



PLANNING PROPOSAL

For the rezoning of

**Land at Clyde Essex Drive and the
Pacific Highway Gulmarrad**

Prepared by : Clarence Valley Council



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1. PRELIMINARY

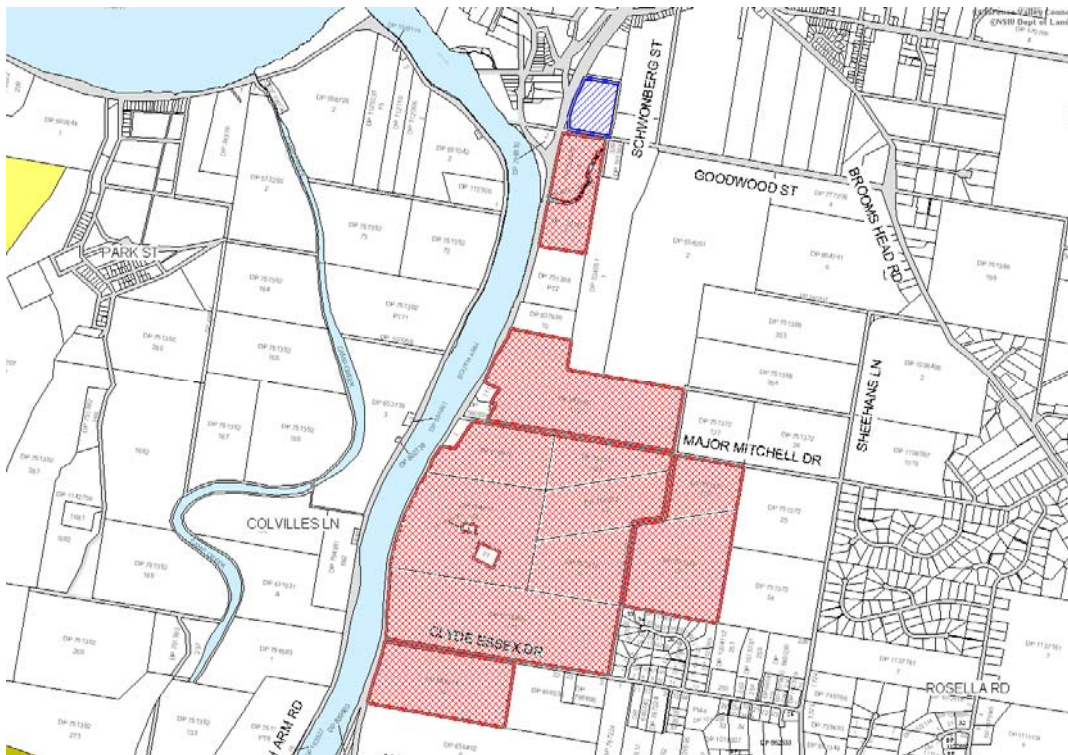
1.1 Context

This planning proposal has been drafted in accordance with Section 55 of the Environmental Planning and Assessment Act, 1979 and the Department of Planning's "A guide to preparing planning proposals" (July 2009). A gateway determination under Section 56 of the Act is requested.

1.2 Subject Land

This planning proposal applies to the following land and is identified in the sketch below (Figure 1).

Figure 1 Locality Sketch



- (1) Lot 10 DP 849374 Pacific Highway
- (2) Lot 171 DP 1134269 Clyde Essex Drive
- (3) Lot 22 DP 794013
- (4) Lot 2 DP 610919
- (5) Lot 16 DP 741372
- (6) Lot 22 DP 751372
- (7) Lot 42 DP 751372
- (8) Lot 123 DP 751372
- (9) Lot 122 DP 751372
- (10) Lot 112 DP 842062 Pacific Highway.
- (11) Lot 1 DP 230180
- (12) Lot 1 DP 798830



- (13) Lot 4 DP 230180
- (14, 15 & 16) Lots 1, 2 & 3 DP 126699.

The subject land is located at Gulmarrad on the eastern side Pacific Highway in the vicinity of Clyde Essex Drive, approximately 1.5 kilometres south of Maclean. Thirteen (13) of the lots are adjoining and the other 3 lots are situated 500 metres to the north. The total area included in the planning proposal is 258.6 hectares. TABLE 1 provides details of the subject land.

Figure 2 Aerial Photo



1.3 Current Zoning & Use

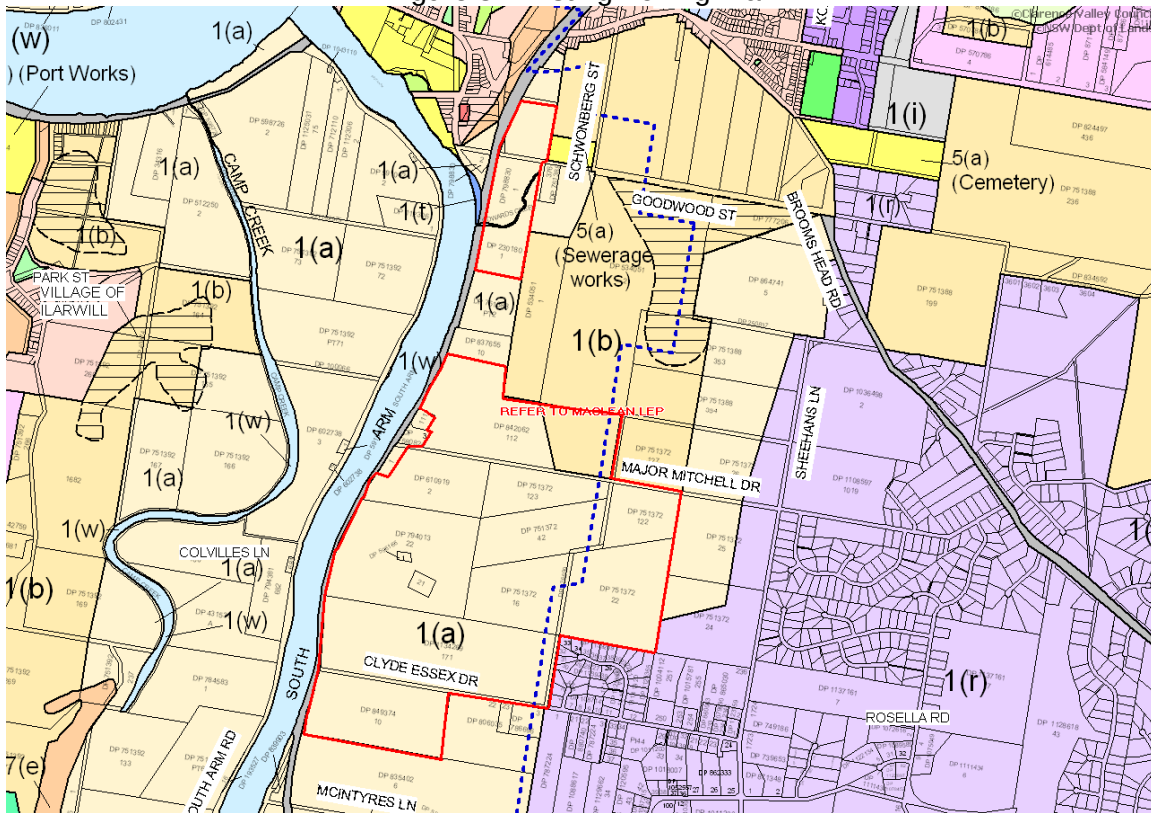
The majority of the land is currently zoned 1(a) Rural (Agricultural Protection) under Maclean Local Environmental Plan (LEP) 2001. Part of lot 112 DP 842062 is zoned 1(b) Rural (General Rural Land) under Maclean LEP 2001. See Figure 3.

Clarence Valley Draft LEP 2010 which is to be on public exhibition from 1 February 2010 zones the majority of the land RU1 Primary Production and zones part of lot 112 DP 842062 RU2 Rural Landscape.

The land is currently used for agricultural purposes. The land is under cane production or used for cattle grazing..



Figure 3 Existing Zoning Plan



1.4 Background

The subject land is in one ownership and is the subject of development consents for 3 dwellings and dwelling eligibilities for 2 dwellings. Another 2 lots could be consolidated to create over 40 hectares (i.e. 42.49 ha) to obtain a dwelling eligibility and another 3 lots could create a second possible dwelling eligibility, although the consolidated lot would be under 40 hectares (i.e. 38.85 ha.) This totals 6 dwelling approvals or dwelling entitlements and possibly another one dwelling eligibility. See TABLE 1.

