

ITEM 13.073/15 PLANNING PROPOSAL – RANNOCH AVENUE, MACLEAN

Meeting	Environment, Planning & Community Committee	9 June 2015
Directorate	Environment, Planning & Community	
Reviewed by	Manager - Strategic & Economic Planning (David Morrison)	
Attachment	Yes	

SUMMARY

<i>Proponent</i>	Geoff Smyth & Associates
<i>Date Received</i>	7 April 2015 (rezoning application fee paid)
<i>Owner</i>	Piper Glen Holdings Pty Ltd
<i>Subject land</i>	Part Lot 2 DP1101094, Rannoch Avenue, Maclean (being proposed Lot in the modified subdivision of Lot 2; refer to SUB2007/0053 & MOD2014/0021, below.
<i>Current Zoning CVLEP 2011</i>	R2 – Low Density Residential (R2)
<i>Proposal</i>	To rezone the land from R2 to R1 General Residential (R1) to permit medium density development – an additional 41 dwellings.

This report considers a planning proposal which supports a case to rezone Part Lot 2 DP1101094, Rannoch Avenue, Maclean from R2 to R1 to facilitate the development of the land for 55 three level townhouses. The proponent has indicated that the proposal will facilitate a net increase of 41 dwellings. However a more considered calculation of the net dwelling increase is an additional 29 additional dwellings; or a 111% increase in dwelling density.

The planning proposal is not recommended for support to the Planning Gateway as there is insufficient strategic justification to permit even a 111% increase in the number of dwellings in this floodplain and flood prone land context.

OFFICER RECOMMENDATION

That Council not support the planning proposal that seeks to rezone Part Lot 2 DP1101094, Rannoch Avenue, Maclean from R2 – Low Density Residential to R1 General Residential for the following reasons:

- (a) The land is flood prone and there is insufficient strategic and statutory justification for a 111% increase in the permitted number of dwellings in such a flood prone land and floodplain context – it is not supported by the Mid North Coast Regional Strategy Grafton, Maclean Urban Catchment Local Growth Management Strategy and Grafton and Lower Clarence River Floodplain Risk Management Plan.
- (b) The proposal is considered to be inconsistent with the Minister's Section 117(2) Direction 4.3 Flood Prone Land as it is not supported by the Mid North Coast Regional Strategy Grafton, Maclean Urban Catchment Local Growth Management Strategy and Grafton and Lower Clarence River Floodplain Risk Management Plan and is not considered to be of minor significance.

COMMITTEE RECOMMENDATION

Baker/Williamson

That Council support the planning proposal in the terms contained in the Geoff Smyth & Associates proposal of 27 April 2015 to rezone Part Lot 2 DP 1101094 Rannoch Avenue, Maclean from R2 Low Density Residential to R1 General Residential.

Voting recorded as follows:

For: Baker, Howe, Hughes, McKenna, Williamson

Against: Nil

COUNCIL RESOLUTION – 13.073/15

(Crs Hughes/Kingsley)

That Council support the planning proposal in the terms contained in the Geoff Smyth & Associates proposal of 27 April 2015 to rezone Part Lot 2 DP 1101094 Rannoch Avenue, Maclean from R2 Low Density Residential to R1 General Residential.

Voting recorded as follows

For: Councillors Williamson, Baker, Howe, Hughes, Kingsley, Lysaught, McKenna, Simmons, Toms

Against: Nil

LINKAGE TO OUR COMMUNITY PLAN

Theme 5 Our Leadership

Objective 5.1 We will have a strong, accountable and representative Government

Strategy 5.1.4 Provide open, accountable and transparent decision making for the community

BACKGROUND

Council has received a planning proposal requesting to rezone Part Lot 2 DP1101094, Rannoch Avenue, Maclean from R2 to R1 to permit the medium density development of the land. A copy of the planning proposal is at Attachment 1. The approximate area sought for rezoning is 13,458m² or 1.346 ha.

A development concept lodged with the planning proposal indicates that once the land is rezoned it is proposed to construct 55 three level townhouses. A copy of the development concept is at Attachment 2. The current R2 zoning does not permit the construction of “*residential flat buildings*” or “*multi-unit housing*” and therefore the proposed townhouse development is currently prohibited. The forms of *residential accommodation* that are permitted in the R2 zone are “*dwelling houses*”, “*dual occupancy*” and “*secondary dwellings*”.

