

A background graphic featuring a dark blue diagonal band across the middle of the page. To the right of this band is a grayscale image of a city skyline with several tall buildings. Overlaid on the entire background is a pattern of white, 3D-outlined rectangular blocks of varying heights and widths, creating a sense of urban architecture.

# **Palmers Island Planning Proposal**


## **Independent Assessment Report**

**Lot 2 DP 598769, School Rd, Palmers Island NSW**

Submitted to NSW Department of Planning, Industry and Environment

APRIL 2020

## REPORT REVISION HISTORY

Revision	Date Issued	Revision Description
01	22/04/2020	Confidential Draft
		<div>Prepared by</div> <div>Verified by</div>
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02	27/4/2020	Updated Report
02a	27/4/2020	Updated Report (minor corrections)
02b	27/4/2020	Updated Report (minor corrections)
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## EXECUTIVE SUMMARY

The NSW Department of Planning, Industry, and Environment (the Department) engaged City Plan Strategy and Development to independently assess Planning Proposal PP\_2017\_CLARE\_007\_01, seeking a rezoning to facilitate the establishment of marine based industry at Palmers Island, NSW (the planning proposal). The purpose of our engagement was to:

1. provide a recommendation as to whether the LEP amendment should be made, and
2. consider whether the Planning Proposal has suitably addressed matters raised by the relevant public authorities and community.

In completing this assessment, the Department also asked us to consider the implications of procedural aspects with respect to site contamination and remediation investigations.

In completing our assessment, we:

- reviewed the planning proposal and accompanying documentation in the context of statutory requirements and relevant practice guidelines,
- completed an inspection of the site and its surrounds, and
- conducted interviews with representatives of Clarence Valley Council and the Department.

Our report provides:

- The context for the planning proposal, including a description of the site and its locality (**Section 1**), the planning proposal (**Section 2**), noting the planning proposal has already undergone several preparatory steps, and
- Our insights and the basis for our conclusions and recommendations in relation to procedural considerations, (**Section 3**), and the extent to which the planning proposal demonstrates strategic merit (**Section 4**) and site-specific merit (**Section 5**).

Our report recommends the Department, as the Minister's delegate, not proceed with making the proposed LEP as the planning proposal does not suitably demonstrate strategic or site-specific merit (**Section 6**). We also conclude that the planning proposal has not adequately addressed the matters raised for consideration by the relevant public authorities and the community.

Our Report is supported by a set of Appendices, provided separately, that form the body of evidence informing our review. The reader should refer to these for more detail, where required.

## 1. SITE AND LOCALITY

The site was inspected by City Plan's assessing officer on the morning of 11 April 2020 and a site inspection record is provided at **Appendix 2.3**. Due to access restrictions, observations of the site were taken from the School Road and McConnells Lane boundaries. The following description of the site and locality is based on the site visit, aerial and streetview imagery, and the documentation accompanying the planning proposal (e.g. detailed survey and technical reports).

### 1.1. Broad context

The site is in the Clarence Valley Local Government Area within the North Coast Region of NSW. It is located midway between strategic centres at Grafton and Ballina, and as illustrated in **Figure 1**, accessible to:

- The Pacific Highway approximately 5.5 kilometres to the north-east of the site by Yamba Road via School Road,
- Yamba's town centre, which is the nearest local centre, approximately 7.5 kilometres north-west by Yamba Rd, and
- The Clarence River, which is one of the five navigable waterways within the region capable of accommodating marine-based industries.

The broad area, taken to include extend from the Pacific Highway to Angourie Rd, Yamba is characteristic of a coastal rural area. Agriculture (sugar cane cropping and orchards) are the most visible land use, interspersed with a range of residential, commercial / light industrial (e.g. food takeaway, tourist accommodation, auto repair and servicing) uses either visible or signed from the road.

The residential areas of Yamba, Angourie and Wooloweyah rely on Yamba Rd to access employment or other services within the area, and so may frequently observe or otherwise be affected by off-site impacts associated with development of the site. This would include freight movements to site, which will rely on access to the Pacific Highway via the Yamba interchange (currently under construction).

In the area surrounding the site, agriculture (orchards, sugar cane cropping) are readily visible from School Rd. Signs indicate the presence of uses typical of a coastal rural area, including aquaculture (fish hatcheries), tourist / visitor accommodation (caravan parks), and animal boarding. Residential and rural industry / commercial properties are typically be situated closer to the riverbank and accessed via private lanes of varying conditions.



Figure 1: Broader site context. Approximate site location indicated by red star (Source: Nearmap)

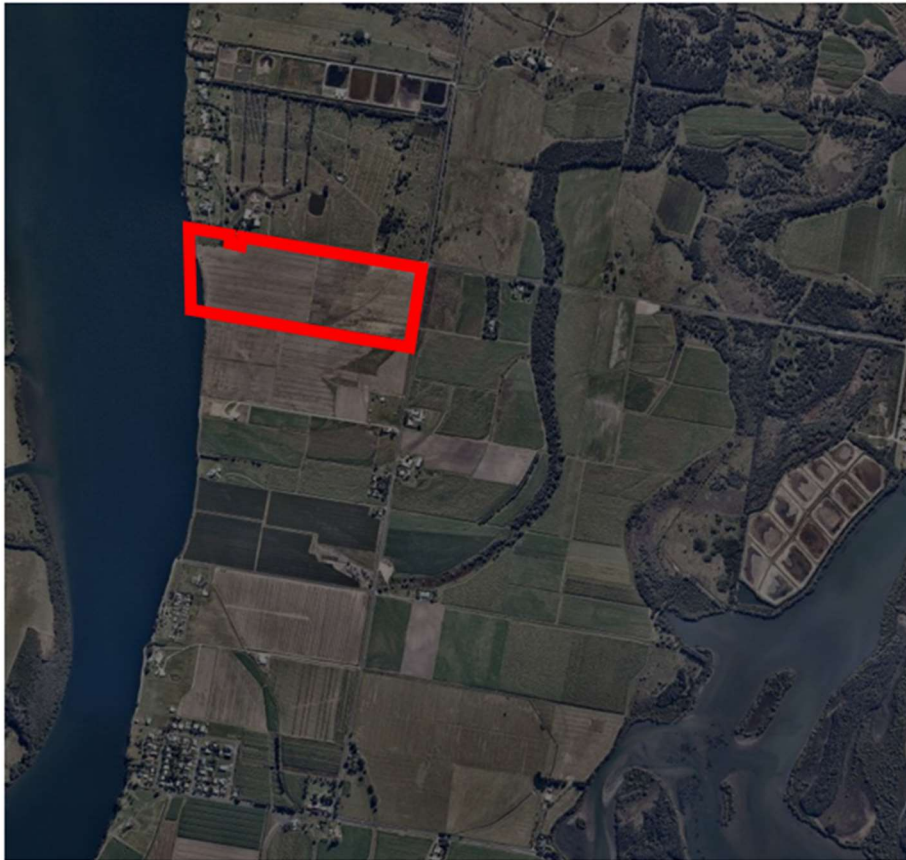


Figure 2: Surrounding site context showing the site outlined in red (Source: Nearmap)



## 1.2. Site Detail

The site is an approximately 21.2 hectare, predominately rectangular shaped allotment located on School Road in Palmers Island. It is bound by McConnells Lane to the north, School Road to the east, a rural allotment to the south, and the Clarence River to the west.

Vehicular access to the site is from the western end of McConnells Lane via an unformed accessway extending along the riverbank within the site. No formal vehicular access is currently available from School Road.

The site currently appears to be utilised for agricultural purposes (broadacre cropping). Some vegetation is scattered along the riverbank within the site and around the adjoining dwelling on Lot 1 DP598769 to the north-east. Except for some minor structures associated with the adjoining dwelling, the site currently appears to be undeveloped.

A portion of the Clarence River encroaches into the western extent of the site. A rubble-mound revetment wall constructed by Council extends along the riverbank within the site, and for several kilometres to the north and south.

The site has a relatively flat topography, with minor level changes from 2.48m AHD in the east of the site to 2.63m AHD in the west. The flood-prone and poorly drained nature of the site and its surrounds was observable during the site inspection, noting rainfall had occurred the day prior to this inspection.