A significant proportion of the land is identified as regionally significant farmland in the Mid North Coast Regional Strategy and is flood liable. Consultant Paul De Fina Town Planner has submitted a planning proposal to Council on behalf of the owners to transfer the dwelling approvals and entitlements to two of the lots to be used for rural residential size lots and for the remaining lots to be maintained in agricultural production. The fragmentation of the rural land by the approved and possible dwellings will be reduced and the land will be able to be used more efficiently for agricultural purposes. The idea is to relocate the dwellings to flood free land adjacent to rural residentially zoned land. The aim is to avoid land use conflicts between residential and agricultural use of the land.

Figure 4 identifies land subject to the Probable Maximum Flood (PMF) and Regionally Significant Farmland is shown by hatching. Figure 5 identifies bush fire prone land.



TABLE 1 Property Details

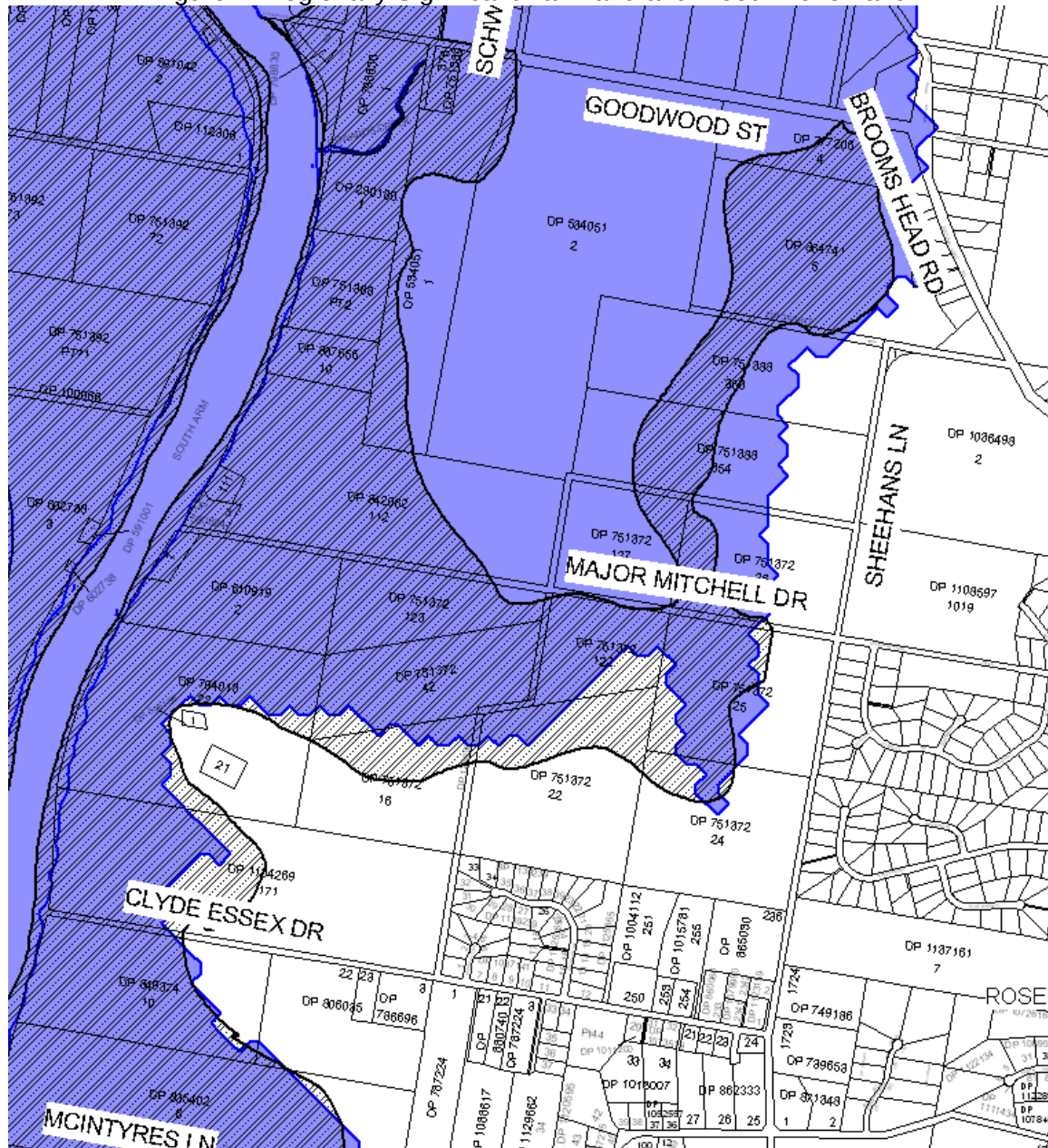
No	Property Description	Lot Size ha.	Maclean LEP 2001 Zone	CV Draft LEP zone	CV Draft LEP Min Lot size	Dwelling Approvals/ Dwelling Eligibility	Land Use	Land Characteristic	Regionally Significant Farm land	Comments
1	Lot 10 DP 849374 117 Pacific Hwy	24.39	1(a) Rural	RU1	40 ha	DA 2008/0706 Dwelling approved 10 Dec 2008 CC 2008/0659 Dwelling approved 14 April 2009	Cane	75% flood liable - NE corner flood free - Not bush fire prone. - Affected by Pacific Highway Upgrade Route.	Yes. 75%	Dwelling approved.
2	Lot 171 DP 1134269 108 Clyde Essex Drive	43.18	1(a) Rural	RU1	40 ha	DA 2008/0121 Dwelling approved 27 June 2008 CC 2008/0125 Dwelling approved 24 August 2009	Cane Grazing	25% flood liable Eastern portion flood free. - Part bushfire prone, centre of lot. - Affected by Pacific Highway Upgrade Route	Yes. 45%	Dwelling approved.
3	Lot 22 DP 794013	34.68	1(a) Rural	RU1	40 ha	SCH 2008/0013 Dwelling eligibility approved 5 March 2008	Cane	60% flood liable - SW corner flood free. - Part bush fire prone. SW area of lot. - Affected by Pacific Highway Upgrade Route.	Yes. 70%	Dwelling eligibility.
4	Lot 2 DP 610919	15.38	1(a) Rural	RU1	40 ha	SCH 2008/0014 Dwelling eligibility approved 12 November 2008	Cane	100% flood liable. - Not bush fire prone. - Affected by Pacific Highway Upgrade Route.	Yes. 100%	Dwelling eligibility.
5	Lot 16 DP 751372	16.49	1(a) Rural	RU1	40 ha	Possible to consolidate with lot 22 to create lot > 40 ha to obtain dwelling eligibility	Cane Grazing	- NE corner flood liable 90% flood free. - SW corner of lot bush fire prone.	Yes. 30%	Possible dwelling eligibility when consolidated with Lot 22. REQUEST FOR RURAL RESIDENTIAL LOTS.



No	Property Description	Lot Size ha.	Maclean LEP 2001 Zone	CV Draft LEP zone	CV Draft LEP Min Lot size	Dwelling Approvals/ Dwelling Eligibility	Land Use	Land Characteristic	Regionally Significant Farm land	Comments
6	Lot 22 DP 751372	26	1(a) Rural	RU1	40 ha	Possible to consolidate with lot 16 to create lot > 40 ha to obtain dwelling eligibility	Grazing	- NW corner flood liable 90% flood free. - Not bush fire prone.	Yes. 30%	See above. REQUEST FOR RURAL RESIDENTIAL LOTS.
7	Lot 42 DP 751372	16.49	1(a) Rural	RU1	40 ha	No dwelling eligibility. Consolidation of lot 42, lot 123 & lot 122 amounts to 38.85ha.	Cane	90 % flood liable - SW corner flood free. - Not bush fire prone.	Yes. 100%	No dwelling eligibility. Consolidation of lot 42, lot 123 and lot 122 is just less than the 40 hectares required form a dwelling.
8	Lot 123 DP 751372	12.34	1(a) Rural	RU1	40 ha	No dwelling eligibility.	Cane	100% flood liable. - Small area NE corner of lot bush fire prone.	Yes. 100%	As above.
9	Lot 122 DP 751372	10.02	1(a) Rural	RU1	40 ha	No dwelling eligibility.	Cane	75% flood liable SW corner flood free. - Small area along northern boundary of lot bush fire prone.	Yes. 100%	As above.
10	Lot 112 DP 842062 Pacific Hwy	38.49	Part 1(a) & part 1(b) Rural	Part RU1 & part RU2	40 ha	DA 2008/0794 Dwelling approved 14 April 2009 On site septic approved 20 April 2009	Cane	100% flood liable. - Eastern area of lot is bush fire prone. - Affected by Pacific Highway Upgrade Route.	Yes. 70%	Dwelling approved
11 12 13	Lot 1 DP 230180 Lot 1 DP 798830 Lot 4 DP 230180	7.172 6.065 6.023	1(a) Rural	RU1	40 ha	SCH 2008/0011 Dwelling eligibility application refused 26 February 2008 No dwelling eligibility.	Cane	100% flood liable. - Not bush fire prone. - Affected by Pacific Highway Upgrade Route	Yes. 100%	No dwelling eligibility.

