

Item 8: Development

8.1 Planning Proposal 194 Hill End Road, 70 Gibsons Lane and 88 Gibsons Lane, Caerleon Proposed Rezoning to R5 Large Lot Residential and Change Minimum Lot Size to 12ha - Post Exhibition

REPORT BY THE MANAGER, STRATEGIC PLANNING
TO 02 FEBRUARY 2022 ORDINARY MEETING
GOV400088, LAN900115, GOV400098

RECOMMENDATION

That Council:

- A. **receive the report by the Manager, Strategic Planning on the Planning Proposal 194 Hill End Road, 70 Gibsons Lane and 88 Gibsons Lane, Caerleon Proposed Rezoning to R5 Large Lot Residential and Change Minimum Lot Size to 12ha - Post Exhibition; and**
- B. **exercise its delegation in the preparation of the amendment to the Mid-Western Regional Local Environmental Plan 2012 in relation to the rezoning of 194 Hill End Road, Caerleon Lot 1 DP104244, Lot 68 DP756897, Lot 83 DP756897, Lot 12 DP855845, Lot 72 DP756897, Lot 26 DP756897, Lot 82 DP756897, Lot 410 DP1112456, Lot 84 DP756897, Lot 13 DP756897, Lot 35 DP756897, Lot 1 DP795672, Lot 1 DP510323, Lot 3314 DP 1112448, Lot 3315 DP1112448, Lot 34 DP756897, Lot 35 DP756897, Lot 11 DP756897 and Lot 36 DP756897 and part of Lot 81 DP756897, Lot 11 DP855845, Lot 97 DP756897, Lot 99 DP756897 and Lot 22 DP756897 from RU1 Primary Production to R5 Large Lot Residential and change the minimum lot size from 100 hectares to 12 hectares subject to the Opinion issued by Parliamentary Counsel.**

Executive summary

At Council's 9 December 2020 meeting, Council resolved to support the Planning Proposal and to forward it to the NSW Department of Planning, Industry and Environment (DPIE) for a Gateway Determination. The Planning Proposal relates to, part 194 Hill End, 70 and 88 Gibsons Lane and proposes to rezone the land from RU1 Primary Production to R5 Large Lot Residential and reduce the minimum lot size from 100 hectares to 12 hectares.

The minimum lot size will be reduced to 12 hectares for the following mentioned lots and part of lots.

Rezone the following lots from RU1 Primary Production to R5 Large Lot Residential: Lot 1 DP104244, Lot 68 DP756897, Lot 83 DP756897, Lot 12 DP855845, Lot 72 DP756897, Lot 26 DP756897, Lot 82 DP756897, Lot 410 DP1112456, Lot 84 DP756897, Lot 13 DP756897, Lot 35

DP756897, Lot 1 DP795672, Lot 1 DP510323, Lot 3314 DP 1112448, Lot 3315 DP1112448, Lot 34 DP756897, Lot 35 DP756897, Lot 11 DP756897 and Lot 36 DP756897.

Rezone part of the following lots from RU1 Primary Production to R5 Large Lot Residential: Lot 81 DP756897, Lot 11 DP855845, Lot 97 DP756897, Lot 99 DP756897 and Lot 22 DP756897.

A conditional Gateway Determination was granted on 26 March 2021. A copy of the Gateway Determination is provided as Attachment 1.

Condition 1 of the Gateway Determination required that prior to the commencement of community consultation a revised Planning Proposal be resubmitted to DPIE that addresses potential contamination to demonstrate that the subject land is suitable or can be made suitable for the proposed large lot residential use. A revised Planning Proposal which addressed this requirement was subsequently submitted and approved by DPIE – Western Region. Approval to proceed to public exhibition was received on 14 September 2021, a copy of this is provided as Attachment 2. A copy of the amended Planning Proposal is provided as Attachment 3.

The Planning Proposal was placed on public exhibition on Friday 24 September 2021 until Friday 22 October 2021 and from Friday 12 November 2021 until Friday 10 December 2021 in accordance with 6.5.2 of A Guide to Preparing Local Environmental Plans (Department of Planning and Environment, 2018), Council's Community Participation Plan 2019 and Gateway Determination Condition 2. Three submissions were received. One submission raised no objection and 2 raised matters of concern. The matters raised are summarised and a staff comment provided in the body of the report.