Figure 3: Aerial view of the site. Site outlined in red (Source: Nearmap)



## 2. THE PROPOSAL

### 2.1. Background

Clarence Valley Council resolved to support a planning proposal for the site to be rezoned to IN4 Working Waterfront and W3 Working Waterways on 15 July 2014. On 18 November 2014, the Department determined that the planning proposal should not proceed. The reasons for this refusal were due to insufficient justification the planning proposal's potential impacts to adjoining properties, including acoustic and land use conflict impacts.

The applicant subsequently prepared a new planning proposal, which was submitted to Clarence Valley Council in 2016.

The process prescribed under the Act to make an LEP delineates a series of preparatory steps. A planning proposal is typically varied as each step progresses, including in response to new information (e.g. technical studies) or changes in the statutory or policy context that forms the basis for assessment. Key decision milestones since then are briefly summarised below and considered in more detail throughout our Report.

- November 2016, the Council report considered at the 15 November 2015 Council meeting includes a recommendation that Council does not support the planning proposal on the grounds that it did not address the basis of the previous Gateway refusal, did not address the key issues relating to its alignment with the strategic planning framework, noise and vibration impacts, access, transport and traffic impacts, and economic benefit. Council resolved to support the planning proposal subject to 40% reduction of the proposed IN4 Working Waterway zone following Council resolution 14.108/16. The planning proposal is submitted to the Department for Gateway determination in December 2016.
- July 2017, an amended planning proposal was re-submitted to the Department for Gateway determination following Council resolution 14.074/17. The planning proposal was amended in response to the Department's request for updates to the Traffic Impact Assessment and Noise Impact Studies to align with the proposed development.
- November 2017, the Department issued a Gateway determination that the planning proposal (as amended) should not proceed for the reasons provided in **Table 1**.
- December 2017, the proponent formally request a review of the Gateway Determination.
- April 2018, the Northern Regional Joint Planning Panel reviewed the Gateway determination, the Departments Justification Assessment Report, and additional information provided by the applicant and recommended the planning proposal proceed. The reasons for this recommendation are provided in **Table 1**.
- August 2018, the Department issued an alteration of Gateway determination enabling the planning proposal to proceed, subject to conditions.
- Between May and July 2019, Clarence Valley Council refer the planning proposal to the public authorities required by the Gateway determination for comment and place the planning proposal on exhibition, reflective of an extended exhibition period. All nominated public authorities provided a response. Clarence Valley Council also received 183 public submissions, including two petitions (one supporting and one objecting).
- October 2019, Council forward an amended planning proposal to the Department without providing a recommendation on whether it should proceed. The amended planning proposal:
  - Was reflective of additional technical studies completed in response to the Gateway conditions, but
  - Was not amended in response to feedback received from the required consultation, noting Council concurrently referred the planning proposal to State agencies nominated by the Gateway conditions and placed the planning proposal on exhibition between May and July 2019.

Table 1: Comparison of the Department's and the Panel's reviews

November 2017 The Department do not support the planning proposal to proceed because:	April 2018 The Panel believes that:
<ul style="list-style-type: none"> <li>It is inconsistent with the North Coast Regional Plan</li> </ul>	<ul style="list-style-type: none"> <li>The planning proposal <b>is not inconsistent</b> with the North Coast Regional Plan 2036, which encourages clusters of related activity but does not define the term 'cluster' specifically. The Clarence Valley Council's publication 'Marine Precinct 2010' advocates that a broad view be taken of a 'precinct' and identifies there are to be 'development possibilities located between the river mouth at Yamba and the City of Grafton.'</li> </ul>
<ul style="list-style-type: none"> <li>It is inconsistent with the Marine-Based Industry Policy - Far North Coast and Mid North Coast NSW</li> </ul>	<ul style="list-style-type: none"> <li>The planning proposal <b>is not consistent</b> with the 'Marine-Based Industry Policy - Far North Coast and Mid North Coast NSW 2015.' The proponent for the proposal has submitted sufficient information to indicate the relevant impact criteria can be adequately ameliorated, managed or offset. <b>These issues can be addressed at the development application stage.</b></li> </ul>
<ul style="list-style-type: none"> <li>It is inconsistent with the Clarence Valley Industrial Lands Policy</li> </ul>	<ul style="list-style-type: none"> <li>The planning proposal <b>is consistent</b> with the Clarence Valley Industrial Lands Strategy, which identifies the potential for a Marine Industry Cluster which would involve a geographically concentrated marine industry precinct, facilitating greater interaction between businesses and efficiency advantages. The Strategy does not require that such industries be co-located or immediately adjacent to each other.</li> </ul>
<ul style="list-style-type: none"> <li>The potential noise and visual impacts on the amenity of the surrounding locality are considered unacceptable</li> </ul>	<ul style="list-style-type: none"> <li>The potential noise and visual impacts of the planning proposal can only be determined when the actual nature and scale of development is known, and these impacts <b>should be considered at the development application stage.</b> Notwithstanding, the proponent for the proposal has submitted sufficient information to indicate that criteria for noise and visual impact can be adequately met, ameliorated or managed.</li> </ul>
<ul style="list-style-type: none"> <li>It is inconsistent with SEPP 71 - Coastal Protection</li> </ul>	<ul style="list-style-type: none"> <li>The planning proposal <b>is not consistent</b> with SEPP 71. The only identified planning criteria that the planning proposal was considered inconsistent with was clause 2k regarding the type, bulk, scale and size of development. The planning proposal <b>requires a waterfront location</b> which in the area is typically flat and some visual impacts in unavoidable. The proposal before the Panel is an indicative proposal, and not a development application. <b>The Panel considers that the actual bulk, scale and size of development and any proposed amelioration thereof should be addressed at the development application stage.</b></li> </ul>

Table 1 continued

November 2017 The Department do not support the planning proposal to proceed because:	April 2018 The Panel believes that:
<ul style="list-style-type: none"> <li>It is inconsistent section 117 Direction 1.2 Rural Zones</li> </ul>	<ul style="list-style-type: none"> <li>The planning proposal <b>is inconsistent</b> with the Section 117 Direction 1.2, but the inconsistency is justified because the planning proposal <b>requires access to a navigable waterway</b>, potentially would provide significant economic benefits, and the area involved in the planning proposal means its conversion to non-agricultural uses would have an insignificant impact on the agricultural activity in the Clarence Valley.</li> </ul>
<ul style="list-style-type: none"> <li>There is no demonstrated need for additional zoned land in this location.</li> </ul>	<ul style="list-style-type: none"> <li>The zoned land at Harwood is not practically available for the proposed use due to land ownership, access limitations, and operational requirements of the planning proposal.</li> </ul>

### 2.1.1. Planning proposal versions

The Palmers Island Planning Proposal currently under assessment has been presented in four forms since being initially lodged with Council. Each version will be referred to herein as the following, with the information supporting each version described in more detail in **Appendix 2.2**.

3. **Initial Gateway version**, meaning the version submitted to the Department in December 2016 (following Council resolution 14.108/16).
4. **Modified Gateway version**, meaning the version re-submitted to the Department in July 2017 (following Council resolution 14.074/17).
5. **Panel version**, which is reflective of the proponent's application dated 27 December 2018 to the Department requesting an independent review of the Gateway determination.
6. **Exhibited version**, meaning the version that was made available to the public and referral agencies for comment between May and July 2019.

The Palmers Island Planning Proposal currently before the Department remains in the Exhibited version.

## 2.2. Details of planning proposal

The planning proposal seeks to amend CVLEP to rezone part of the site from RU1 Primary Production to part IN4 Working Waterfront, part W3 Working Waterway.