No	Property Description	Lot Size ha.	Maclean LEP 2001 Zone	CV Draft LEP zone	CV Draft LEP Min Lot size	Dwelling Approvals/ Dwelling Eligibility	Land Use	Land Characteristic	Regionally Significant Farm land	Comments
14 15 16	Lots 1, 2 & 3 DP 126699	1.872 total	1(a) Rural	RU1	40	No dwelling eligibility.	Cane Grazing	- Lots 1 & 2 100% flood Liable, 25% of lot 3 flood liable 10% bush fire prone.	Yes. Lots 1 & 2 100%. Lot 3 50%	Closed road reserves

Figure 4 Regionally Significant Farmland and Flood Prone Land





2. OBJECTIVE OR INTENDED OUTCOME

The intent of the planning proposal is to transfer three (3) approved dwellings, two (2) approved dwelling eligibilities and two (2) potential dwellings from consolidated lots, one of which has an agreed dwelling eligibility, to be relocated away from regionally significant farmland and flood prone land to higher land which is currently in the same ownership. The land to where the dwelling approvals/ eligibilities are to be transferred is lot 16 DP 751372, Lot 22 DP 751372 and Lot 3 DP 126699 which is adjacent to land zoned 1(r) Rural (Residential) in Maclean LEP 2001.

The planning proposal is to enable 7 rural residential lots on lot 16 and lot 22 DP 751372 and lot 3 DP 126699 (the small lot between the other 2 lots) and prohibit further dwelling houses on the remainder of the subject land. This is the planning proposal as requested by consultant Paul De Fina.

3. EXPLANATION OF PROVISIONS

The objective of the Proposal will be achieved by:

- (a) Amending the map to Maclean LEP 2001 to rezone lot 16 DP 751372, Lot 22 DP 751372 and Lot 3 DP 126699 as 1(r) Rural (Residential).
- (b) Adding a clause to Maclean LEP 2001 which limits the subdivision of lot 16 DP 751372, Lot 22 DP 751372 and Lot 3 DP 126699 to 7 lots and a minimum lot size of 4,000m².
- (c) Adding a clause to Maclean LEP 2001 which prohibits development for the purpose of a dwelling house on the lots listed below:
 - (1) Lot 10 DP 849374 Pacific Highway
 - (2) Lot 171 DP 1134269 Clyde Essex Drive
 - (3) Lot 22 DP 794013
 - (4) Lot 2 DP 610919
 - (5) Lot 42 DP 751372
 - (6) Lot 123 DP 751372
 - (7) Lot 122 DP 751372
 - (8) Lot 112 DP 842062 Pacific Highway.
 - (9) Lot 1 DP 230180
 - (10) Lot 1 DP 798830
 - (11) Lot 4 DP 230180
 - (12) Lot 1 DP 126699
 - (13) Lot 2 DP 126699

Rezoning of the land to 1(r) Rural (Residential) would permit subdivision to 4000m² lots. The 3 lots proposed to be zoned for rural residential development total 42.49 hectares, which has the potential for 106 lots.

Alternatively, should the planning proposal proceed after approval of the Clarence Valley Draft LEP 2010 the objective could be achieved by:

- (a) Amending the Clarence Valley LEP 2010 Land Zoning Map to rezone lot 16 DP 751372, Lot 22 DP 751372 and Lot 3 DP 126699 as R5 Large Lot Residential.



- (b) Amending the Clarence Valley LEP 2010 Minimum Lot Size Map to show rezone lot 16 DP 751372, Lot 22 DP 751372 and Lot 3 DP 126699 as having a minimum lot size of 4,000m² and a provision to restrict subdivision to 7 lots.
- (c) Amending the Clarence Valley LEP 2010 Minimum Lot Size Map to show the lots listed above as having a minimum lot size of 200 hectares.

4. JUSTIFICATION

4.1 Is the Proposal a result of any strategic study or report?

No, the planning proposal is not the result of any strategy or study.

However the applicant argues that the planning proposal is aiming to protect regionally significant farmland which is consistent with the objectives of the Mid North Coast Regional Strategy. The applicant also argues that the planning proposal is consistent with the principles of the Mid North Coast Farmland Mapping Project as the planning proposal is implementing measures to avoid land use conflict. Although there is no disputing these arguments the planning proposal is not the result of any strategic study or report.

4.2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. Maclean LEP 2001 does not make provision for the transfer of dwelling entitlements from one lot to another lot. The intended outcome is best achieved by changing the zoning and minimum lot size controls for the land. Alternatively, a special clause could be included in Maclean LEP 2001 to apply to the subject land and prohibit the use of most of the land for dwelling purposes and indicate the maximum number of dwellings to be permitted on lot 16 DP 751372, Lot 22 DP 751372 and Lot 3 DP 126699.

4.3 Is there a net community benefit?

Yes. It is considered that there is a net community benefit of this planning proposal.

Benefits include:

- (a) Protection of regionally significant farmland, by reducing fragmentation of the land by additional dwellings
- (b) Continuation of a viable sugar cane farm.
- (c) Reduced land use conflicts in relation to residential and agricultural land uses.
- (d) Location of dwellings on flood free land.
- (e) Location of dwellings away from the Pacific Highway, with associated noise and potential land use conflicts.
- (f) Location of dwellings adjacent to rural residential land.



5. RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK

5.1 Applicable Regional Strategy – Mid North Coast Regional Strategy

The Mid North Coast Regional Strategy (March 2009) is the applicable regional strategy.

This Regional Strategy aims to protect regionally significant farmland. The planning proposal aims to protect regionally significant farmland by clustering dwellings that potentially could be erected on rural land that is regionally significant farmland and locating these dwellings in an area adjacent to rural residential development.

The planning proposal does not include a significant change to the settlement pattern of the area. The planning proposal in effect means an increase of rural residential development by 7 dwellings and a decrease in the potential rural dwellings by 7 dwellings. There are no additional dwellings proposed to be permitted. The planning proposal is to transfer dwellings from rural land to land adjoining existing rural residential development to enable a more efficient use of the rural land.

Accordingly, the proposal is considered to be consistent with the Mid North Coast Regional Strategy. See Appendix 2.

5.2 Consistency with Council's Community Strategic Plan, or other local strategic plan

Valley Vision 2020, July 2008, is Council's adopted corporate strategic plan, which is based on the Sustainability Initiative adopted by Council in 2006. Sustainability principles underlie Council's decision making. The goals of Valley Vision include protecting the land and a health economic activity. The planning proposal is consistent with these goals. The purpose of the planning proposal is to enable the continued agricultural use of the majority of the subject land without fragmentation by residential use and associated potential land use conflicts. The proposal is consistent with Council's Valley Vision 2020.

5.3 Consistency with applicable State Environmental Planning Policies

The proposal is consistent with applicable State Environmental Planning Policies (SEPPs). Refer to the checklist against these policies at Appendix 3.

5.4 Consistency with applicable Ministerial Directions (s.117 Directions)

The proposal is consistent with applicable Section 117 Directions. Refer to the checklist against these Directions at Appendix 4.

6. ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACT

6.1 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

Not considered likely.



6.2 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The subject land, including the land where the potential dwellings are to be transferred to has been under agricultural production for many years. There is a possibility that the land could be contaminated from agricultural use or the storage of chemicals and the like associated with farming. Therefore it is recommended that prior to construction of dwellings soil testing be carried out for any likely chemicals associated with agricultural uses.

6.3 How has the planning proposal adequately addressed any social and economic effects?

An investigation of the social and economic effects of the planning proposal is not considered necessary given the nature of the proposal.

7. STATE AND COMMONWEALTH INTERESTS

7.1 Is there adequate public infrastructure for the planning proposal?

Public road access will need to be constructed, via Clyde Essex Drive to the area proposed for rural residential sized lots. Road access would also be required in the case of the dwellings being dispersed throughout the area on different lots. The planning proposal for dwellings being grouped in one area makes for a better use of public road infrastructure than providing public road access to 7 dispersed housing sites, all of which would require some degree of public road access. The amount of public road required to be constructed is reduced. There is also the issue of on-going maintenance of public roads, particularly on flood liable land. On-going maintenance costs are reduced by the dwellings being located together on flood free land.

