

Purpose: To outline the planning proposal, the reasons why the original Gateway determination was made, and the views of the council (if the review was proponent-initiated) and to consider and assess the request for a review of a Gateway determination.

Dept. Ref. No:	GDR_2013_CLARE_001_00
LGA	Clarence Valley
LEP to be Amended:	Clarence Valley LEP 2011
Address/ Location:	Lots 4 and 5, DP 758532, 4454 Lawrence Road, Woodford Island, Ilarwill
Proposal:	Amend the minimum lot size map to enable the erection of a dwelling.
Review request made by:	☐ The council ☒ A proponent
Reason for review:	☒ A determination has been made that the planning proposal should not proceed. ☐ A determination has been made that the planning proposal should be resubmitted to the Gateway. ☐ A determination has been made that has imposed requirements (other than consultation requirements) or makes variations to the proposal that the proponent or council thinks should be reconsidered.

Background information

Details of the planning proposal	The Planning Proposal (Tag C) seeks to amend the minimum lot size for Lots 4 and 5, DP 758532, 4454 Lawrence Rd, Ilarwil, from 40ha to approximately 2580m². The land is currently zoned R2 Rural Landscape under Clarence Valley LEP 2011. A location map showing the subject land is at Tag D. The amendment would alter the minimum lot size map to apply a lot size equivalent to the combined areas of Lots 4 and 5. This would then enable a development application for a dwelling house to be lodged with Council for consideration under clause 4.2B(3)(a) of the Clarence Valley LEP 2011. Clarence Valley Council requested a Gateway Determination under section 56 of the Environmental Planning and Assessment Act 1979 on 26 March 2013. On 19 April 2013 a delegate of the Minister for Planning and Infrastructure determined that the Planning Proposal should not proceed.
Reason for Gateway determination	Following consideration of the Planning Proposal (Tag C), the Planning Team report (Tag E) and the LEP Panel Recommendation Report (Tag F), a delegate of the Minister issued the Gateway Determination (Tag G) on 19 April 2013. It was determined that the Planning Proposal should not proceed as: 1. The proposal is inconsistent with the Mid North Coast Regional Strategy because it enables an additional dwelling house to be constructed on rural land in a high flood risk area, that is not identified in a department endorsed local residential strategy and does not satisfy the Sustainability Criteria established by the Strategy for development outside agreed growth area boundaries. 2. The proposal is inconsistent with S117 Directions 1.5 Rural Lands, 4.3 Flood Prone Land and 5.1 Implementation of Regional Strategies as the proposal to reduce the minimum lot size applying to land zoned for rural purposes is inconsistent with the Mid North Coast Regional Strategy and is located on land below the 1 in 100 year flood level. 3. The proposal will increase the potential for land use conflict with adjoining regionally significant farmland.

Views of council

Date council advised of request:	6 June 2013
Date of council response:	26 June 2013
Council response: List issues / points provided in response	Council staff have advised that the timeframe provided by the Gateway Determination Review has not permitted an opportunity to obtain a formal resolution of Council in regard to the review. Council's submission makes reference to the original Planning Proposal and Council's consideration of it. Council staff have advised that "In the circumstances, Council is unable to provide further comment to that already provided", but have requested that it be informed of the review outcome (Tag H).