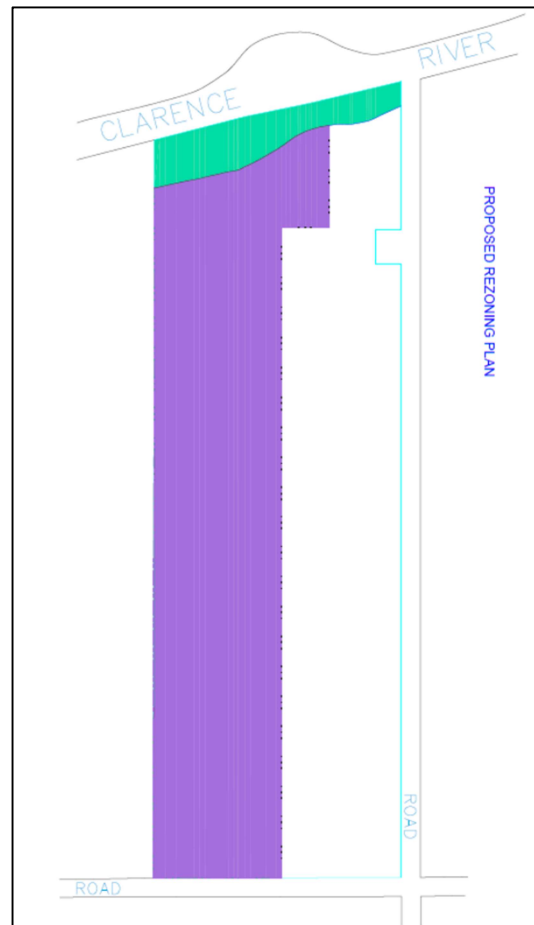
The planning proposal will result in a split zone on a single 21.2 hectare lot comprising:

- IN4 Working Waterfront: 10.6 hectare
- W3 Working Waterway: 1.1 hectare
- Retained RU1 Primary Production: 9.5 hectare



Existing zone

- RU1– Primary Production
- W2 – Recreational Waterways



Proposed zone:

- IN4 Working Waterfront
- W3 Working Waterways

Figure 4: Existing and proposed zones

No other changes to CVLEP are proposed. The following CVLEP mapped provisions will remain:

- The minimum lot size standard applying under clause 4.1 is 40ha,
- No height of building or floor space ratio standards apply under clauses 4.3 and 4.4 respectively,
- The site is identified within the Flood Planning Area for the purpose of applying clause 7.3, and
- Acid sulfate soils class 3 for the purpose of applying clause 7.1.

The new land zone objectives and permissible uses are presented in Table 2 and Table 3, respectively.

Table 2: Objectives of Zone IN4 Working Waterfront and W3 Working Waterways

	Zone IN4 Working Waterfront	Zone W3 Working Waterways
Zone objectives	<ul style="list-style-type: none"> <li>▪ To retain and encourage waterfront industrial and maritime activities.</li> <li>▪ To identify sites for maritime purposes and for activities that require direct waterfront access.</li> <li>▪ To ensure that development does not have an adverse impact on the environmental and visual qualities of the foreshore.</li> <li>▪ To encourage employment opportunities.</li> <li>▪ To minimise any adverse effect of development on land uses in other zones.</li> <li>▪ To enable light industries where they are related to the waterfront industrial and maritime activities permitted in the zone.</li> <li>▪ To ensure that development does not detract from the maritime character of small commercial fishing and port facilities on the Clarence River.</li> </ul>	<ul style="list-style-type: none"> <li>▪ To enable the efficient movement and operation of commercial shipping, water-based transport and maritime industries.</li> <li>▪ To promote the equitable use of waterways, including appropriate recreational uses.</li> <li>▪ To minimise impacts on ecological values arising from the active use of waterways.</li> <li>▪ To provide for sustainable fishing industries.</li> </ul>

Table 3: Land use tables for Zone IN4 Working Waterfront and W3 Working Waterways

	Zone IN4 Working Waterfront	Zone W3 Working Waterways
Permitted without consent	Home occupations; Home occupations (sex services)	Moorings
Permitted with consent	Aquaculture; <b>Boat building and repair facilities; Boat launching ramps;</b> Jetties; Light industries; Neighbourhood shops; Roads; Take away food and drink premises; Waste or resource transfer stations; Any other development not specified in item 2 or 4	Aquaculture; <b>Boat building and repair facilities; Boat launching ramps; Boat sheds;</b> Charter and tourism boating facilities; Environmental facilities; <b>Environmental protection works;</b> Extractive industries; Flood mitigation works; Jetties; Kiosks; Marinas; Mooring pens; Open cut mining; Port facilities; Research stations; Water recreation structures; Wharf or boating facilities
Prohibited	Agriculture; Air transport facilities; Airstrips; Amusement centres; Animal boarding or training establishments; Biosolids treatment facilities; Camping grounds; Caravan parks; Cemeteries; Centre-based child care facilities; Commercial premises; Community facilities; Correctional centres; Crematoria; Eco-tourist facilities; Educational establishments; Entertainment facilities; Environmental facilities; Exhibition homes; Exhibition villages; Farm buildings; Forestry; Function centres; Health services facilities; Helipads; Highway service centres; Information and education facilities; Mooring pens; Mortuaries; Passenger transport facilities; Places of public worship; Public administration buildings; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Residential accommodation; Respite day care centres; Restricted premises; Sewage treatment plants; Sex services premises; Tourist and visitor accommodation; Vehicle body repair workshops; Vehicle repair stations; Veterinary hospitals; Waste or resource management facilities; Water storage facilities; Water treatment facilities	Any development not specified in item 2 or 3



### 2.3. Details of the proposed development

We understand the planning proposal is principally motivated by the applicant's intention to expand an existing boat building business, which currently fabricates vessels from a land-based industrial estate in Yamba (approximately 10km from the subject site). Vessels are currently transported from the existing facility by road to a suitable launch-point, which is typically the marina at Yamba. The applicant is seeking to conduct boat building activities from an additional or alternative location to enable increased production volume and would benefit from a site with frontage to a navigable waterway to allow the business to fabricate larger vessels (typically greater than 20m in length), which require transport by water.

The concept plan included with the planning proposal shows the construction of a boat building facility encompassing the following key components:

- A 3,000m<sup>2</sup> (100m x 30m) fabrication shed and 1,500m<sup>2</sup> (50 x 30m) fitout shed;
- A 50m x 20m launching and recovery basin including ramp, with boat storage hardstand areas on both sides;
- A 6m wide internal driveway from School Road providing access to hardstand delivery and manoeuvring areas and a 125-space hardstand car park;
- An on-site wastewater management system; and
- Landscaping along the southern boundary.

The proposal involves the establishment of an earth pad at 3.25m AHD, to mitigate flood risks, and a 5.5m acoustic barrier above the filled areas to mitigate operational noise.

The scope of works envisaged by the proposed development are understood to encompass Boat building and repair facilities; Boat launching ramps; Boat sheds, and any associated environmental protection works, which would be permissible within the proposed Zone IN4 Working Waterfront and Zone W3 Working Waterways.


The proposed hours of operation are 6am to 6pm, 5 days per week, but up to 7 days per week as required to accommodate certain activities such as heavy vehicle deliveries, waste collection and boat lifts. The planning proposal envisages that up to 122 full-time staff may be employed once the proposal is fully operational.


The site plan for the YWE Aluminum Plant includes the following details:

- Plant Building:** A long, narrow structure with a total length of 843.31 units. It is divided into a "YWE ALUMINUM FITOUT SECTION" (50 units wide) and a "YWE ALUMINUM FABRICATION SECTION" (100 units wide).
- Access and Parking:** A "ROAD ACCESS (Paved)" leads to a "PARKING AREA" (731 units long) and a "VEGETATION BUFFER ZONE" (782 units long).
- Infrastructure:** An "ON SITE WASTE WATER MANAGEMENT SYSTEM" is located near the parking area.
- Surroundings:** The plant is situated next to a "CLARENCE RIVER" and a "ROAD". The road width is 20.115 units, and the river width is 262.44 units.
- Scale:** The plan is drawn at a scale of 1:25.