7.2 What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

A gateway determination has not yet been issued. There has been no consultation with State and Commonwealth public authorities to date.

8. COMMUNITY CONSULTATION

It is considered that the proposal is a "low impact planning proposal" under Section 4.5 of *"A guide to preparing local environmental plans"*.

On this basis, it is intended that the planning proposal be advertised for 14 days in accordance with Section 4.5 of *"A guide to preparing local environmental plans"*. It is also intended to write directly to land owners who surround the subject land

A public hearing is not considered necessary.



APPENDIX 1: MID NORTH COAST REGIONAL STRATEGY COMPLIANCE

Rural Residential development

- (1)** A planning proposal /LEP for future rural residential development must be in accordance with a Local Growth Management Strategy agreed to by Council and the Department of Planning

Relevant / Consistent / Inconsistent /Comments

Not inconsistent. The planning proposal is not inconsistent with the Clarence Valley Settlement Strategy, which requires rural residential development to be close to settlements with services and community facilities. The Strategy requires building on existing rural residential cluster areas. The Strategy also discourages further dispersed residential settlement. The planning proposal is in keeping with this settlement principle.
The scale of the planning proposal is not significant in terms of increased rural residential development. An additional 7 rural residential lots is proposed. The planning proposal is to transfer dwellings from rural land to land adjoining existing rural residential development to enable a more efficient use of the rural land.

- (2)** A planning proposal /LEP for future rural residential development must be consistent with the principles of the Settlement Planning Guidelines in the Mid North Coast Regional Strategy. (See page 16 Regional Strategy).

Relevant / Consistent / Inconsistent /Comments

Not inconsistent. The transfer of dwellings is within the same locality. The planning proposal does not include a significant change to the settlement pattern of the area. The planning proposal does not include a capacity for an increase in dwelling numbers or population growth.

- (3)** Is the land within the Coastal Area? No new rural residential development is permitted within the Coastal Area, except in existing zones or in an approved local growth management strategy or rural residential land release strategy.

Relevant / Consistent / Inconsistent /Comments

Not inconsistent. The majority of the subject land is within the Coastal Area. The planning proposal in effect means an increase of rural residential development by 7 dwellings and a decrease in the potential rural dwellings by 7 dwellings. There are no additional dwellings proposed to be permitted.

- (4)** A planning proposal/ LEP for rural residential land must be integrated with the supply of infrastructure and transport.

Relevant / Consistent / Inconsistent /Comments

Consistent. The 7 dwellings are to be located in the same locality, where servicing is available through extension of existing services.



APPENDIX 1: MID NORTH COAST REGIONAL STRATEGY COMPLIANCE

Subdivision, houses and other uses in rural zones

- (1)** A planning proposal/ LEP must maintain appropriate subdivision standards for rural zones consistent with the State Environmental planning Policy (Rural Lands) 2008.

Relevant / Consistent / Inconsistent /Comments

Not inconsistent. The planning proposal is consistent with the aim of the Rural Lands SEPP in that it introduces measures designed to reduce land use conflicts. The planning proposal and Rural Land SEPP also share the same aim of facilitating the orderly and economic use and development of rural lands for rural purposes.

The planning proposal is consistent with the rural planning principles of the SEPP. The planning proposal aims to protect the productivity of the rural land by limiting the fragmentation of the land by dwellings being scattered throughout the land holding on various lots.

The planning proposal is consistent with the rural subdivision principles of the SEPP in that the aim of the planning proposal is to reduce rural land fragmentation and minimise land use conflicts. By locating the potential dwelling in one area, adjacent to rural residential development, the potential for conflict between the dwellings and rural land uses is reduced.

The natural and physical constraints of the land have been considered in locating the transferred dwellings to flood free land and land with limited bush fire constraints. The land identified for the location of the dwellings is only partly identified as regionally significant farmland. In comparison the majority of the other lots that make up the subject land are identified as regionally significant farmland.

- (2)** A planning proposal/ LEP must include minimum subdivision standards for rural and environmental protection zones.

Relevant / Consistent / Inconsistent /Comments

Not inconsistent. The aim of the planning proposal to prohibit further dwellings on rural land and this can be achieved by increasing the minimum lot size for some lots and decreasing the minimum lot size for the 2 lots where rural residential scale development is to occur.

- (3)** A planning proposal/ LEP must include provisions to limit dwellings in rural and environmental protection zones.

Relevant / Consistent / Inconsistent /Comments

Not inconsistent. The planning proposal involves the transfer of potential dwellings.

- (4)** A planning proposal/ LEP should generally locate new caravan parks and manufactured home estates where there is any potential for permanent accommodation to occur in urban areas.

Relevant / Consistent / Inconsistent /Comments

Not relevant.

- (5)** A planning proposal/ LEP should locate major health and education facilities in urban areas.

Relevant / Consistent / Inconsistent /Comments

Not relevant.



APPENDIX 2: STATE ENVIRONMENTAL PLANNING POLICY CHECKLIST

STATE ENVIRONMENTAL PLANNING POLICY	COMPLIANCE	COMMENTS
SEPP 1 Development Standards.	n/a	Not applicable.
SEPP 2 Minimum Standards for Residential Flat Buildings. Repealed by SEPP 20.	Repealed.	
SEPP 3 Castlereagh Liquid Waste Depot. Repealed by Infrastructure SEPP.	Repealed.	
SEPP 4 Development Without Consent and Miscellaneous Complying and Exempt Development.	n/a	Not applicable.
SEPP 5 Housing for Older People with a Disability. Repealed by Seniors Living SEPP.	Repealed.	
SEPP 6 Number of Storeys in a Building	n/a	Not applicable.
SEPP 7 Port Kembla Coal Loader. Repealed by Infrastructure SEPP.	Repealed.	
SEPP 8 Surplus Public Land. Repealed by Infrastructure SEPP.	Repealed.	
SEPP 9 Group Homes. Repealed by Infrastructure SEPP.	Repealed.	
SEPP 10 Retention of Low Cost Rental Accommodation.	n/a	Not applicable.
SEPP 11 Traffic Generating Developments. Repealed by Infrastructure SEPP.	Repealed.	
SEPP 12 Public Housing (dwelling houses). Repealed by SEPP 53	Repealed.	
SEPP 13 Sydney Heliport. Repealed by Sydney REP 26.	Repealed.	
SEPP 14 Coastal Wetlands.	Complies	The subject land is not affected by SEPP 14 wetlands
SEPP 15 Multiple Occupancy of Rural Land. Repealed by SEPP 42. SEPP 15 Rural Land-Sharing Communities.	Complies	Rural land sharing is not required to enable the viable running of the agricultural land.
SEPP 16 Tertiary Institutions. Repealed by Infrastructure SEPP.	Repealed.	
SEPP 17 Design of Buildings In Certain Business Centres.	Did not Proceed	
SEPP 18 Public Housing. .	Did not proceed	
SEPP 19 Bushland in Urban Areas.	n/a	Not applicable.
SEPP 20 Minimum Standards for Residential Flat Buildings. Repealed by SEPP 53.	Repealed.	
SEPP 21 Caravan Parks.	n/a	Not applicable.
SEPP 22 Shops and Commercial Premises.	n/a	Not applicable.
SEPP 23	Not allocated.	
SEPP 24 State Roads.	Did not proceed	
SEPP 25 Residential Allotment Sizes. Repealed by SEPP 53.	Repealed.	
SEPP 26 Littoral Rainforests.	Complies	The subject land is not affected by SEPP 26 Littoral Rainforests.
SEPP 27 Prison Sites.	Repealed.	