A development consent is in place for the residential subdivision of much of that part of Lot 2 the subject of the planning proposal into 23 residential lots (plus a detention pond lot and a residue lot) ranging in area from 563m² to 686m² (SUB2007/0053). The subdivision has not been constructed as yet although the consent is commenced. A modification of consent application (MOD2014/0021) has been lodged seeking to reduce the number of residential lots to 17 (plus a detention pond lot and a 13,458m² residue lot). Proposed lot 18 consolidates 5 of the previously approved lots on the R3 zoned land over which Council has approved a 22 unit development under DA2014/0165. The proposed 13,458m² residue lot (lot 19) is the land the subject of this planning proposal.

The planning proposal has stated that it facilitates an increase of 41 dwellings with a proposed R1 zone. However the net increase due to the R1 zone being facilitated by the planning proposal is calculated as being 29 additional dwellings, calculated as follows:

Method of calculation	Net number of additional dwellings
55 townhouses/dwellings minus: 17 lots proposed in the approved/modified stage 1 <u>plus</u>: 9 lots - taking into account the conventional residential subdivision potential of proposed Lot 19. $55 - 26 = 29$	29

The increase in dwelling yield/potential from a R2 zone scenario (26 dwellings) to the proposed R1 zoning scenario (55 dwellings) represents a 111% increase in dwelling numbers.

KEY ISSUES

1. Compliance with the Planning Proposal guidelines

The planning proposal in this case is contained within a document entitled "*Planning Proposal Part Lot 2 DP1101094, Rannoch Avenue, Maclean*", prepared by Geoff Smyth & Associates, April 2015. A copy of the planning proposal is at **Attachment 1**.

A review of the planning proposal indicates that it generally complies with section 55(2) of the Act and the Department of Planning and Environment's "A guide to preparing planning proposals" (October 2012). The main planning proposal document otherwise outlines the future intended development and most of the relevant merit issues in a sufficiently detailed manner at the rezoning stage.

2. Flooding and drainage

The land is subject to flood inundation in a major flood. The level of the 1 in 100 year flood at this location is 3.75 m AHD. The habitable floor level will need to be a minimum of 4.25m AHD (i.e. 500mm above the 1:100 year level).

The level of the land ranges between 0.2m – 2m AHD with much of the eastern/south-eastern portion of the land being 1m AHD or below. Therefore depth of flooding in a 1 in 100 year flood event will range between 3.55m and 1.75m, meaning that habitable floor levels will have to be elevated up to 3.85m above existing ground level in some instances, taking into account the part of that site that is proposed to be built upon.

The planning proposal states the filled level of the site to be developed will be 1.7m AHD with the current stormwater management modelling based on such fill level. Its possible that at the DA stage a higher finished fill level may be sought and if so that would require further modelling and assessment.

Stormwater runoff, drainage and ponding are issues raised by objections in the assessment process of SUB2007/0053, MOD2014/0021, DA2014/0165 and SUB2006/0055. Therefore drainage and ponding may be a concern raised by some local residents at the community consultation stage of this proposal should it reach that stage.

3. Dam safety (Wherrett Park detention basin)

The site is immediately downstream of Wherrett Park and its stormwater detention basin which has an estimated capacity in the order of 85,000m³. The proposed increase in density provides increased risk to life and property given the development is immediately downstream and adjacent to the existing detention

basin wall. Council raised such concerns during the assessment of the previous 23 lot subdivision in SUB2007/0053.

A Dam Safety Analysis was previously undertaken (de Groot & Benson, 8 August 2010) as part of an earlier development application (DA) for residential subdivision (Hogues Lane stage 1, SUB2006/0055) adjacent to the proposed Rannoch Avenue subdivision. This analysis concluded that the:

- probable loss of life in event of a dam failure (of the Wherrett Park Detention basin) to be zero; and
- structure does not need prescribing under Dam Safety Committee regulations.

The planning proposal and the earlier 2010 Dam Safety Analysis were recently referred to the NSW Dams Safety Committee (DSC) for comment. Refer to consultation below for further details.

