some flexibility" is not accepted. The Parkville East investigation area covers an already fragmented rural area adjoining the existing village, with a potential yield of approximately 15 additional 1ha allotments. This investigation area is considered consistent with the Strategy's underlying objectives to protect agricultural lands from fragmentation and to consolidate the Parkville urban footprint so it can be potentially connected to reticulated water, subject to funding.

The updated planning proposal dated 13 September 2014 raises strategic concerns about rezoning the subject land in relation to the existing and adjacent agricultural uses. It is considered unnecessary to rezone land in a marginal location (given the potential land use conflict issues) when there is already

adequate zoned land in close proximity to Scone to meet future demands.

The Gateway determination required Council to assess the planning proposal against its locational criteria in Table 11 of its Strategy. Council's assessment highlights two main areas of concern:-

- The rezoning will create an isolated large lot residential area, surrounded by intensive agricultural land. It is not a logical extension of an existing large lot residential or small rural holding zone.
- The site is surrounded by Class 3 Agricultural Land and is considered suitable for extensive agriculture such as cropping and grazing. The land is highly suitable for beef cattle grazing on native and improved pastures. The location also makes it suitable for intensive agriculture and has a history of poultry and piggery enterprises.

Conclusion

The subject land is not suitable for rural residential development. It is important to protect agricultural lands from fragmentation because it significantly contributes towards employment in the Local Government Area. Any future rural residential development in Parkville should occur in the identified investigation area.

In the future, it may be necessary to identify new investigation areas when the existing and potential supply of rural residential land has been developed. Council will be able to closely monitor the supply and demand for residential and rural residential lands through its established land monitor.

5. Land Supply Monitor

When the Director General endorsed the Upper Hunter Land Use Strategy, Council was required to establish a land monitor to assist in maintaining an adequate supply of residential and rural residential lands. In Upper Hunter Local Government Area, there is an estimated supply of 402 zoned rural residential allotments, without including the land at Rouchel Rad, Aberdeen, which forms part of a horse stud. In Scone, there is an existing land supply of approximately 200 zoned rural residential allotments.

The Land supply monitor confirms that there is an adequate supply of zoned rural residential land in Scone to meet the anticipated short to medium term demand. In addition, the Upper Hunter Land Use Strategy identifies a number of potential rural residential investigation areas to provide Council's strategic direction and to provide a number of development fronts to create contestability in the market.

6. State Environmental Planning Policies

State Environmental Planning Policy 55 Remediation of Land

Council is satisfied that the site is uncontaminated and suitable for the proposed urban uses. Council intends to request additional soil sampling at the development application stage.

State Environmental Planning Policy (Rural Lands) 2008

The policy identifies rural planning principles and the rural subdivision principles to ensure the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State. An assessment of the planning proposal against these rural planning principles is provided below:-

Rural Planning Principles

a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas.

Comment: The subject and surrounding lands are used for grazing and cropping. Council advises that there is a regular cropping area within approximately 900m of the site to the north-west. The planning proposal will fragment Class 3 agricultural lands and create potential land use conflicts, which may limit the ability for adjacent landholders to pursue agricultural based activities on their land. Potential land use conflicts include noise, dust, chemical use, weed control, feral animal control, farm operations (24 hour, 7 days a week) and farm machinery movements.

b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State.

Comment: The retention of rural lands is important to the social, economic and environmental well-being of the Upper Hunter Shire. There is the potential for areas such as the Upper Hunter Shire to become more important for agriculture as urban expansion in peri-urban locations in areas such as the Lower Hunter, Central Coast and Western Sydney is making agriculture more marginalised.

The proponent has suggested that the most productive use for this land is restricted to grazing. Yet the beef cattle industry has an estimate value of \$98.6 million for the Upper Hunter Shire (Department of Primary Industries (2013) Upper Hunter Region Beef Profile, Factsheet No 2). One of the key challenges faced by this industry is identified as “expanding residential development, including rural lifestyle lots” and “the cost of managing land use conflicts”.

c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development.