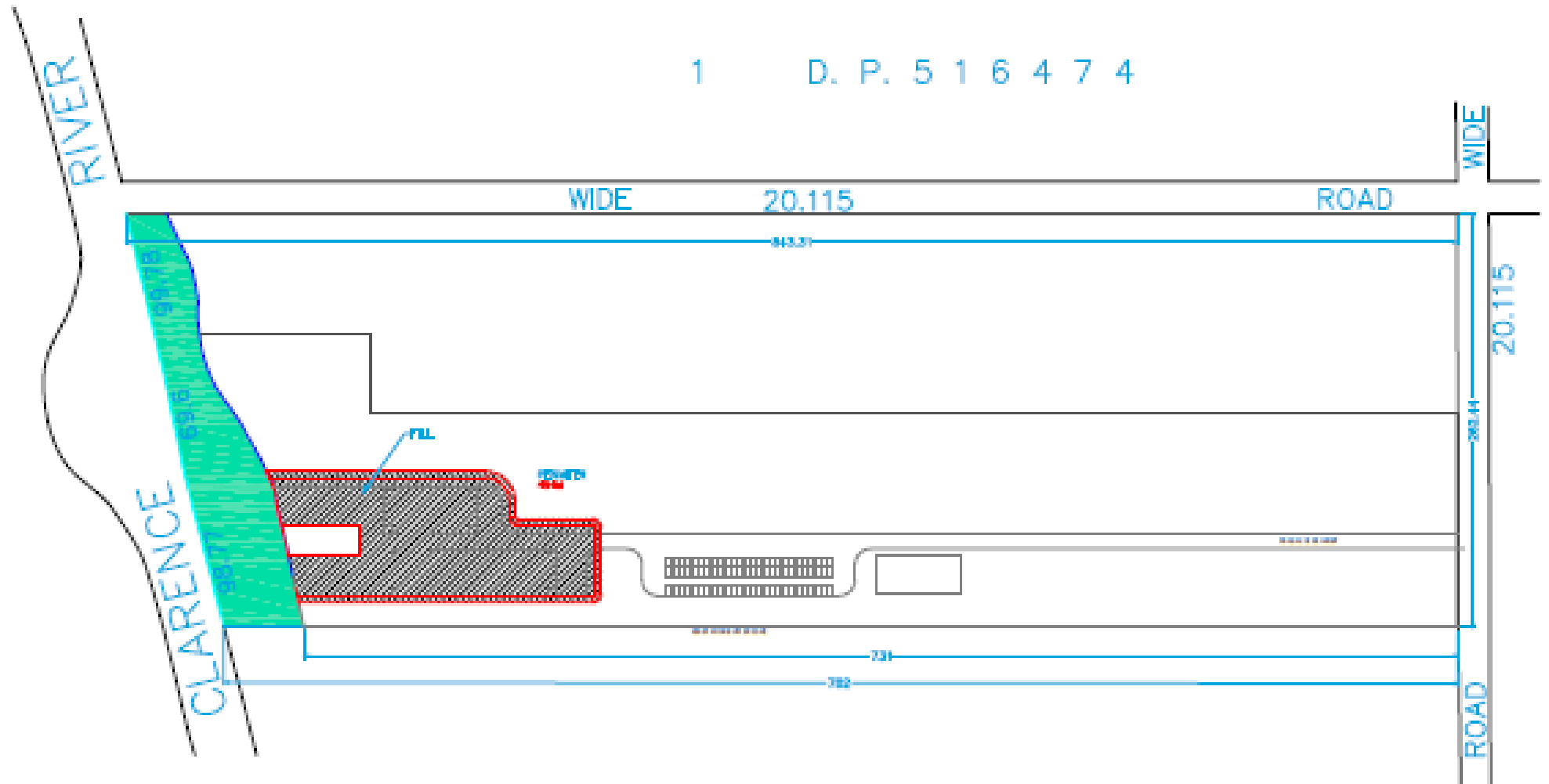
SOLID WALL 3.8M HIGH	
SOLID WALL 3.6M HIGH	
SOLID WALL 8M HIGH	
SOLID WALL 4.5M HIGH	

 IN4 Working Waterfront

 W3 Working Waterways

[illegible]

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### 3. PROCEDURAL CONSIDERATIONS

The Department has asked us to evaluate procedural and operational circumstances of the decision-making process to date. To do this, we have considered whether the steps taken to progress the Planning Proposal have been undertaken in accordance with statutory and technical requirements, focusing on:

- The extent to which various authorities have fulfilled their statutory obligations,
- How the proponent's request for an independent review of the Gateway determination was considered,
- How site contamination and remediation issues were addressed, and
- How issues raised through consultation with agencies and the community have been identified and addressed.

Our evaluation of authorities' conclusions in relation to merit-based considerations are provided in Sections 4 and 5.

#### 3.1. Authorities

The Act defines the relevant authorities responsible for administering Division 3.4 Environmental planning instruments - LEPs.

Under section 3.31(3) of the Act, *the following are local plan-making authorities -*

- a) *the Minister,*
- b) *a council for its local government area if the gateway determination under this Division authorises the council to make the local environmental plan concerned.*

The local plan-making authority for the Palmers Island Planning Proposal is the Department, as the Minister's delegate, as the gateway determination issued under section 3.42(2) of the Act does not specify any conditions regarding the local plan-making authority.

Under section 3.32(1) of the Act, *the planning proposal authority in respect of a proposed instrument is as follows -*

- c) *the council for the local government area to which the proposed instrument is to apply, subject to paragraph (b),*
- d) *if so directed under subsection (2) - the Planning Secretary, a Sydney district or regional planning panel or any other person or body prescribed by the regulations.*

Section 3.32(2) of the Act, *the Minister may direct that the Planning Secretary (or any such panel, person or body) is the planning proposal authority for a proposed instrument in any of the following cases*

- e) *not relevant*
- f) *not relevant*
- g) *the Planning Secretary, the Independent Planning Commission or a Sydney district or regional planning panel has recommended that the proposed instrument should be submitted for a determination under section 3.34 (Gateway determination) or that the proposed instrument should be made,*
- h) *not relevant.*

The proponent's submission for gateway review of the Palmers Island Planning Proposal, which was referred to the Northern Joint Regional Planning Panel, qualifies as a submission for a determination under subsection 3.34(5) of the Act. Although this would allow the Department, as the Minister's delegate, to make a direction under section 3.32(2), we have not been provided evidence to demonstrate that the Department has made such a direction.

The planning proposal authority is Clarence Valley Council.

The Department, as the Minister's delegate, appears to have technically fulfilled the statutory and technical responsibilities assigned to local plan-making authorities to date.

As discussed in Section 3.3 of this Report, Council's resolution to submit the planning proposal put before it in November 2016 for Gateway determination was not compliant with the statutory requirements of planning proposal authorities under Remediation of Contaminated Land (previously clause 6 of the State Environmental Planning Policy No 55 – Remediation of Land). Notwithstanding this, we understand that:

- at the time the planning proposal was considered by Council, it was general practice for the assessment of land contamination to be undertaken after a Gateway determination was issued, and prior to public exhibition, and
- the site has subsequently been remediated.

### 3.2. Review of Gateway determination

Written notification of the Gateway determination for the Palmers Island Planning Proposal not to proceed was issued to Council on 10 November 2017. At the time, Planning Circular PS 16-004 provided advice to councils and the public about the independent review processes related to plan-making decisions. This includes the process for a proponent or Planning Proposal Authority to request that a Gateway determination be reconsidered and re-issued.

Planning Circular PS 16-004 advised that, if a Gateway determination is not to proceed, the proponent or Planning Proposal Authority has 42 days from being notified to formally apply for a Gateway review. It then refers to the Department's *A Guide to Preparing Local Environmental Plans* for further detail in relation to lodgement requirements, including information that must be provided for a review to be undertaken. An application was made by the proponent, which was referred to the Northern Joint Regional Planning Panel (the Panel) for consideration.

We have considered the procedural and operational aspects of the Panel's Gateway review based on the following inputs, within the context of The Department's *A Guide to Preparing Local Environmental Plans*. We have considered the inputs available in the context of the most recent versions of this document (issued in December 2018), which we understand to substantially reflect previous versions.

- The Panel Version of the Palmers Island Planning Proposal, as described in **Appendix 2.2**, which formed the proponent's request for Gateway review;
- Correspondence prepared by the Department and Council in response to the proponent's request for Gateway review;
- *The Gateway Review Advice Report* issued by the Panel on 3 April 2018 (the Panel Report); and
- Interviews conducted with nominated Council and Department staff, as described in **Appendix 2.4**.

In addition to the Department's *A Guide to Preparing Local Environmental Plans*, the Panel's approach to reviewing the information provided and preparing its advice would have also been guided by the relevant Code of Conduct and Operational Procedures. We have considered the inputs available in the context of the most recent versions of these documents<sup>1</sup>, which we understand to substantially reflect previous versions.

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<sup>1</sup> NSW Planning Panels Code of Conduct (August 2018) and Sydney & Regional Planning Panels Operational Procedures (January 2020).

A summary of our examination is provided in **Table 4**.