4. Flooding and statutory and strategic context

Planning proposals are required to be consistent with the Directions issued by the Minister under Section 117(2) of the Environmental Planning and Assessment Act 1979 (the Act). In the case of Direction 4.3 Flood Prone Land a *“planning proposal must not contain provisions that apply to the flood planning areas which:*

(c) permit a significant increase in the development of that land,....”.

Further 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”.

The planning proposal deals with this Direction (p.6) by stating that:

“Land is zoned residential and is behind a flood levee. Buildings will be designed for flood protection. Justification report attached. The report includes filling the site to 1.7m AHD, considers evacuation routes and other matters in accordance with the Lower Clarence Valley Flood Plan 2012, Grafton and Lower Clarence Floodplain Risk Management Plan 2007 and matters for consideration under Direction 4.3. There is currently 167 dwellings proposed on the Rannoch Avenue & Hogues Lane sites. The Planning Proposal will allow an increase of forty one (41) dwellings that is 25% in this locality but only a very minor increase in the total dwellings in Maclean on flood prone land”.

The relevant floodplain risk management plan (FRMP) is the Grafton and Lower Clarence River Floodplain Risk Management Plan (Bewsher Consulting, June 2007). In making a broad strategic comment on new development on a valley-wide basis the FRMP stated (p.43 – section 4.5.3):

“....Minimal infill development should be allowed within the floodplain, including areas surrounded by flood levees as overtopping and failure can occur”.

In focussing on Levee Overtopping/Failure risk in Maclean the FRMP stated (p.73 – section 5.3.3):

“The Overtopping Study indicates that the levee crest will be overtopped in the 50 year flood.....The volume of overtopping floodwater is not sufficient to totally fill the ‘protected’ basin area behind the levee”.

Flood heights vary from RL 3.0m AHD on the higher ground adjacent to the levee down to a level of 1.2m AHD on the lower ground to the east of Maclean. Velocity-depth products are less than 0.05m²/s.

Overtopping in the 100 year flood is more extensive, with the 'protected' basin area totally filling to the same level as the river (i.e. RL 3.7m AHD). The majority of this filling occurs approximately 3 hours after overtopping first commences. Velocity-depth factors have increased to 0.15 m²/s, but this is still relatively low due to low flood velocities".

With the level of the Maclean levee at approximately the 1 in 30 year level it would not be sound planning and decision making to allow increased residential densities neither on a broader basis nor on a single land parcel basis in such flood prone circumstances.

One of the FRMP's recommended valley-wide planning measures is (p.92 – section 6.1.7):

" i) That Council, in consultation with the Department of Planning, review the Clarence Valley Settlement Strategy having regard to the flood risks and planning recommendations identified within the Floodplain Risk Management Plan and incorporate where appropriate in the Mid North Coast Regional Strategy. As a general principle, it is preferable that new urban areas are located outside of the floodplain and intensification of existing urban areas be restricted to a level that can be accommodated within the evacuation capacity of the State Emergency Services.....".

This both complements and reinforces the plan's strategic philosophy at page 43 of encouraging minimal infill development only within the floodplain and the location of new urban areas generally outside of the floodplain.

5. Acid sulfate soils

The land is mapped as class 2 acid sulfate soils (ASS) with Minister's section 117(2) Direction 4.1 Acid sulfate soils being relevant.

Direction 4.1 (4) requires that a Council must consider the Acid Sulfate Soils Planning guideline where a planning proposal applies to land that is mapped as having a probability of ASS being present. Further where a planning proposal proposes an intensification of land uses is such instance Direction 4.1 (6) requires that Council must consider an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of ASS.

The planning proposal in considering this Direction and issues states (p.5) that:

"An Acid Sulfate Soil Management Plan has been prepared for excavation activities involved in the construction of residential development on adjoining lands in the Rannoch Avenue and Hogues Lane properties. Site testing found acid soils of varying degrees of acidity and prepared management principles and guidelines. In addition, the site is to have fill placed on the development area. The Management Plan ensures that any impacts will be managed".

The ASS management plan referred to in the planning proposal is for the Hogues Lane estate adjoining the land the subject of the planning proposal. It is considered that this document is indicative and adequate for the purposes of considering this planning proposal. Although any future DA for a medium density townhouse development for Part Lot 2 should be the subject of a site specific ASS management plan.