STATE ENVIRONMENTAL PLANNING POLICY	COMPLIANCE	COMMENTS
Repealed by Infrastructure SEPP.		
SEPP 28 Town Houses & Villa Houses. Repealed by SEPP 25 Amendment 4.	Repealed.	
SEPP 29 Western Sydney Recreation Area.	Not applicable	
SEPP 30 Intensive Agriculture	n/a	Not applicable
SEPP 31 Sydney (Kingsford Smith) Airport. Repealed by Infrastructure SEPP.	Repealed.	
SEPP 32 Urban Consolidation (Redevelopment of Urban Land).	n/a	Not applicable.
SEPP 33 Hazardous & Offensive Development.	n/a	Not applicable.
SEPP 34 Major Employment Generating Industrial Development. Repealed by Major projects SEPP.	Repealed.	
SEPP 35 Maintenance Dredging of Tidal Waterways. Repealed by Infrastructure SEPP.	Repealed/	
SEPP 36 Manufactured Home Estates.	n/a	Not applicable.
SEPP 37 Continued Mines & Extractive Industries Repealed by Mining, Petroleum Production and Extractive Industries SEPP.	Repealed.	
SEPP 38 Olympic games & Related Projects. Repealed by Major Projects SEPP.	Repealed.	
SEPP 39 Split Island Bird Habitat.	Not Applicable	
SEPP 40 Sewerage Works.	Did not proceed.	
SEPP 41 Casino/Entertainment Complex.	Not Applicable	
SEPP 42 Multiple Occupancy & Rural Land. .	Repealed by SEPP 15	
SEPP 43 New Southern Railway. Repealed by Infrastructure SEPP.	Repealed.	
SEPP 44 Koala Habitat Protection.	Complies	The subject land has been under cultivation and is not core koala habitat.
SEPP 45 Permissibility of Mining. Repealed by Mining, Petroleum Production and Extractive Industries SEPP.	Repealed.	
SEPP 46 Protection & Management of Native Vegetation. Repealed by Native Vegetation Conservation Act 1997.	Repealed.	
SEPP 47 Moore Park Showground.	Not Applicable	
SEPP 48 Major Putrescible Landfill Sites. Repealed by Infrastructure SEPP.	Repealed.	
SEPP 49 Tourism Accommodation in Private Homes.	Draft only.	
SEPP 50 Canal Estate Development.	n/a	Not applicable.
SEPP 51 Eastern Distributor. Repealed by Infrastructure SEPP.	Repealed.	
SEPP 52 Farm Dams & Other Works in Land & Water Management Plan Areas.	Not Applicable	
SEPP 53 Metropolitan Residential Development	Not Applicable	
SEPP 54 Northside Storage Tunnel. Repealed by Infrastructure SEPP.	Repealed.	
SEPP 55 Remediation of Land.	Complies	Soil testing for contaminants related to agricultural use of the land should be carried out



STATE ENVIRONMENTAL PLANNING POLICY	COMPLIANCE	COMMENTS
		for the proposed rural residential lots.
SEPP 56 Sydney Harbour Foreshores & Tributaries. Repealed by Major Projects SEPP Amendment.	Repealed.	
SEPP 57	Not allocated.	
SEPP 58 Protecting Sydney's Water Supply. Repealed by Drinking Water Catchments REP No 1.	Repealed.	
SEPP 59 Central Western Sydney Economic & Employment Area.	Not Applicable	
SEPP 60 Exempt & Complying Development.	Not Applicable	
SEPP 61 Exempt & Complying Development for White Bay & Glebe Island Ports. Repealed by Infrastructure SEPP.	Repealed.	
SEPP 62 Sustainable Aquaculture.	n/a	Not applicable.
SEPP 63 Major Transport Projects. Repealed by Infrastructure SEPP.	Repealed.	
SEPP 64 Advertising & Signage.	n/a	Not applicable.
SEPP 65 Design Quality of Residential Flat Buildings.	n/a	Not applicable.
SEPP 66 Integration of Land Use & Transport. Draft.	n/a	Not applicable.
SEPP 67 Macquarie Generation Industrial Development Strategy. Repealed by Infrastructure SEPP.	Repealed	
SEPP 68	Not allocated.	
SEPP 69 Major Electricity Supply Projects. Repealed by Infrastructure SEPP.	Repealed.	
SEPP 70 Affordable Housing (Revised Schemes).	Not Applicable	
SEPP 71 Coastal Protection	Complies	The majority of the subject land is within the coastal zone. The planning proposal does not impact on foreshore areas
SEPP 72 Linear Telecommunications Development - Broadband. Repealed by Infrastructure SEPP.	Repealed.	
SEPP 73 Kosciuszko Ski Resorts Repealed by SEPP Kosciuszko National Park – Alpine Resorts.	Repealed.	
SEPP 74 Newcastle Port & Employment Lands Repealed by Major Projects SEPP.	Repealed.	
SEPP (Housing for Seniors or People with a Disability) 2004	n/a	Not applicable.
SEPP Building Sustainability Index: BASIX 2004	n/a	Not applicable.
SEPP (ARTC Rail Infrastructure) 2004 Repealed by Infrastructure SEPP.	Repealed.	
SEPP (Sydney Metropolitan Water Supply) 2004 Repealed by Infrastructure SEPP.	Repealed.	
SEPP (Development on Kurnell Peninsula) 2005	Not applicable	
SEPP (Major Projects) 2005	n/a	Not applicable.
SEPP (Sydney Regional Growth Centres) 2006	Not applicable	
SEPP (Mining, Petroleum Production and	Not applicable.	



STATE ENVIRONMENTAL PLANNING POLICY	COMPLIANCE	COMMENTS
Extractive Industries) 2007		
SEPP (Temporary Structures) 2007	n/a	Not applicable.
SEPP (Infrastructure) 2007	n/a	Not applicable.
SEPP (Kosciuszko National Park – Alpine Resorts) 2007	Not applicable.	
SEPP (Rural Lands) 2008	Complies	The planning proposal is consistent with the aim of the Rural Lands SEPP in that it introduces measures designed to reduce land use conflicts and shares the aim of facilitating the orderly and economic use and development of rural lands for rural purposes. The aim of the planning proposal is to reduce rural land fragmentation and minimise land use conflicts.
SEPP (Exempt and Complying Development Codes) 2008	n/a	Not applicable.
SEPP (Western Sydney Parklands) 2009	Not applicable	
SEPP (Affordable Rental Housing) 2009	n/a	Not applicable.
SEPP (Western Sydney Employment Area) 2009	Not applicable	
SEPP – North Coast Regional Environmental Plan 1988 (NCREP)	Applicable	This document now has the status of a SEPP – specific relevant provisions are addressed below.
NCREP <i>clause 7 – Plan Preparation – prime crop or pasture land</i> requires that prime crop or pasture land be included in an agricultural protection zone and that a minimum lot size to enable efficient and sustainable agricultural protection apply	Consistent	The planning proposal aims to retain prime agricultural land in agricultural production and to reduce the fragmentation of agricultural land. Land to be used for the transfer of the dwellings is only partly identified as Regionally Significant Farmland. The minimum lot size for a dwelling is to be increased for most of the land.
NCREP <i>clause 20 – Plan Preparation – Rural Land release strategy</i> requires land for rural residential development to be consistent with a rural land release strategy.	Not inconsistent	The planning proposal is not inconsistent with the Clarence Valley Settlement Strategy, which requires rural residential development to be close to settlements with services and community facilities. The planning proposal is in keeping with this settlement principle of discouraging further dispersed residential settlement. .



STATE ENVIRONMENTAL PLANNING POLICY	COMPLIANCE	COMMENTS
NCREP <i>clause 21 – Plan Preparation – dwellings on rural land</i> requires a minimum lot size for the erection of a dwelling	Not inconsistent	The planning proposal includes minimum lot sizes for dwellings.
NCREP <i>clause 45A – Plan Preparation – flood liable land</i> does not allow the alteration of the zoning of flood liable land that is in a rural zone to a residential zone.	Consistent.	The planning proposal is to transfer potential dwellings to predominately flood free land. There is no change in zoning to residential.
NCREP <i>clause 53 and 55 – Plan Preparation – Primary arterial roads</i> and existing controls for main or arterial roads requires primary arterial roads to be identified and restricted access applied.	Consistent.	The planning proposal reduces the number of potential dwellings in proximity to the Pacific Highway.

**APPENDIX 3: SECTION 117 DIRECTION CHECKLIST**

SECTION 117 DIRECTION	COMPLIANCE	COMMENTS
1. EMPLOYMENT AND RESOURCES		
1.1 Business and Industrial Zones	Not applicable.	
1.2 Rural Zones	Complies	The planning proposal is to transfer 7 potential dwellings to 2 lots from surrounding rural lots. There is no increase in dwelling numbers overall or a significant change to the settlement pattern. The dwellings are proposed to be located adjacent to land in a rural residential zone.
1.3 Mining, Petroleum Production and Extractive industries	Not applicable.	
1.3 Oyster Aquaculture	Not applicable.	
1.5 Rural Lands	Complies	The planning proposal aims to protect the productivity of the rural land by limiting the fragmentation of the land by dwellings being scattered throughout the land holding on various lots. Reducing rural land fragmentation and minimising land use conflicts is consistent with the SEPP Rural Lands 2008.
2. ENVIRONMENT AND HERITAGE		
2.1 Environmental protection Zones	Not applicable.	
2.2 Coastal protection	Complies	No controls related to the coastal zone are changed by the planning proposal.
2.3 Heritage Conservation	Not applicable.	
2.4 Recreation Vehicle Areas	Not applicable.	
3. HOUSING, INFRASTRUCTURE AND URBAN DEVELOPMENT		
3.1 Residential Zones	Not applicable.	
3.2 Caravan Parks and Manufactured Home Estates	Not applicable.	
3.3 Home Occupations	Not applicable.	
3.4 Integrated Land Use and Transport	Not applicable.	
3.5 Development Near Licensed Aerodromes	Not applicable.	