In addition to the Modified Gateway version of the Planning Proposal, the proponent's application also included additional information to justify why an alteration of the Gateway determination is warranted. This information included:

- Details of the proponent's current business and expansion plans;
- Rationale for why the land already zoned for marine industry at Harwood was not suitable to the proponent's specific operational requirements;
- Rebuttals to the Department's view as to the consistency of the Planning Proposal with strategic merit considerations (e.g. strategies, Ministerial Directions, and SEPPs);
- Description of the Planning Proposal's economic benefits; and
- Evidence to suggest a lack of transparency and consistency in the decision-making process to date, including a comparison of the Department's response to the Palmers Island Planning Proposal in 2014 and 2017, and a copy of the Gateway assessment report for the Harwood Marine Industry Precinct Rezoning.



Table 4: Summary of procedural considerations for the Gateway determination review

Step	Comment
<i>Department checks whether to request is eligible and accompanied by the required information, noting the proponent had 42 days from being notified to formally apply for a Gateway review.</i>	
<i>42-day timeframe to apply</i>	<p><b>Not met, but accepted</b></p> <p>The proponent's application requesting an independent review of the Gateway determination is dated 27 December 2017, which is 47 calendar days after notification was issued.</p> <p>We understand the Department afforded time in addition to that specified in the Department's A Guide to Preparing Local Environmental Plans for the proponent to make the request to allow procedural fairness. This recognised that the Department's Regional office was closed on 22 December 2017 (42 calendar days after notification was issued) until 8 January 2017.</p>
<i>Suitability of application</i>	<p><b>Met</b></p> <p>The application contained the required information, as described.</p>
<i>If the application is proponent-initiated, the Department will notify the council of the request. The council will have 21 days to provide a response</i>	
<i>Council notified</i>	<p><b>Met</b></p> <p>The Department notified Council of the proponent's request for a Gateway review on 11 January 2018.</p> <p>The Department's notification to Council did not provide a copy of the proponent's application, including the statement justifying why an alteration of the Gateway determination was warranted. In our view, this limited Council's ability to respond to the evidence forming the proponent's justification.</p>
<i>21-day timeframe for Council's response</i>	<p><b>Met</b></p> <p>Council's response was received on 31 January 2018, which is 20 calendar days after the Department notified them of the request.</p> <p>Council advised the required timeframe did not allow the matter to be again referred to a formal Council meeting and reverted to the Council report considered at the 18 July 2017 Council meeting.</p> <p>Council did not provide a response to evidence underpinning the proponent's justifying statement.</p>

Table 4 continued

Step	Comment
<i>The Department will prepare a report outlining the planning proposal, the reason(s) why the review request has been made, the reasons why the original Gateway determination was made, and the views of the council (if the review was proponent-initiated). The Department's report and accompanying information will be forwarded to the relevant body for its advice.</i>	
<i>Department's report / referral</i>	<p><b>Met</b></p> <p>The Department prepared a Justification Assessment Report, which, along with the proponent's Gateway review request, was referred the matter to the Northern Joint Regional Planning Panel for consideration on 6 March 2018.</p> <p>The report summarised Council's response, referring to the report to Council of 18 July 2017. We understand the Department did not attach a copy of the Council report to this referral.</p> <p>The report identifies that the Department's position on the reasons for refusal remains unchanged in response to the proponent's additional information.</p> <p>Council's response provided by way of the report to Council of 18 July 2017 infers their position remains unchanged notwithstanding the proponent's additional information.</p>
<i>The relevant body reviews the request and prepares its advice. In this case, the Panel would be expected to follow the relevant Code of Conduct and Operational Procedures.</i>	
<i>Panel's review and advice</i>	<p><b>Met</b></p> <p>The panel held a site inspection and briefing meeting(s) on 3 April 2018.</p> <p>Department staff confirmed the proponent addressed the Panel during the briefing meeting. We consider this to be the only opportunity Council staff would have been afforded to hear and respond to the additional information provided in the proponent's justifying statement for a Gateway review. We understand Council did not provide a response during the meeting.</p> <p>We understand individuals representing the proponent and Council, in addition to those recorded in the Panel report, were also in attendance at the briefing meeting.</p>

We understand Council's standard practice in relation to this planning proposal would have required the matter to be reported to the elected Council to consider any new information and provide an updated position of support. This could not occur because no Council meetings were scheduled during the 21-day response period. Consequently, Council officers reverted to the most recent position available, which was reflected in the 18 July 2017 Council report.

We note the 18 July 2017 Council report was the second time the elected Council had considered the matter. It provided a concise update on progress made since the Planning Proposal had originally been submitted for Gateway Determination. We understand from our interviews with Council staff that, once elected Council resolve to support a proposal, subsequent reports are prepared to align with that position. Consequently, the 18 July 2017 Council report reflected Council's resolved position at the time, which was supportive of the Planning Proposal. In other words, it provided recommendations as to how the Planning Proposal should proceed, rather than again considering whether the Planning Proposal should proceed. The rationale for Council officers' initial recommendation for refusal was instead outlined in the Council report considered at the 15 November 2015 Council meeting.

In our view, the inability for Council officers to report the matter to elected Council, along with Council officers' lack of opportunity to respond to the new information presented in the applicant's justifying statement, means that the Panel was not afforded the full planning assessment that Council officers would ordinarily provide. This recognises Council officers would have been capable of providing a more-informed response to the following issues, which heavily informed the Panel's advice and are considered substantial to demonstrating the strategic merits of the planning proposal, as discussed in Section 4.

- **The suitability of the Harwood site.** The proponent specifically cited limitations arising from road access and additional dredging that would be required to provide suitable water access. At the time the Panel was reviewing this request, Council was in the process of applying for grant funding for the 'Connecting the Harwood Marine Precinct' project, which was subsequently accepted under the Growing Local Economies Fund. This project involves constructing an upgraded sealed road into the Harwood Marine Precinct and potentially some strategic maintenance dredging at the transition in the Clarence River<sup>2</sup>.
- **Considerations for Marine Industry precincts and clusters.** In addition to The Department's Marine-Based Industry Policy - Far North Coast & Mid North Coast NSW (2015), these considerations were derived from studies and strategies that were prepared by or on behalf of Council. The proponent relied on the Clarence Valley Marine Precinct 2010, which we understand this document is not intended for land use planning purposes, and the Clarence Valley Industrial Lands Strategy (2007), which provides high-level considerations for the concept of 'clustering' industrial activities.
- **The availability of other suitable sites within the broader Clarence Valley Marine Precinct,** and the extent to which the proponent had considered these before submitting the planning proposal.

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<sup>2</sup> Item 13.040/18 in the minutes of the Ordinary Meeting Council Valley Council held on 21 August 2018

### 3.3. Site contamination and remediation

#### 3.3.1. Background

The commentary in this subsection refers to:

- The Remediation Policy, specifically meaning the provisions made under Section 9.1 of the Act through Ministerial Direction 2.6 - Remediation of Contaminated Land, which were previously made under clause 6 State Environmental Planning Policy No 55 – Remediation of Land,
- Pt 3, Div 4 of the Act, which is now Part 3, Div 3.4 of the Act, and
- Section 55 of the Act, which is now Section 3.33 of the Act.

Mills Oakley (Anthony Whealy) made a submission to the public exhibition of the planning proposal on behalf of several Palmers Island Residents in the form of a letter, dated 12 July 2019. This submission outlined grounds for a potential legal challenge based on how Council, as planning proposal authority, considered site contamination and remediation with respect to the Remediation Policy provisions, drawing on the Court of Appeal's ruling on *Moorebank Recyclers Pty Ltd v Tanlane Pty Ltd* [2018] NSWCA 304 (the Moorebank decision).

The Moorebank decision rendered the subject planning proposal invalid because the Council, as planning proposal authority, did not comply with the Remediation Policy provisions prior to submitting the planning proposal to the Department for Gateway determination under section 3.34 of the Act. Specifically, it considered a planning proposal could not comply with the requirement in section 3.33 of the Act to explain the intended effect of the proposed instrument if obligations with respect to dealing with contamination had not been addressed.

On 17 April 2020, clause 6 of the Remediation Policy was repealed and the provisions were directly transferred to a new Ministerial Direction 2.6 - Remediation of Contaminated Land. We consider the intent and operation of these provisions to remain unchanged. Ministerial Direction 2.6 does not further clarify at which preparatory step contamination is required to be considered (e.g. pre-Gateway, before community consultation, before amending the LEP etc.). On that basis, the Moorebank decision is considered to stand.