Comment: Agriculture is an important economic activity for the Upper Hunter Shire. Farm holdings comprise 80% of the Shire, with 70% of these holdings used for grazing purposes and 5% used for cropping or horticulture. The estimated value of agricultural production (excluding horses) is \$156 million, which is higher than the surrounding LGAs of Dungog, Gloucester, Muswellbrook and Singleton. The Upper Hunter employs 2,406 persons in the agriculture sector and has the highest number of farms and area of land as farm holdings. (Department of Primary Industries (2013) Upper Hunter Region Agricultural Profile, Fact sheet No 1).

It is important to protect strategic agricultural lands with good access to infrastructure and capable of being used for intensive agricultural activities. The subject land is located within close proximity of a major transport route (the New England Highway), within close proximity to the regional saleyards, it is located within both the Biophysical Strategic Agricultural Lands and Equine Critical Industry Clusters under the Upper Hunter Strategic Regional Land Use Plan and there is existing infrastructure nearby associated with the Parkville Egg Farm and former piggery nearby. In this regard it is considered to be an agricultural area with high potential to deliver economic benefits to the Shire and the Hunter Region.

d) in planning for rural lands, to balance the social, economic and environmental interests of the community.

Comment: The Upper Hunter Strategic Regional Land Use Plan and the Upper Hunter Land Use Plan provide the strategic directions to ensure that there is sufficient land zoned for residential, business, industrial whilst managing agriculture and environmental significant lands. As discussed above, agriculture provides significant employment opportunities and it is in the community's

interests to prevent the unnecessary fragmentation of agricultural lands.

(e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land.

Comment: The land is cleared of native vegetation and has been used for agriculture. As such there is unlikely to be any biodiversity issues. Rural residential development in this locality may impact on water resources through the use of water that may be more appropriately used for agriculture.

(f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities.

Comment: This planning proposal is not considered consistent with this principle. The Upper Hunter LGA has an adequate supply of land zoned for rural residential development to meet the anticipated short to medium term demand. Furthermore, Council's Land Use Strategy identifies a number of potential investigation areas which should contribute to the social and economic welfare of rural communities.

(g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing.

Comment: The site does not have access to water and sewer. The community raises concerns about the adequacy of the Mareeba Road-New England Highway intersection. If the planning proposal was to proceed it should be referred to the Road and Maritime Services for comments about the adequacy of existing intersection along the New England Highway, which runs through Parkville.

(h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.

Comment: The planning proposal is inconsistent with the Upper Hunter Strategic Regional Land Use Plan. New rural residential areas should be consistent with the settlement planning principles and be located adjacent to, or in close proximity to, existing centre, towns and villages and be within easy access of relevant infrastructure and services.

Conclusion

The fragmentation of Class 3 agricultural lands to create 5 rural residential allotments is unnecessary and unjustified. The rural residential development creates a potential land use conflict that may also limit the ability of surrounding rural landholders to undertake irrigated agriculture and intensive agriculture.

7. Minister's S117 Directions

Direction 1.2 Rural Zones, Direction 1.5 Rural Lands and Direction 3.4 Integrated Land Use and Transport

The Gateway determination mistakenly approved the planning proposal's inconsistencies with Direction 1.2 Rural Zones, Direction 1.5 Rural Lands and Direction 3.4 Integrated Land Use and Transport based on Council's advice that the subject land was located within the Parkville East rural residential investigation area under the endorsed Upper Hunter Land Use Strategy.

The Upper Hunter Land Use Strategy identifies the adjoining, already fragmented rural land for rural residential investigation to yield up to 15 rural residential allotments. The Strategy does not justify the planning proposal's inconsistencies with these S117 Directions because the subject land is not identified as a potential rural residential investigation area.

Direction 4.4 Planning for Bushfire Protection

The planning proposal is consistent with this direction. The Rural Fire Service raise no objection to the planning proposal. Bushfire requirements will be resolved at the development application stage.

8. Community consultation

The Planning Proposal was placed on public exhibition for 28 days from 15 May to 12 June 2013 in accordance with the Gateway determination. Six submissions were received objecting to the rezoning and raising concerns about inconsistency with Council's Land Use Strategy, potential land use conflicts, visual amenity, traffic impacts and inadequate services and infrastructure.