SECTION 117 DIRECTION	COMPLIANCE	COMMENTS
4. HAZARD AND RISK		
4.1 Acid Sulphate Soils	Complies.	The subject land is affected by acid sulfate soils. LEP controls related to acid sulfate soils still apply.
4.2 Mine Subsidence and Unstable land	Not applicable.	
4.3 Flood Prone Land	Complies	The majority of the subject land is flood prone land. Existing development controls related to flood impacts are not proposed to be changed by the planning proposal. The proposal transfers potential dwellings from flood prone land to flood free land.
4.4 Planning for Bushfire Protection	Complies	A small proportion of one of the lots where the dwellings are to be located is bushfire prone. Bush fire management controls apply to the subject land regardless of the planning proposal.
5. REGIONAL PLANNING		
5.1 Implementation of Regional Strategies	Complies	The planning proposal is generally consistent with the Mid North Coast Regional Strategy
5.2 Sydney Drinking Water Catchments	Not applicable.	
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Not applicable.	
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Not applicable.	
5.5 Development in the Vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	Not applicable.	
5.6 Sydney to Canberra Corridor	Not applicable.	
5.7 Central Coast	Not applicable.	
5.8 Second Sydney Airport: Badgerys Creek	Not applicable.	
6. LOCAL PLAN MAKING		
6.1 Approval and Referral Requirements	Not applicable.	
6.2 Reserving Land for Public Purposes	Not applicable.	
6.3 Site Specific Provisions	Not applicable.	

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Town Planner

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12 November 2009

General Manager
 Clarence Valley Council
 Locked Bag 23
 Grafton NSW 2460

Dear Sir

Re: Planning Proposal for:

Lots 16, 22, 42, 122, & 123 in DP 751372
Lot 171 in DP 1134268, (formally Lot 101 DP 837736 & Lot 17 DP 751372).
Lot 112 in DP 842062
Lot 10 in DP 849374
Lot 2 in DP 610919
Lot 22 in DP 794013.

The subject properties are owned by J. Hirst, M.J Hirst and K. Hirst. The subject land has been the subject of a number of development approvals and dwelling entitlements over the past two years.

The subject sites are adjoining allotments that collectively are used for sugar cane farming and cattle grazing. For the most part the subject sites are located in the land designated as "Regionally Significant Farmlands" and most lots used for cane farming are flood liable.

It is proposed that Council give its consideration to a **Planning Proposal** under the NSW Department of Planning's "Gateway Determination" system for the making of a Local Environmental Plan under Part 3A of the Environmental Planning and Assessment Act. A Planning Proposal is a document that explains the intended effect of the proposed LEP and the justification for making it under S 55 (1) of the EP & A Act.

In general terms, the owner's of the subject land wish to retain all of the land identified as "**Regionally Significant Farmlands**" for the continuation of sugar cane farming in a single "Holding" and to relocate all dwelling approvals and dwelling entitlements out of the flood liable land and up onto higher ground they own and that

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adjoins existing rural residential land as illustrated on the maps accompanying this submission.

By retaining the "Regionally Significant Farmlands" and relocating the dwellings to dry and higher ground, the farm land can be managed as a single "Holding" whilst the potential for land use conflicts as identified in the document "Living and Working in Rural areas- A handbook for Managing Land use Conflict Issues on the NSW North Coast, 2008" produced by the Department of Primary Industries, is removed as potential for conflict in the future.

In addition, the retention of the "Regionally Significant Farmlands" as a single 'Holding' ensures the protection and continuation of farming as identified in State Environmental Planning Policy (Rural Lands) 2008 and the North Coast Regional Environmental Plan 1988.

Planning Approvals and Dwelling Entitlements.

The subject land owned by M.J.Hirst and K. Hirst has obtained the following development approvals, valid for five years from the date of consent from Clarence Valley Council:

- **Three (3) approved dwelling allotments. Plan PP.01**

Council has granted development approval for a rural dwelling's on the following lots:

1. Lot 10 in DP 849374, No 117 Pacific Highway, Gullmarrad.

DA 2008 / 706 Rural **Dwelling approved** 27 September 2008.
Construction Certificate 2008 / 659 approved 14 April 2009.

2. Portion 17 and lot 101 DP 837736 have been consolidated into Lot 171 DP 1134269.

DA 2008 / 121 Rural **Dwelling approved** 27 June 2008
Construction Certificate 2008 / 125 approved 24 August 2009.

3. Lot 112 in DP 842062 Pacific Highway,

DA 2008 / 794 Rural **Dwelling approved** 14 April 2008
On site Sewer System approved Act 2008 / 603 20 April 2009.

Each of the above three lots can be sold individually as rural allotments with each having a valid dwelling approval. The individual sale of these lots has the potential to reduce the overall size of the cane farm and this may well affect the long term economic viability of the farm to continue to be used for agriculture. Three additional dwellings on prime agricultural land may cause potential land use conflicts as future residents will expect appropriate "buffers" between them

and the continuation of agriculture.

- **Two (2) approved dwelling entitlements. Plan PP.01**

1. Lot 22 in DP 794013 has been granted a Dwelling Entitlement ref: SCH 2008 / 0013 approved 5 March 2008.
2. Lot 2 in DP 610919 has been granted a Dwelling Entitlement ref: SCH 2008 / 0014 approved 11 November 2008.

Each of the above lots has a valid rural dwelling entitlement. That is, subject to lodging an application, each lot can rightly anticipate a dwelling approval. As with the three dwelling approvals listed above in point 1 each of these lots could be sold individually as a rural allotment and again this will reduce the actual farm area for continuous cropping. Plus it is reasonable to anticipate these two additional dwellings will lead to potential land use conflicts as residents will expect appropriate "buffers" between them and the continuation of agriculture.

- **Two (2) allotments that when consolidated will have an area greater than 40 hectares and therefore obtain a dwelling entitlement on each consolidated lot. Plan PP. 01.**

1. Lots 16 and 22 in DP 751372 have a combined area in excess of 42 hectares and Clarence Valley Council has written to Jon Hirst and advised on 25 February 2008, that subject to the **consolidation** of these two lots a dwelling entitlement can be anticipated.
2. Lots 42 and 123 have a combined area of over 40 hectares and as above, if these lots were to be **consolidated** they also would be entitled to anticipate a dwelling entitlement.

The subject land has five (5) confirmed dwelling entitlements and two potential dwelling entitlements that would be granted if the land were consolidated. The Hirst family could sell the above seven sites to the detriment of the "Regionally Significant Farmlands".

In addition to the above allotments the Hirst family also own the following land:

Lot 1 in DP 116105
 Lot 16 in DP 837736
 Lot 1 and 4 in DP 230180 and
 Lot 1 in DP 798830.

This land was the subject of a dwelling entitlement application, Ref: SCH 2008 / 0011 that was **refused** by Council on 26 February, 2008.

Planning Proposal.

In accordance with the Gateway Determination, Council is asked to consider an alternative to the above. The Hirst family own Lot 16 and 22 in DP 751372 see Plan PP.01 and it is their request to shift the potential seven dwellings up onto the hill, out of flood and keep the farm free from potential conflict between dwellings and rural activities. Lots 16 and 22 adjoin existing land zoned 1 (r) rural / residential land running off Clyde Essex Road. A possible lot layout is shown on Plan PP.03.

The concept is simple and practical and in my opinion ensures that the flood liable Regionally Significant Farmlands are kept in one 'Holding' for the guarantee of future farming.

This is an unusual request however it is common sense and in my opinion a perfect case example of the benefits of the Gateway process. I have prepared a formal planning proposal and ask Council to give consideration to the Hirst proposal.

If there are any questions or need for additional information please contact my office.

Paul De Fina
B.App.Sc. (Environmental Planning)
MPIA
NSW LGTC&P No. 474

Planning Proposal.

1. Objective.

To enable the three (3) approved rural dwellings, two (2) approved dwelling entitlements and two consolidated lots that Council have agreed are eligible for a dwelling entitlement each, to be relocated away from Regionally Significant Farmlands and Flood Prone Land to higher land within the same Holding that is not Regionally Significant Farmlands and is not Flood Prone that adjoins existing rural residential land and is described as Lot 16 and 22 in DP 751372.