#### 3.3.2. Considerations regarding legal risk

The intended effect with respect to dealing with contamination was not addressed when the Palmers Island planning proposal was considered by Clarence Valley Council at its 15 November 2016 meeting (item no 14.108/16). Appendix D to the Council version of the Palmers Island Planning Proposal concluded the Remediation Policy was not relevant to the Planning Proposal. In contradiction to this, Attachment 2 to the Council officer's report identified the planning proposal was inconsistent with SEPP 55, noting *"The subject property has previously been used for commercial cane production and has potential to be contaminated by chemical residues"* and that *"A preliminary site assessment would be required...prior to public exhibition to comply with this State Policy."*

We understand that, at the time the planning proposal was considered by Clarence Valley Council, it was general practice for the assessment of land contamination to be undertaken after a Gateway determination was issued, and prior to public exhibition. Council's Resolution - 14.108/16 seeks to rectify this non-compliance by noting consideration for site contamination would be required prior to public exhibition, in line with general practice. Notwithstanding this, Clarence Valley Council was aware that the Palmers Island Planning Proposal put before it in November 2016 was not compliant with cl 6 of the Remediation Policy when it submitted the Planning Proposal for determination under section 3.34 of the Act. In line with the Moorebank decision, this, in and of itself, may render the Planning Proposal invalid.

In line with general practice, condition 1(b) of the August 2018 Alteration of Gateway Determination required a preliminary site investigation for contamination to be undertaken and attached to the Planning Proposal prior to community consultation. A 'Phase 1 Site Contamination Assessment Report' was issued by Regional Geotechnical Solutions (RGS) in January 2019 and attached to Planning Proposal prior to public exhibition.

The intended effect with respect to dealing with contamination, therefore, was described in the Exhibition version of the planning proposal; however, the described intended effect was inaccurate. The 'Phase 1 Site Contamination Assessment Report' identified the location of heavy metal concentrations found to be above the adopted criteria for commercial/industrial land use within a tractor storage area as occurring outside the area where development is proposed. This description appears to be based on the site improvements detailed in the Concept Plan accompanying the Planning Proposal at the time the report was prepared, whereas the operation of the Remediation Policy relates to the proposed change in land use zone. The figure provided in the 12 July 2019 letter prepared by Mills Oakley (Anthony Whealy) Mills, consolidating the planning proposal's proposed rezoning plan with the sampling locations shown in the Contamination Report site plan, confirms that the contaminated land is within the area proposed as IN4 Working Waterfront.

Although the site has subsequently been remediated, as confirmed by a Site Validation Assessment issued by RGS in December 2019, we still consider there to be a legal risk in proceeding with the planning proposal that would need to be addressed before the LEP is made.

### **3.4. Consultation with agencies**

Council, as planning proposal authority, has fulfilled its obligations with respect to Condition 3 of the Gateway determination, which required consultation with the following public authorities and organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of section 9.1 Directions:

- NSW Roads and Maritime Service
- NSW Department of Industry (Fisheries)
- NSW Department of Industry (Agriculture)
- NSW Office of Environment and Heritage.

We understand Council provided each agency with a copy of the Exhibition version of the Planning Proposal on 6 May 2019 to request feedback and have been provided with a copy of all nominated agencies' responses. The extent to which key issues raised by Agencies have been resolved is discussed in Section 5.

We note the approach taken to concurrently consult with agencies and the public means the Planning Proposal is technically inconsistent with Ministerial Direction 1.4 Oyster Aquaculture, which, under Clause 5(a), requires the planning proposal authority to completed its consultation with Department of Primary Industries - Fisheries and provide a copy of any objection or supporting information with the statement to the Director-General of the Department of Planning before undertaking community consultation.

### **3.5. Community consultation**

Council placed the planning proposal on exhibition from 10 May until 11 June 2019, in accordance with Gateway requirements. Council granted an extension to the exhibition until 11 July 2019, for a total exhibition period of 63 calendar days.

Council received 183 submissions, including one petition in support and one petition objecting to the planning proposal. Council engaged a consultant to independently review of the submissions received. We have considered the outcomes of this review, completed by Planning Resolutions, and provided as Attachment B to Item 6b.19.031 considered by considered by Clarence Valley Council at its 22 October 2019 meeting. Key considerations are summarised below.

Planning Resolutions noted support for the planning proposal was almost entirely synonymous with support of the proponent's business or the boat building industry in general, rather than supporting a change in zoning at this site.

Planning Resolutions also found that objectors did not raise any new issues, but instead reiterated issues associated with flooding, noise, traffic, visual impacts, and loss of agricultural land. These issues remain unresolved in the current planning proposal.

### **3.6. Conclusions regarding procedural considerations**

The Department, as the Minister's delegate, and Council have each fulfilled the statutory and technical responsibilities assigned to their respective roles to date. The way in which some responsibilities have been carried out has led to issues with regard to consistency and transparency in the overall decision-making process.

The Panel was not afforded the full planning assessment that Council officers would ordinarily provide, including in relation to issues that are considered substantial to demonstrating the strategic merits of the planning proposal. This warrants re-consideration of the Panel's advice, which we have provided later in our Report.

Although the site has subsequently been remediated, as confirmed by a Site Validation Assessment issued by RGS in December 2019, we still consider there to be a legal risk in proceeding with the planning proposal that would need to be addressed before the LEP is made.

Technical requirements for consultation with agencies and community consultation have fulfilled, but the issues raised have not been resolved. The significance of these as to whether the planning proposal should proceed are considered later in our Report.



## 4. CONSIDERATIONS FOR STRATEGIC MERIT

The Department's *A Guide to Preparing Planning Proposals* sets out assessment criteria to determine the extent to which a planning proposal has strategic merit. The criteria ask whether the planning proposal will:

- Give effect to the relevant regional plan outside the Greater Sydney Region, which in this case is the North Coast Regional Plan, or
- Give effect to a relevant local strategic planning statement or strategy that has been endorsed by the Department or required as part of a regional or district plan or local strategic planning statement, or
- Respond to a change in circumstance, such as the investment in new infrastructure or changing demographic trends that have not been recognised by existing strategic plans.

The Department's *A Guide to Preparing Planning Proposals* requires planning proposals to respond to the following questions to demonstrate the justification for the planning proposal:

### Section A - Need for the planning proposal

- Q1. Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?
- Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

### Section B - Relationship to strategic planning framework

- Q3. Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?
- Q4. Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?
- Q5. Is the planning proposal consistent with applicable State Environmental Planning Policies?
- Q6. Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?

### 4.1. Need for the planning proposal

The need for the planning proposal has not been justified.

<b>No</b>	<b>Q1. Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?</b>
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Clarence Valley Council does not have an endorsed local strategic planning statement.

The planning proposal is not a result of the two endorsed strategic studies applying to Clarence Valley:

- Clarence Valley Settlement Strategy (endorsed March 1999)
- Clarence Local Growth Management Strategy (Maclean Urban Catchment Component) (endorsed November 2011)

<b>No</b>	<b>Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?</b>
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The planning proposal's objective is to enable the development of a Marine Industrial Park on this site.

The required land uses to enable this development are not permissible within zone RU1 - Primary Production, which currently applies to the site.

The zone regime proposed in the planning proposal is consistent with that set out in Section 3 of the Department's *Marine-Based Industry Policy - Far North Coast & Mid North Coast NSW*, which states that "A change of zoning to permit a marine-based industry should **utilise the Zone IN4 Working Waterfront** of the Standard Instrument LEP. Depending on the local circumstances it may also be

necessary to zone the adjoining waterway(s) as **Zone W3 Working Waterway** to ensure that water-based activity associated with a marine-based industry is permissible."

The proposed LEP amendments do not incorporate the three additional considerations set out in the Department's *Marine-Based Industry Policy - Far North Coast & Mid North Coast NSW*, that are intended to ensure that areas identified for marine-based industry are reserved for that purpose - not used for general industrial development which should be located in a general industrial area away from the waterway:

- *add a local objective in the IN4 zone land use table, as follows: 'To ensure that any industry requires direct waterfront access or is associated with another industry that requires direct waterfront access, noting this is not identified as a local objective for Zone IN4 in the CVLEP;*
- *only include land uses as permissible in the Zone IN4 land use table if their presence would be consistent with the policy positions in this paper, noting the planning proposal does not propose any changes to the Zone IN4 land use table, and*
- *insert an additional clause in the LEP which specifically addresses marine-based industry, noting a model clause is provided in this Policy but has not been considered in this planning proposal.*

Section 3 of the Department's *Marine-Based Industry Policy - Far North Coast & Mid North Coast NSW* also advises Councils may prepare development control plans to locally customise controls for marine-based industry to address such things as river access, boat sizes, co-location, servicing, environmental management, etc. which would provide guidance for the specific detail about the form and nature of development, recognising local conditions. In this regard:

- Clarence Valley Council's Industrial Zones Development Control Plan 2011 sets out local considerations for the proposed IN4 zone, and
- Clarence Valley Council's Development Control Plan Development in Environmental Protection, Recreation and Special Use Zones 2011 sets out considerations for the proposed W4 zone.