In accordance with Condition 3, the Planning Proposal was referred to NSW Rural Fire Services, Department of Planning, Industry and Environment – Environment, Energy and Science Department of Planning, Industry and Environment – Water. No comments were received.

The purpose of this report is to provide Council with a post exhibition report and to seek Council's approval to exercise its delegation in finalising the Planning Proposal.

Disclosure of Interest

Nil

Detailed report

Planning Proposals

Planning Proposal is a term used to describe the process of rezoning or making an amendment to a Local Environmental Plan (LEP). A Planning Proposal application is a document that explains the intended effect of the LEP amendment and provides a strategic justification for doing so. DPIE has issued A Guide to Preparing Planning Proposals, to provide guidance and information on the process for preparing planning proposals.

The Gateway Process

DPIE is responsible for assessing Planning Proposals through the Gateway Process. Details of the Gateway Process are outlined in DPIE's A Guide to Preparing Local Environmental Plans.

Gateway Timeline

The following table summarises the key components of making an amendment to the Mid-Western Regional Local Environmental Plan 2012 and the progress of the current Planning Proposal through the various stages.

Stage	Completed	Comment
Preparation of a Planning Proposal		
Planning Proposal lodged with Council	✓	August 2020.
Staff Undertake Initial Assessment	✓	August 2020 – December 2020.
Council Decision to Support Proposal	✓	Planning Proposal reported to 9 December 2020 meeting.
Issue of Gateway Determination		
Council Requests Gateway Determination	✓	18 February 2021.
DPIE Issues Gateway Determination	✓	26 March 2021.
Gateway Conditions Satisfied	✓	14 September 2021.
Consultation		
Consultation with Relevant Agencies	✓	Agency consultation with: <ul style="list-style-type: none"> - NSW Rural Fire Services. - Department of Planning, Industry and Environment – Environment, Energy and Science. - Department of Planning, Industry and Environment – Water.
Public Exhibition	✓	Friday 24 September 2021 until Friday 22 October 2021 and Friday 12 November 2021 until Friday 10 December 2021.
Post-Exhibition Report to Council	✓	Planning Proposal Post Exhibition is being reported to 2 February 2022 meeting.
Finalisation of the Planning Proposal		
Council Exercises Delegation to Prepare LEP		
Draft LEP by Parliamentary Council		
Opinion Issued and LEP Made		

GATEWAY DETERMINATION

A conditional Gateway Determination was received on 26 March 2021 and included seven standard conditions.

CONSULTATION

Community Consultation

Condition 2 of the Gateway Determination required Council to undertake community consultation with a public exhibition period of 28 days. The community consultation was undertaken in accordance with 6.5.2 of A Guide to Preparing Local Environmental Plans (Department of Planning and Environment, 2018), Council's Community Participation Plan 2019 and Gateway Determination Condition 2. One submission was received from The Department of Planning Industry & Environment - Crown Lands who raised no concern regarding the Planning Proposal. Two submissions were received from adjoining landowners, the matters and comments raised in the submissions are summarised below with a staff comment provided. The submission is provided as Attachment 4.

MATTER/COMMENT RAISED IN THE SUBMISSION	STAFF COMMENT
Community Submissions	
Increased noise	The rezoning of the subject site and change in minimum lot size will result in additional dwellings within the locality. Noise generated on the lots is anticipated to be consistent with the rural setting. There is legislation that can be considered if noise is generated that is not determined to be 'fair and reasonable' by Council and other authorities.
Reduced Privacy / Aesthetic Impacts	The lots will be created with a minimum of 12 hectares. A lot of this area can achieve the minimum setbacks stipulated in Council's Development Control Plan. These setbacks have been determined to maintain amenity for adjoining landowners.
Increased Traffic and condition of Gibsons Lane.	The development application will include a subdivision plan, this will detail which lots will front Gibsons Lane. The traffic generated from the development and traffic impact will be considered by Council's Development Engineer in the assessment of the development application.
Unsympathetic use and recreation on adjoining land (motorbikes and domestic animals)	<p>The use of recreational vehicles and keeping of domestic animals is currently permissible in the zone. It is acknowledged that the number of recreational vehicles and domestic animals has the potential to increase in the locality.</p> <p>As mentioned above, there is legislation that can be considered in the event that noise becomes problematic.</p> <p>The Companions Animals Act 1998 requires animals to be contained. Offensive odours generated can be considered under the Local Government Act 1993.</p> <p>The type of animal and concern will determine the relevant legislation and what authority is responsible.</p>
Planning Consistency	<p>The Planning Proposal has been considered in accordance with Council's Comprehensive Land Use Strategy (CLUS).</p> <p>The CLUS details two Principles to assist in identifying rural lifestyle opportunities; proximity to town and the location of future development within 1 kilometre from specific sealed roads. The subject site satisfies these requirements.</p>