Council received one submission from PSA Consulting on behalf of Pace Farm Pty Ltd who own the adjoining poultry farm located approximately 500m to the north of the subject land. Pace Farm Pty Ltd advise that they have owned this land for 20 years and intend expanding their operation to Parkville on a more permanent basis. At the moment it is used to house layers in response to the fluctuating demand for egg products. The submission objects to the proposed rezoning on the basis that the encroachment of residential development will be detrimental to Pace Farm's egg production operations and likely to create a future land use conflict.

9. Planning Proposal's conclusion

The planning proposal dated 13 September 2013 recommended not to support the rezoning proposal because "Agriculture remains a significant industry in the Upper Hunter Shire in terms of value of production, employment and area of land use. The proposed rezoning of Part Lot 2 DP 813125 removes a 20ha area from agricultural production with the potential to adversely impact on the adjacent agricultural land uses. The proposed rezoning site is surrounded by intensive agricultural land and there is nearby rural infrastructure. A future large lot residential estate in this location is likely to result in land use conflict and thereby hinder the agricultural land use activities."

Council resolved to support the planning proposal and requested that it be made on the 8 August 2014. Council advises that this decision was made on the basis that "the dotted investigation areas in the Upper Hunter Land Use Strategy represent a concept rather than an empirical designation, and should therefore be allowed some flexibility" and that it does not agree with the Department of Primary Industries (Agriculture) advice.

10. Lobbyist Code of Conduct

To date, all dealings with this Planning Proposal have adhered to the Lobbyist Code of Conduct. To the best of the knowledge of the regional team there have been no meetings with registered lobbyists.

DEPARTMENT'S RECOMMENDATION

11. Department's Recommendation

It is recommended that this planning proposal should not be made for the following reasons:-

- The planning proposal is inconsistent with the Upper Hunter Strategic Regional Land Use Plan. New rural residential areas should be consistent with the settlement planning principles and be located adjacent to, or in close proximity to, existing centre, towns and villages and be within easy access of relevant

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infrastructure and services.

- The planning proposal does not justify the fragmentation of Class 3 agricultural lands. It creates a potential land use conflict with the surrounding and future agricultural land uses. Also, the revised subdivision plan creates a rural residue of 12.3ha without a dwelling entitlement and no agricultural potential. The argument that any new agricultural land uses will have to address potential land use conflicts with the rural residential subdivision is not supported. This further reinforces that this rural residential development has the potential to limit the ability of surrounding rural landholders to undertake irrigated agriculture and intensive agriculture.
- The Upper Hunter Land Use Strategy and the land supply monitor confirms that there is sufficient land zoned for residential and rural residential development to meet the anticipated short to medium term demand in the Local Government Area. The strategy also identifies a number of potential investigation areas to provide Council's strategic direction and accommodate the projected demand for rural residential development for the next 30+ years;
- The planning proposal does not demonstrate that it is suitable against the Upper Hunter Land Use Strategy locational criteria. The subject land does not adjoin the existing village and creates a potential land use conflicts with existing and future agricultural land uses.
- The planning proposal does not justify the fragmentation of Class 3 agricultural lands. It creates a potential land use conflict with the surrounding and future agricultural land uses. Also, the revised subdivision plan creates a rural residue of 12.3ha without a dwelling entitlement and no agricultural potential. The argument that any new agricultural land uses will have to address potential land use conflicts with the rural residential subdivision is not supported. This further reinforces that this rural residential development has the potential to limit the ability of surrounding rural landholders to undertake irrigated agriculture and intensive agriculture.
- Agriculture is an important economic activity for the Upper Hunter Shire and the Hunter Region. Valuable agricultural lands need to be protected from urban encroachment and potential land use conflicts.

LEP Assessment

Date Received from RPA : 15-Aug-2014

LEP Determination

DatePublishNotification

Date sent to Parliamentary Council to Draft LEP :

Determination Date :

Determination Decision :

Notification Date :