Proponent justification

Details of justification:	On 28 May 2013 the proponent submitted a Gateway Determination Review Application Form with supporting information requesting a review. The supporting information (Tag I) addresses the reasons why the Planning Proposal was not supported.
Material provided in support of application/proposal:	The Proponent has responded to the reasons why the Gateway Determination did not support the Planning Proposal as follows: Inconsistent with the Mid North Coast Regional Strategy – • The site is outside an identified Growth Area but should be considered as a 'greenfield' site and may be developed subject to satisfying the sustainability criteria of the Mid North Coast Regional Strategy; Flooding - • Despite being flood prone, the subject land and surrounding houses were previously included in the Ilarwill village area and developed for residential purposes; • Design of a development on the site would incorporate measures to reduce risk to life and property in a flood event including building to an appropriate floor height, using flood compatible materials, implanting an early evacuation system and flood safe plan for onsite refuge; • The flood plain is typified by slow rising floodwaters, providing time for safe evacuation; • The nearby Ilarwill village has a flood protection levee that provides refuge; Inconsistencies with the s117 Ministerial Direction – • 1.5 Rural Land – the land has no agricultural potential and is already fragmented; • 4.3 Flood Prone Land – future flood risk can be managed by building to appropriate floor levels (see above comments); • 5.1 Implementation of Regional Strategies – the proposal satisfies the sustainability criteria of the Mid North Coast Regional Strategy; Increase the potential for land use conflict with adjoining regionally significant farmland – • The site is not suitable for agriculture and is surrounded by residential lots and land with no agricultural potential; and • Due to the residential nature of the surrounding land, and as the land has no agricultural activity or ability for agricultural activity, there are no existing or potential land use conflicts.

Assessment Summary

Department's assessment

Provide a summary assessment of the department's position/views on the request for review

In regard to the proponent's supporting information provided for the review, the following comments are made:

Mid North Coast Regional Strategy (MNCRS) and the sustainability criteria -

The MNCRS requires that urban rezoning proposals outside of the agreed growth area boundaries can only be considered if they satisfy the sustainability criteria. The planning proposal and gateway review request have however addressed the sustainability criteria within the MNCRS to justify the minimum lot size amendment (as the rural zoned land has not been identified for rural residential purposes in a Department endorsed local strategy as required by the MNCRS).

The sustainability criteria included in the Mid North Coast Regional Strategy allows for settlement expansion in non-coastal zone locations outside growth areas. The sustainability criteria highlights the need to avoid risks to human life and health and states that there should be no residential development within the 1:100 flood plain. The subject land is located within the 1:100 floodplain as shown on the attached extract from the Clarence Valley LEP 2011 Flood Planning Map (Tag J). Council has advised that Lawrence Road (which connects the subject land to the flood free areas at Ilrawill village) is inundated early in a flood event and that the modelled depth of flood waters in a 1:100 event is approximately 2m at the subject site, which would classify the land as being of high flood hazard. Whilst it is acknowledged that early evacuation and on-site refuge (if desired by residents), may be possible in smaller flood events, a significant inundation could require evacuation, placing additional pressure and danger on emergency services and inhabitants, contrary to the objectives of the sustainability criteria. The proponent's suggestion that any development on the site could be managed through on-site management measures and structural design does not change the inconsistency with the sustainability criteria, or the MNCRS Strategy, of placing a new rural dwelling unnecessarily in a high hazard flood area, particularly when existing flood free vacant residential land is available in the nearby Ilrawill village.

Section 117 Directions -

It is not considered that the inconsistencies with the s117 Ministerial Directions have been resolved by the proponent's additional justification as follows:

Direction 1.5 Rural Lands states that a Planning Proposal which affects rural land or changes the minimum lot size on rural zoned land must be consistent with the Rural Planning Principles and Rural Subdivision Principles of SEPP (Rural Lands) 2008. The proposal is considered to be inconsistent with some of the Rural Planning Principles and Rural Subdivision Principles for the following reasons;

- (a) The proposal seeks to increase the development potential of land in a high hazard flood area ;
- (b) The proposal has the potential to increase land use conflict between residential uses and neighbouring agricultural uses; and
- (c) The proposal is not consistent with some of the planning outcomes and actions of the Mid North Coast Regional Strategy.

The proponent's justification is not supported by a strategy approved by the Director General. It also does not adequately address the impacts of the proposal on the surrounding regional significant farmland and relies on the current lack or viability of agricultural activity on the land itself, rather than addressing the potential future conflict with the adjoining regionally significant farmland in larger holdings to the south and east of the site. It is therefore considered that the inconsistency with the direction has not been justified to alter the Gateway Determination.