Clarence Valley Council's Industrial Zones Development Control Plan 2011 provides site-specific controls for the Marine Industrial Precinct, Harwood Island under Part N. We understand the purpose of identifying site-specific controls was to allow for multiple uses or multiple users to co-locate within this precinct.

The planning proposal does not consider whether a development control plan should be prepared to achieve the outcomes described in Section 3 of the Department's *Marine-Based Industry Policy - Far North Coast & Mid North Coast NSW*.

A key strategic consideration for this planning proposal is whether additional zoned land is needed and, if so, whether required in this location. Considerations detailed later in our report identify the planning proposal is intended to specifically facilitate the proponent's proposed development, rather than enable the in-principle development of marine industry in this location. This warrants consideration of alternative LEP controls or planned approaches that would ensure the site retains its existing land use objectives should the proponent's proposed development not proceed. This could include:

- Retaining the site's RU1 Primary Production zone and specifying the range of uses envisaged for the proposed development in Schedule 1 Additional Permitted Uses,
- Introducing a sunset clause to the proposed part IN4 Working Waterfront and part W4 Working Waterway zoning, which would see the land zone revert to RU1 Primary Production after a specified time, should the development not proceed, or
- Postponing the making of the LEP until the proponent prepares a development application, demonstrating the development can proceed.

## 4.2. Relationship to strategic planning framework

No	<b>Q3. Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?</b>
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### 4.2.1. Mid North Coast Regional Strategy

The Department's *Mid North Coast Regional Strategy* (2009) was the prevailing regional strategy at the time the planning proposal was initially accepted. This acknowledged that 'the Region is historically recognised for its boat building industry and provides sheltered, waterside locations for this industry to grow and provide more employment' and 'In the case of some marine-based industries that depend upon access to navigable waterways, additional opportunities for industry establishment may be provided outside the growth areas.'

While the site was not identified as a 'growth area', the *Mid North Coast Regional Strategy* identified an action for Government to develop suitable locational criteria to assist in guiding future development opportunities for marine-based industries that depend upon access to navigable waterways. This culminated in the Department's *Marine-Based Industry Policy - Far North Coast & Mid North Coast NSW*.

We understand the planning proposal is principally motivated by the applicant's intention to expand an existing local business, which currently fabricates vessels from a land-based industrial estate in Yamba (approximately 10km from the subject site). Vessels are currently transported from the existing facility by road to a suitable launch-point, which is typically the marina at Yamba. The applicant is seeking to conduct boat building activities from an additional or alternative location to enable increased production volume and would benefit from a site with frontage to a navigable waterway to allow the business to fabricate larger vessels (typically greater than 20m in length), which require transport by water.

### 4.2.2. Considerations for a marine industry cluster

Development of marine-based industry and riverfront development, as relevant to this planning proposal is guided by:

- The Department's *Marine-Based Industry Policy - Far North Coast & Mid North Coast NSW* (2015),
- Clarence Valley Council's *Industrial Lands Strategy* (2007),
- Clarence Valley Council's *Clarence Marine Precinct* (2010), and
- Clarence Valley Council's *Clarence River Way Master Plan* (2009).

The Department's *Marine-Based Industry Policy - Far North Coast & Mid North Coast NSW* states on p7, "Ideally if more than one enterprise is likely to be established, they should be clustered into a precinct rather than scattered along the waterway's edge, with a view to maximising efficiency of infrastructure and minimising environmental impacts."

This clustering approach is also supported by Clarence Valley Council's *Industrial Lands Strategy*, which:

- Describes clusters as "groupings of related firms within a particular geographical space, with the aim that this proximity to other firms will: facilitate interaction between producers; centralise labour and resources within one particular place; and generate economies of scale (lower costs and improve efficiency)",
- Supports the creation of clusters for marine industries and notes the role suitable industrial land supply can play, and
- Encourages clusters to be self-generating, recognising it may take some time for the benefits of industry clusters to be realised.

Clarence Valley Council's *Clarence Marine Precinct* sets out a framework for investment in development and infrastructure along the Clarence River, from Yamba/Iluka at the mouth of the river to Grafton. This represents some 32 nautical miles. The *Clarence River Way Master Plan* has been prepared as a supporting plan to this document, predominantly focusing on the development of the tourism industry.

Collectively, these documents encourage the clustering approach described in Clarence Valley Council's *Industrial Lands Strategy*. We consider the clustering approach to be sequential, with development within the Harwood site preferred before making augmentations to the land supply. The planning proposal as currently presented does not demonstrate that the Harwood site is incapable of accommodating the development, which means the need to augment supply is not justified.

We acknowledge that the proponent provided information to address the suitability of the Harwood site in the December 2017 request for independent review of the Gateway determination. This has never been provided to Clarence Valley Council and hence has not been incorporated into the planning proposal.

Furthermore, the planning proposal does not demonstrate that development of the site would qualify as a 'cluster' with respect to its geographical proximity to the Harwood site. This would include considerations for how the proposal meets the characteristics described in Clarence Valley Council's *Industrial Lands Strategy* to: facilitate interaction between producers; centralise labour and resources within one particular place; **and** generate economies of scale (lower costs and improve efficiency). This would include, for example, evidence that development and operation within the site would rely on some shared cost associated with infrastructure (e.g. transport, power, water, etc.) or environmental protection measures (e.g. riverbank stabilisation, noise mitigation, etc.). Conversely, the information provided in the planning proposal indicates development of the proposed site would require the duplication of a substantial amount of these works.

Notwithstanding the above, the Clarence Valley Council's *Clarence Marine Precinct* and *Clarence River Way Master Plan* are predominantly aimed at promoting the area for investment and are not intended for land use planning purposes. Any new development seeking to locate within the broadly defined precinct area would still need to conform to the Department's *Marine-Based Industry Policy - Far North Coast & Mid North Coast NSW*.

#### **4.2.3. Marine-Based Industry Policy**

The Department's *Marine-Based Industry Policy - Far North Coast & Mid North Coast NSW* highlights issues that need to be addressed in assessing any planning proposal for marine-based industry. The extent to which the planning proposal has, or can meet the locational criteria in Sections 2.2 and 2.3 of this Policy have been considered in conjunction with the waterway attributes listed in Appendix 1 of the Policy and are presented in detail in **Appendix 1.3**, with the insights emerging from that review presented below. Where sites conform with these criteria, Section 3 of this Policy provides considerations for establishing LEP controls, as discussed in **Section 4.1** of our report and noting the planning proposal is currently inconsistent with Section 3 of this Policy.

**The planning proposal has not suitably addressed the exclusionary criteria, where marine-based industry should not occur as set out in Section 2.2 of this Policy.**

The aquatic habitat mapping provided in the planning proposal was prepared at a high-level for the Clarence River, and is not considered suitable for site-specific considerations. It was prepared based on field data from 2004, and is considered out of date, noting survey methods and protected listings for several exclusionary criteria have changed since that time. The planning proposal is not accompanied by a study of potential impacts of the proposed slipway and basin on aquatic habitat at the site, as required by the amended Gateway determination issued by the Department on 14 August 2018.

**The planning proposal has not proven it meets the three qualifying criteria where marine-based industry can occur as set out in Section 2.3 of this Policy.**

The three qualifying criteria are:

- The industry is dependent on access to a navigable waterway,
- The maximum draught of the vessel(s) or product(s) proposed to be built allows it/them to pass safely through the waterway and the waterway's entrance to the sea, and
- The size or bulk of the vessel(s) or product(s) proposed to be built requires transport by water.