6. Other strategic context (MUCLGMS, MNCRS)

Section 8 of the Mid North Coast Regional Strategy (MNCRS) deals with planning for natural hazards. One of the strategy's outcomes (p.35) is *"....Until the above plans and investigations are complete, councils will not zone land or approve new development or redevelopment in potential hazard areas, unless assessed within a risk assessment framework adopted by the council".*

Further one of the strategy's actions (p.35) is that *"Local environmental plans will zone areas subject to high hazard to reflect the limitations of the land"*.

Although the site or location may not necessarily be regarded as a high hazard flood environment the strategy does not encourage zoning land or approving new development or redevelopment in potential hazard areas, unless assessed within a risk assessment framework adopted by the council nor ahead of completion of appropriate plans and investigations. Council has not undertaken any planning, investigation or risk assessment in addition to the 2007 Grafton and Lower Clarence River FRMP.

The Maclean Urban Catchment Local Growth Management Strategy (the MUCLGMS) covers the existing township in broad terms although Maclean does not feature in a future urban expansion structure plan. According to the strategy Maclean is maintained as the principal town in the hierarchy supported by residential satellites at Townsend, Gulmarrad and James Creek. This provides for about 10,000 people by 2031, an increase of about 5,200 people over the current population.

The MUCLGMS acknowledges that:

- Maclean has reached its practical geographic size, as defined by physical constraints imposed by the River, the floodplain and Maclean Hill.
- Future residential growth will continue as infill development within the existing zoned area with only minor extensions at the edges where major constraints are absent.
- Maclean's population will stay much the same as at present, stabilising at about 3,000.

7. Conclusion

At present the current strategic framework described above does not support intensification of residential development in Council's towns and villages on the floodplain. At best it permits infill development within the limits (including density limits) of the existing zoned area as permitted by the current LEP, DCP and FRMP.

Rezoning to allow increased density as infill of or extension to existing urban footprints within the floodplain should also not be supported due to the precedent it will establish and the problem of determining the scale or extent to which it should be permitted. Increased densities on the floodplain presents a cumulative increase in the residents exposed to flood hazard and is not supported by Council's existing floodplain management policies. Strategic planning for the Maclean area's future growth identifies sufficient land available for residential growth to 2031, principally at Townsend, Gulmarrad and Townsend without the need to increase yields on the floodplain.

A decision to rezone to allow a considerable increased residential density beyond the current strategic and statutory limits and if supported, should be informed by a further disciplined strategic process.

COUNCIL IMPLICATIONS

Budget/Financial

Assessment and management of the planning proposal is being undertaken within existing budgets.

Asset Management

N/A

Policy or Regulation

- Environmental Planning and Assessment Act 1979 – including relevant State environmental planning policies (SEPPs) and Minister's Section 117 Directions made under the Act.
- Clarence Valley LEP 2011
- Grafton and Lower Clarence River Floodplain Risk Management Plan

- NSW Floodplain Development Manual: the management of flood liable land 2005

Consultation

<i>Internal Section or Staff Member</i>	<i>Comment</i>
Ian Dodd, Development Engineer	As discussed, the increase in density provides increased risk to life and property given the development is immediately downstream and adjacent to the existing detention basin wall. This was raised during the assessment process for the previous subdivision and should be referred to the Dam Safety Committee for any comments / requirements. Council as the infrastructure owner is responsible for doing this. The development has been included in current application / design considerations for DA2014/0165, MOD2014/0021 and MOD2014/0022. Engineering conditions for these applications have not been finalised due to on-going discussions with de Groot & Benson regarding stormwater 'MUSIC' modelling. This close to resolution and the engineering conditions are likely to be issued soon. Those engineering conditions will be in accordance with those issued for the previous approval SUB2006/0055.

External referrals

The planning proposal and the earlier 2010 Dam Safety Analysis were recently referred to the NSW Dams Safety Committee (DSC) for comment. The DSC has requested further information from the proponent's engineer de Groot & Benson and will further consider the matter once the additional information is received.

Legal and Risk Management

The Act does not provide for any inbuilt legal appeal rights for third parties who may oppose a planning proposal.

Prepared by	Terry Dwyer, Senior Strategic Planner
Attachment	Attachment 1 - " <i>Planning Proposal Part Lot 2 DP1101094, Rannoch Avenue, Maclean</i> ", prepared by Geoff Smyth & Associates, April 2015 Attachment 2 - Development Concept