Direction 4.3 Flood Prone Land provides that a Planning Proposal must not permit a significant increase in the development of land within a flood planning area. The proponent's suggestion that any development on the site could be managed through structural design and on-site management, as discussed above, is not considered satisfactory and does not change the inconsistency with this direction of permitting an increase in the development potential of a high hazard flood site, in the absence of a floodplain risk management plan prepared in accordance with the principles of the Floodplain Development Manual 2005.

Direction 5.1 Implementation of Regional Strategies requires that a planning proposal must be consistent with the regional strategy. As discussed above, the proposal is considered to be inconsistent

	with the intent of the Mid North Coast Regional Strategy. Potential Land Use Conflict with Regionally Significant Farmland - The subject land, and surrounding land, are identified as Regionally Significant Farmland by the Mid North Coast Farmland Mapping Project, as identified in the attached farmland map extract (Tag K). While it is acknowledged that the size and location of Lots 4 and 5 would make any agricultural use of the land itself limited, it is considered that the construction of an additional dwelling in the locality could increase the potential for land use conflict with future farming activities that may generate noise, odour or other emissions on the adjoining and adjacent regionally significant farmland. This matter has not been adequately addressed by the proponent. It is considered that the initial assessment in the Planning Team Report is appropriate and the determination made by the Gateway should remain unaltered. No appropriate justification has been provided demonstrating that the reasons for not supporting the Planning Proposal were not appropriate. It is also noted that Council staff did not support the proposal to permit a dwelling on the subject land for generally the same reasons as discussed above (Tag L). The elected Council resolved against the staff recommendation to support the proposal and to seek a Gateway determination.
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RECOMMENDATION

Reason for Review: A determination has been made that the planning proposal should not proceed.

Recommendation:	☒	The planning proposal should not proceed past Gateway. ☒ no amendments are suggested to original determination. ☐ amendments are suggested to the original determination.
	☐	The planning proposal should proceed past Gateway in accordance with the original submission.

Reason for Review: A determination has been made that the planning proposal should be resubmitted to the Gateway.

Recommendation:	☐	The planning proposal should be resubmitted to the Gateway ☐ no amendments are suggested to original determination. ☐ amendments are suggested to the original determination.
	☐	The planning proposal should not be resubmitted and should proceed past Gateway in accordance with the original submission.

Reason for Review: A determination has been made that has imposed requirements (other than consultation requirements) or makes variations to the proposal that the proponent or council thinks should be reconsidered.

Recommendation:	☐	Requirements should be imposed or variations made to the planning proposal ☐ no amendments are suggested to original determination. ☐ amendments are suggested to the original determination.
	☐	The suggested requirements or variations of the original Gateway determination are not necessary and the planning proposal should proceed past Gateway in accordance with the original submission.

Any additional comments:

If it is decided that a new Gateway Determination be made to enable the Planning Proposal to proceed, appropriate conditions should include:

- Prior to undertaking public exhibition, the following studies are to be completed and included in the material to be exhibited:

- a) A flood study;
- b) Investigation of the potential for Aboriginal cultural heritage on the site;
- c) A land use conflict risk assessment which includes the adjoining regionally significant farmland;
- Council is to consider applying a minimum lot size area which will prevent subdivision of the subject land and which may be used for other land in the local government area;
- Prior to undertaking public exhibition the Council is to prepare existing and proposed minimum lot size maps, at an appropriate scale, which clearly identify the subject site;
- The planning proposal is to be completed within 12 months;
- That a community consultation period of 14 days be undertaken;
- Council is to consult with the following State agencies and organisations;
 - a) the NSW Office of Environment and Heritage in relation to flooding and Aboriginal cultural heritage;
 - b) The Yaegl Local Aboriginal Land Council in relation to potential for Aboriginal cultural heritage;
- and
- It is recommended that the Director General (or his delegate) agree that the inconsistencies of the proposal with S117 Directions 1.5, 4.1, 4.3 and 5.1 are justified in accordance with the provisions of the directions.

Prepared by:

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REGIONAL PLANNING OFFICER

28.6.13

Endorsed by:

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Acting Regional Director
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