	Further to the two Principles, Constraints and Opportunities mapping was produced to identify the location of the most suitable land for future rural lifestyle opportunities. The subject site is identified on the Constraints and Opportunity mapping as an opportunity.
Gateway Determination	The Gateway Determination outlines what community consultation is required to be undertaken. It should be highlighted (not outlined in the Gateway Determination itself), submissions received are considered in this report and are being reported back to Council.
Indicative Layout	The layout submitted with the Planning Proposal is only indicative, its purpose is to demonstrate what type of lot yield can be achieved. A subdivision plan will be submitted with any future development application. The plan of subdivision, specifically layout, will be assessed during the consideration of the development application.
Potential for Further Subdivision	The Planning Proposal is for the change to a minimum lot size of 12 hectares. It is anticipated lots will be created at the 12 hectare minimum. Part of the subject site is covered by Council's draft Large Lot Residential Strategy, however the Planning Proposal does not propose changing the minimum lot size for 2 hectares.
Environmental, Social and Economic Impact	Part C of the Planning Proposal considered the environmental, social and economic impacts of the proposed rezoning. The environmental impact of the proposed development (specifically the subdivision layout) will again be considered by Council in the assessment of the future development application.
A meeting should be convened by Council with the proponent and neighbouring properties	This is not the role of Council. The public exhibition period is the time for the community to voice their comments in writing. Those who made submissions have the opportunity to talk at Open Day, held immediately prior to the Council meeting to consider the Planning Proposal.
The proponent did not consult the adjoining landowner	Noted.

Agency Consultation

The NSW Rural Fire Services, Department of Planning, Industry and Environment – Environment, Energy and Science Department of Planning, Industry and Environment – Water were consulted with in accordance with Gateway Determination Condition 3. No comments have been received.

FINALISATION OF PLANNING PROPOSAL

The recommendation of staff is to proceed with the finalisation of the Planning Proposal. This will involve drafting LEP provisions and amending maps.

Draft LEP

Included, as part of the Gateway Determination is a written Authorisation to Exercise Delegation of the Minister's functions under Section 3.36 (previously Section 59) of the *Environmental Planning and Assessment Act 1979*. The documentation will be forwarded to the Office of Parliamentary Counsel to draft the amendment to the LEP and seek an Opinion that the plan may be made. A copy of the request will be forwarded to DPIE – Western Region. Following the receipt of the Opinion, a request that the LEP amendment be notified will be made.

Community Plan implications

Theme	Looking After Our Community
Goal	Vibrant towns and villages
Strategy	Make available diverse, sustainable, adaptable and affordable housing options through effective land use planning

Strategic implications

Council Strategies

Mid-Western Regional Local Strategic Planning Statement, Our Place 2040.
Mid-Western Regional Comprehensive Land Use Strategy, August 2010.

Council Policies

The steps involved towards the notification of the Planning Proposal will not require any change to relevant policies.

Legislation

The Planning Proposal has been considered in accordance with Division 3.4 Environmental Planning Instruments - LEPs (previously Division 4) Local Environmental Plans of the *Environmental Planning and Assessment Act 1979* and the *Mid-Western Regional Local Environmental Plan 2012*.

Financial implications

Nil

Associated Risks

If Council does not wish to proceed with finalisation of the Planning Proposal, it can withdraw its support at this stage in the Gateway Process. Council would be required to formally resolve not to proceed with the Planning Proposal and advise the landowners and DPIE accordingly.

SARAH ARMSTRONG
MANAGER, STRATEGIC PLANNING

19 October 2021

Attachments:

1. Gateway Determination. (separately attached)
2. Confirmation to proceed to Public Exhibition. (separately attached)
3. Planning Proposal. (separately attached)
4. Submissions. (separately attached)

APPROVED FOR SUBMISSION:

JULIE ROBERTSON
ACTING GENERAL MANAGER