2. Explanation of Provisions.

Amendment of the MacLean Local Environmental Plan 1992 in accordance with the proposed zoning map shown on Plan PP.03.

Justification.

A. Need for the planning proposal.

1. *Is the Planning proposal a result of any strategic study or report?*

- ***The Settlement Planning Guidelines for the Mid and Far North Coast Regional Strategies, NSW Department of Planning, August 2007.***
- ***The Mid North Coast Farmland Mapping Project, NSW Department of Planning, 2008.***
- ***The Mid North Coast Regional Strategy, NSW Department of Planning, 2009.***

The Mid North Coast Regional Strategies comprise three land-use planning documents that the Department of Planning and Clarence Valley Council must include in any future planning decisions up to the year 2031.

Maclean is specifically listed as a **major town** in the strategy and it is expected to provide a level of services and employment opportunities to support the existing and future residents of the surrounding lower Clarence area.

Clarence Valley Council is currently preparing a Local Growth Management Strategy for the Shire and Gulmarrad is included by both the Council and the NSW Department of Planning as an area for rural residential expansion as Council's contribution to the growth predictions set out in the regional planning documents.

While the majority of new housing will be focused around major centre's, new urban growth areas will also develop in the Grafton and Maclean areas,

particularly within Clarenza and Junction Hill in Grafton and **Gulmarrad** in Maclean.

The Mid North Coast Regional Strategy has been designed to deliver the Region's strong expected growth in a sustainable manner - boosting prosperity for existing and new residents while ensuring the Region's valuable natural and cultural assets are protected.

The strategy caters for a regional population increase of 94,000 by 2031. This will require an additional 59,600 new dwellings and 48,500 new jobs.

In the Clarence subregion the NSW Department of Planning predict an additional 7,100 new dwellings to be provided over the next 21 years.

Coastal values will be protected by identifying a 'Coastal Area' east of the proposed new Pacific Highway alignment, limiting land release to mapped growth areas. This will ease development pressure on valuable coastal assets of the State and will maintain valuable 'green breaks' between coastal settlements.

Note: The new Pacific Highway alignment passes through the subject land.

The subject land carries a sustainable and economically viable sugar cane farm owned and managed by the land owner's Jon Hirst and his family. The subject land is located on land described as Regionally Significant Farmland.

In 2001 the gross value of Mid North Coast agriculture was \$245 million. The Department of Planning's Mid North Coast Farmland Mapping Project seeks to protect regionally significant farm and horticultural lands from urban and rural residential development pressures.

Where land proposed for development adjoins land that is currently used for agriculture a conflict assessment should be undertaken and measures implemented to avoid situations of land use conflict, consistent with the principles of the relevant Regional Farmland Protection Project.

It is for this reason the subject cane farm land must be protected from rural / residential development. By locating the three (3) approved dwellings and two (2) dwelling entitlements and two (2) potential dwelling allotments away from the Regionally Significant Farmland will ensure that there is no potential future land use conflict between residents and the continuation of agriculture.

In addition, the subject sugar cane farmland is flood liable. The approved dwellings are located on flood liable farmland. Climate change and the implications of potential sea level rise and inundation is recognised as a major planning challenge. The regional strategy provides a number of mechanisms for councils to manage the risk associated with climate change by ensuring that risks to public and private assets from flood inundation is minimised.

Sensible planning must seek to locate rural dwellings and their access routes away from flood liable lands in accordance with the principles of the NSW *Floodplain Development Manual (2005)*.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. Council is currently preparing a Growth Management Strategy and it is an opportunity to review the development approvals that the subject site enjoys and take action to best locate the individual dwellings away from the regionally Significant Farmlands and away from the potential damage from flooding that will be even more exacerbated by global warming and sea level rises.

3. Is there a net community benefit?

Yes. The potential for rural land use conflict between occupants of the rural dwellings and the continuation of viable sugar cane farming is contrary to the principles of ESD. We have taken a precautionary approach to the proposal to relocate the approved dwellings and potential dwellings away from the Regionally Significant Farmland and flood plain, to higher ground that is not considered to be Regionally Significant Farmland nor is it flood liable. This same land adjoins existing rural residential land and therefore is more in character with what Council and Planning NSW seek for the area.

Given the extent, nature and intensity of the rural residential zoned lands and the sensitivity of adjoining and surrounding land uses on the subject cane farmland, the proposal will have less potential for land use conflict between adjoining land uses.

Given the planning directions to protect agricultural land it is better that planners proactively avoid land use conflict.

B. Relationship to strategic planning framework.

1. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?

The proposal is consistent with the aims and objectives of the following:

- **The Settlement Planning Guidelines for the Mid and Far North Coast Regional Strategies, NSW Department of Planning, August 2007.**
- **The Mid North Coast Farmland Mapping Project, NSW Department of Planning, 2008.**
- **The Mid North Coast Regional Strategy, NSW Department of Planning, 2009.**
- **North Coast Regional Environmental Plan.**

2. Is the planning proposal consistent with Council's Community Strategic Plan?

There is no available Community Strategic Plan.

3. Is the planning proposal consistent with the state environmental planning policies?

Yes. North Coast Regional Environmental Plan, now a SEPP.

4. Is the planning proposal consistent with applicable Ministerial Directions (S 117 Directions)?

Yes. The following Section 117(2) Directions apply to the proposal. The proposal is considered to be consistent with the following:

Direction 1.2 Rural Zones

Objective

The objective of this direction is to protect the agricultural production value of rural land.

Comment.

The purpose of this Planning Proposal is to protect agricultural land described as Regionally Significant Farmland.

A planning proposal must:

- (a) *Not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.*

Comment.

The proposal seeks to rezone Lots 16 and 22 in DP 751372 to a rural / residential zone in order to protect the Regionally Significant Farmland.

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:

- (a) justified by a strategy which:
 - (i) gives consideration to the objectives of this direction,
 - (ii) identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and

- (iii) is approved by the Director-General of the Department of Planning, or
- (b) justified by a study prepared in support of the planning proposal which gives consideration to the objectives of this direction, or
- (c) in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or
- (d) is of minor significance.

Direction 1.5 Rural Lands

Objectives

1. The objectives of this direction are to:

- (a) *protect the agricultural production value of rural land,*
- (b) *facilitate the orderly and economic development of rural lands for rural and related purposes.*

What a relevant planning authority must do if this direction applies

- (4) A planning proposal to which clauses 3(a) or 3(b) apply must be consistent with the Rural Planning Principles listed in *State Environmental Planning Policy (Rural Lands) 2008*.
- (5) A planning proposal to which clause 3(b) applies must be consistent with the Rural Subdivision Principles listed in *State Environmental Planning Policy (Rural Lands) 2008*.

Consistency

- (6) A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:
 - a. justified by a strategy which:
 - i. gives consideration to the objectives of this direction,
 - ii. identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites, and

- iii. is approved by the Director-General of the Department of Planning and is in force, or
- (b) is of minor significance.

Direction 4.3 Flood Prone Land

Objectives

1. The objectives of this direction are:
 - b. to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the *Floodplain Development Manual 2005*, and
 - c. to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.
2. This direction applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.
3. A planning proposal must not contain provisions that apply to the flood planning areas which:
 - (a) permit development in floodway areas,
 - (b) permit development that will result in significant flood impacts to other properties,
 - (c) permit a significant increase in the development of that land,
 - (d) are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or
 - (e) permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high hazard areas), roads or exempt development.
4. A planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land, unless a relevant planning authority provides adequate justification for those controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).

5. For the purposes of a planning proposal, a relevant planning authority must not determine a flood planning level that is inconsistent with the Floodplain Development Manual 2005 (including the *Guideline on Development Controls on Low Flood Risk Areas*) unless a relevant planning authority provides adequate justification for the proposed departure from that Manual to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).
6. A planning proposal may be inconsistent with this direction only if the relevant planning authority can satisfy the Director-General (or an officer of the Department nominated by the Director-General) that:
 - (a) the planning proposal is in accordance with a floodplain risk management plan prepared in accordance with the principles and guidelines of the Floodplain Development Manual 2005, or
 - (b) the provisions of the planning proposal that are inconsistent are of minor significance.

Direction 5.1 Implementation of Regional Strategies

Objectives

The objective of this direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies.

This direction applies to land to which the following regional strategies apply:

1. Mid-North Coast Regional Strategy.

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), that the extent of inconsistency with the regional strategy:

- a) is of minor significance, and
- b) the planning proposal achieves the overall intent of the regional strategy and does not undermine the achievement of its vision, land use strategy, policies, outcomes or actions.

C. Environmental, social and economic impact.

1. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be affected as a result of the proposal?

No.

2. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The likely environmental effects are all positive. Simply, remove the approved dwellings and dwelling entitlements from Regionally Significant Farmlands and flood liable lands to higher grounds adjoining existing rural residential lands.

3. How has the planning proposal adequately addressed any social and economic effects?

At the present there has been no investigation of the social or economic effects, however to allow up to seven dwellings to be developed on Regionally Significant Farmlands and flood liable lands is not a practical solution when there is a sustainable alternative as proposed.

D. State and Commonwealth Interests.

1. Is there adequate public infrastructure for the planning proposal?

Yes

2. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

Nil

E. Community Consultation.

The proposal is a low impact proposal.

Council will put the application on public display for 14 days and call for submissions from interested persons.

In order to respond to the above it must be noted that the following State Environmental Planning Policies (SEPP) and Regional Planning Policies; Local Environmental Plans and Development Control Plans apply to the subject land:

- SEPP No. 71 – Coastal Protection.
- SEPP (Rural Lands) 2008.

- SEPP (North Coast Regional Environmental Plan);
- Mid North Coast Regional Strategy;
- Settlement Planning Guidelines: Mid and Far North Coast Regional Strategies, August, 2007
- Mid North Coast Farmland Mapping Project, 2008
- Clarence Valley Settlement Strategy;
- MacLean Shire Council's Local Environmental Plan 2001, and
- MacLean Shire Council's Development Control Plan – Development in Rural Zones, 2006.

Any development must be assessed given the potential impacts and ability to satisfy the following criteria:

- The “**right to farm**” principle - any development should not jeopardise rural production of agricultural or horticultural pursuits.
- The need for adequate “**Buffer**” zones and set backs to road boundaries, adjoining property boundaries and rural dwellings to ensure that activities and land use do not adversely affect the surrounding amenity and other physical impacts on the environment.

To assess the *highest and best use* for the land, I have physically inspected all of the land and after discussing the agricultural activity of cane farming and cattle breeding with the owner, I met with Clarence Valley Council's Strategic Town Planner, David Morrison, to obtain as much background information possible with regard the future strategic planning as related to the subject land and land within the vicinity.

1) State Environmental Planning Policy (Rural Lands) 2008

The State Environmental Planning Policy (Rural Lands) states Rural Planning Principles are as follows:

- (a) The promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- (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,*

(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,

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

(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,

(f) The provision of opportunities for rural lifestyle, settlement and housing that 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, and

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

The North Coast Regional Environmental Plan 1988.

The North Coast Regional Environmental Plan applies to the Clarence Valley Council.

The objectives of NCRP in relation to agricultural resources are:

(a) To conserve the productive potential of agricultural land,

(b) To provide for new forms of agricultural development and changing patterns of existing agricultural development,

(c) To ensure that commercial agriculture is not affected adversely by incompatible uses which impair its long term sustainability, and

(d) To ensure that industries and services that support agriculture are not disrupted.

Regionally Significant Farmland 2008.

The subject land has been listed as Regionally Significant Farmland by Planning NSW and the NSW Department of Primary Industries. The objectives of this plan are as follows:

1. To establish the priority of legitimate rural uses over non-rural uses

2. To recognise and conserve the best farmland in the region for current and future agricultural uses.

3. *To keep options open for future generations to produce a range of agricultural goods throughout the region.*
4. *To allow for a range of activities that support agriculture, including farm diversification and value-adding, without compromising long-term agricultural production potential.*
5. *To protect agricultural land from adjacent development that may compromise agricultural uses.*
6. *To avoid creating conditions where conflict will arise between rural and non-rural land users.*

Regionally Significant Farmland cannot be considered for residential, tourism, commercial and industrial or rural residential zoning unless the land is:

- *a) Identified in a council rural residential strategy which has been agreed to by the Department of Planning as at the completion date of the Mid North Coast Regional Strategy, (or exhibited by that time and subsequently agreed to); or*
- b) Part of a Growth Area under the 2008 Mid North Coast Regional Strategy; or*
- c) Already zoned, subdivided or approved for an urban or rural residential use under an LEP.*

The Regionally Significant Farmland Strategy should be used as an information resource when councils and state agencies plan for public infrastructure and facilities. The Regionally Significant Farmland Strategy reflects the State Government's assessment of the location of important agricultural resources which should be preserved for the future.

The Department of Planning's State Environmental Planning Policy on Rural Lands requires potential land use conflict to be considered in the development approval process for subdivisions and dwellings.

The Farmland Project is implemented by the Mid North Coast Regional Strategy. Farmland maps reflect the State Government's assessment of the location of important agricultural resources which need to be preserved for the future.

Under the Local Government Act the subject land is categorised as farmland for rating purposes. The dominant use of the land is cane farming. The agricultural production is significant and substantially commercial. The farming activity is for the purpose of profit on a continuous or repetitive basis.

"Living and Working in Rural Areas - A Handbook for Managing Land Use Conflict Issues on the NSW North Coast, 2008"

"Living and Working in Rural Areas - A Handbook for Managing Land Use Conflict Issues on the NSW North Coast" provides guidance on buffers and the land use conflict risk assessment process. The handbook has been produced by the Centre for Coastal Agricultural Landscapes (Dept Primary Industries, Southern Cross University and the CMA.

Maclean Local Environmental Plan 2001

The subject land is zoned Part 1 (a) Rural Agricultural Protection and Part 1 (b) Rural (General Rural Land) Zone under the Maclean LEP 2001.

The Aim of Zone 1 (a) are:

"To protect, reserve and encourage the use of land in this zone for agriculture and uses compatible with agriculture".

The Objectives of zone 1 (a) are

- (a) To conserve the productive potential of prime crop or pasture land,*
- (b) To provide for new forms of agricultural development, and changing patterns of existing agricultural development,*
- (c) To ensure that commercial farming is not affected adversely by incompatible uses which impair its long term sustainability,*
- (d) To avoid degradation and alienation of prime agricultural land,*
- (e) To enable rural tourism, which does not adversely affect the productive potential of the land,*
- (f) To exclude urban development on all prime crop or pasture land,*
- (g) To restrict the subdivision of prime crop or pasture land,*
- (h) To encourage conservation in farming practices,*
- (i) To control the clearing of vegetation and encourage the retention of vegetation.*

The 1 (a) zone allows development for the purpose of:

aquaculture; bus stations; clear felling; clearing allowed only with consent under clause 40; cluster farming; dams not included in item 3; duplexes; dwelling houses; general stores; home industries; intensive animal husbandry; liquid fuel depots; livestock keeping establishments; professional consulting rooms; roadside stalls; rural industries; rural tourist facilities; rural workers' dwellings.

Conclusion

The objectives of this planning proposal are:

- To seek to protect agricultural land resources,
- To discourage rural dwellings been built on Regionally Significant Farmland.
- To minimise the ad hoc fragmentation of the Regionally Significant Farmland,
- To minimise the potential for land use conflict
- To provide for a closer rural settlement where it can benefit and support the existing and planned rural residential land uses in the area.
- To provide for better and safer access away from flood liable land,

Having inspected the sites and surrounding developments and after due consideration of current planning directions with regard protecting agricultural land, it is my conclusion that the planning proposal has merit and should be supported.

Paul De Fina
B.App.Sc. (Environmental Planning)
MPIA
LGTC & P No. 474

1(a)

1(t)

1(a)

5(a)
(Sewerage
works)

1(a)

1(b)

1(w)

ARM

Lot 112 DP 942059
DA 2005 / 791Lot 2 DP 610919
SCH 2008 / 0014

Lot 125 DP 761372

Lot 42 DP 751372

Lot 122 DP 761372

Lot 22 DP 760113
SCH 2008 / 0013

Par 16 DP 761372

Par 22 DP 761372

1(a)

Lot 171 DP 1134239
DA 2005 / 121
CO 2005 / 126Lot 19 DP 963174
DA 2005 / 709
CO 2005 / 130

1(r)

FUTURE NEIGHBOURHOOD
CENTRE

LEGEND

B1 RESIDENTIAL

APPROXIMATE DWELLING ALLOTMENTS

APPROXIMATE DWELLING ENTITLEMENTS

APPROXIMATE DWELLING ENTITLEMENTS

PLANNING PROPOSAL

General - Urban Village

CLIENT

M.J. & L. HIRST

DRAWING

PROPERTY PLAN INDICATING LOT DETAILS,
DWELLING ALLOTMENTS & ENTITLEMENTS

SCALE

1:10,000

DATE

NOVEMBER 2009

DRAWING NO.

PP.01