'Access to a navigable waterway' is not synonymous with a 'marine-frontage site'. By way of illustration, access can be achieved either by road/rail from a land-based fabrication facility to a suitable launch site, or directly where activities occur on a site that benefits from marine frontage. These criteria must therefore be considered collectively to identify whether the planning proposal for a marine-based industry must have marine frontage.

The estimated mix of vessels to be constructed annually from the proposed facility suggests that at least 80%, and potentially up to 95% of these would be capable of fabrication at a land-based facility (either the proponent's existing facility or an alternative land-based facility). On that basis, while marine frontage would be advantageous to one element of the proponent's expansion prospects (e.g. fabrication of larger vessels), the expansion of the business in its totality is not considered to be entirely dependent on marine frontage.

**The planning proposal either does not meet or has not yet demonstrated it can meet the site criteria as set out in Section 2.3 of this Policy**

The remaining criteria only need to be addressed if the planning proposal meets the above qualifying criteria. Notwithstanding our conclusion above, the planning proposal does not suitably address how the following criteria would be sustainably managed, ameliorated or off-set:

- 1. Any new dredging required for site access would not adversely affect estuarine habitats, marine vegetation, fishery resources and water quality.
- 2. The site is not located where its development would be likely to adversely affect water quality for other users or impact on water quality or tidal regimes for estuaries, wetlands, marine parks, aquatic reserves or other high conservation value habitats.
- 3. Development of the site would not have an adverse effect on oyster aquaculture development or Priority Oyster Aquaculture Areas (POAA) and/or commercial and recreational fishing activities.
- 4. The site is not located in a high flood risk precinct or high flood area.
- 6. The site does not contain high-risk acid sulfate soils which could be disturbed, exposed or drained.
- 9. The proposed development of the site would not conflict with neighbouring land uses (such as residential and recreational/tourism pursuits).
- 10. Services and infrastructure could be practicably provided.

We understand the intent of this policy is for these matters to be addressed in the planning proposal rather than at the development application stage, noting the operative wording of the on page 7 states that 'Proponents of prospective marine-based industries that meet the criteria can approach the relevant local council seeking preparation of a planning proposal, with a view to permitting the industry.'

We acknowledge that Clarence Valley Council's *Industrial Lands Strategy* also provides general site selection criteria for industrial land. This Strategy is not considered an endorsed strategy, and the locational criteria provided in the Department's *Marine-Based Industry Policy - Far North Coast & Mid North Coast NSW* is considered to prevail.

#### **4.2.4. North Coast Regional Plan**

The Department's *North Coast Regional Plan 2036* (2017) superseded the *Mid North Coast Regional Strategy* and is now the prevailing regional plan. The extent to which the planning proposal is consistent with the objectives and actions of this plan is presented in detail in **Appendix 1.4**



The *North Coast Regional Plan 2036* does not specifically acknowledge the strategic importance of the region's historic and current boat building industry or identify this as a growth industry. Under Direction 6, it does recognise certain industries may need to be located away from existing centres due to their type, scale, and nature, and advises that these should be addressed in strategies.

The planning proposal is contradictory to Direction 11, which aims to protect and enhance productive agricultural lands, noting the site is identified as 'Important Farmland' (see **Figure 5**).

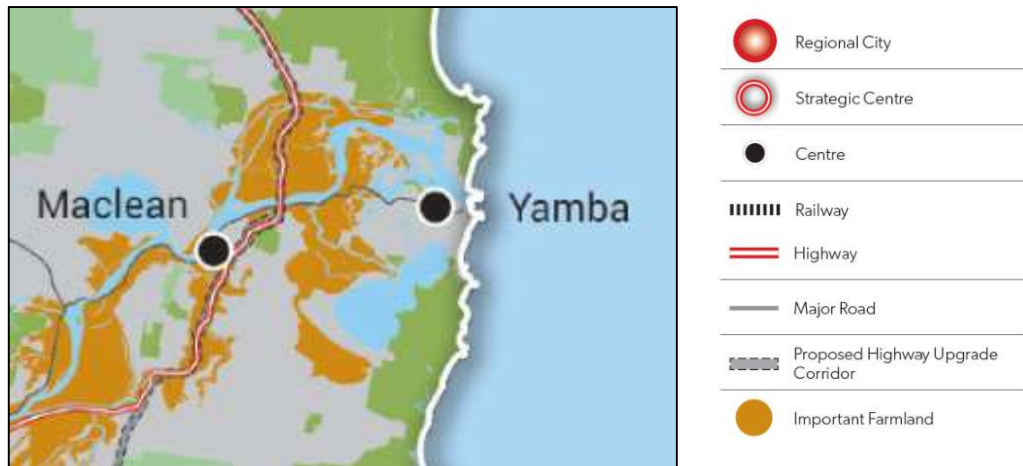


Figure 5: North Coast Regional Plan map identifying Important Farmland

No

**Q4. Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?**

Clarence Valley Council has two endorsed strategic studies, but these are not considered relevant to the planning proposal.

Clarence Valley Council does not have an endorsed local strategic planning statement.

A draft local strategic planning statement was issued in April 2020 but has not yet been finalised. This recognises the importance of marine manufacturing and logistics as an 'engine of growth', noting the Clarence River has one of the highest concentrations of marine industry businesses outside of Sydney and Newcastle. The following draft actions are considered relevant to the planning proposal:

- 12.3 Develop community based local precinct plans and economic strategies for local centres, such as Harwood.
- 14.3 Explore opportunities and supporting planning controls for marine industries that are sustainable and fit with the amenity and local character expectations of the community.



No

**Q5. Is the planning proposal consistent with applicable State Environmental Planning Policies?**

The extent to which State Environmental Policies apply to the planning proposal is presented in detail in **Appendix 1.1**. The planning proposal is inconsistent with the only applicable State Environmental Policy as follows.

**SEPP (Coastal Management) 2018**

The site is within the land application map to which this SEPP applies. General provisions applying to all development are set out in Clauses 15 and 16. Under Clause 6, the site is also identified within the 'Coastal Environment Area', triggering Clause 13, and the 'Coastal Use Area', triggering Clause 14.

The planning proposal addresses the requirements of Clause 14.

The planning proposal does not address Clauses 13, 15 and 16, which deal with a range of matters such as potential impacts to and from coastal hazards, visual impacts / scenic qualities, water quality and ecology. These matters are also required to address the locational criteria the Department's *Marine-Based Industry Policy - Far North Coast & Mid North Coast NSW* and are relevant to considering the planning proposals site-specific merits.

No

**Q6. Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?**

The extent to the planning proposal is consistent with applicable Ministerial Directions is presented in detail in **Appendix 1.2**.

The planning proposal is does not adequately address the following Ministerial Directions.

**1.1 - Business and Industrial Zones**

The planning proposal is inconsistent with Clause 4(a) of this Direction, which requires a planning proposal to ensure proposed new employment areas are in accordance with a strategy that is approved by the Secretary. The proposed development of the site is expected significantly conflict with neighbouring land uses, such as residential and recreational/tourism pursuits but is not supported by a justifying strategy or statement to demonstrate these impacts can be ameliorated.

**1.2 - Rural Zones and 1.5 - Rural Lands**

The planning proposal is inconsistent with clause 4 of Direction 1.2 Rural Zones as it would rezone land from a rural zone to an industrial zone. We understand the Panel considered this inconsistency to be minor and, consequently, the inconsistency was approved through the amended Gateway determination.

Ministerial Direction 1.5 Rural Lands applies under clause 3(b) as the planning proposal will affect land within an existing rural zone. The planning proposal is either not consistent or has not yet resolved the clause 4 or clause 5 considerations required to justify the rezoning.

The extent to which this inconsistency is justified cannot be determined because the significance of potential impacts has not been identified in the planning proposal, noting the Department of Primary Industries - Agriculture is not supportive of the proposal.

#### **1.4 - Oyster Aquaculture**

Clause 5(a) of this Direction requires the planning proposal authority to complete its consultation with Department of Primary Industries - Fisheries and provide a copy of any objection or supporting information with the statement to the Director-General of the Department of Planning before undertaking community consultation. The planning proposal is inconsistent with this Direction because Priority Oyster Aquaculture Areas located within 10km of the site were identified as relevant to the planning proposal by Department of Primary Industries - Fisheries in June 2019, after community consultation had been undertaken.

The extent to which this inconsistency is justified cannot be determined because the significance of potential impacts has not been identified in the planning proposal.

#### **2.2 - Coastal Management**

The planning proposal has not adequately addressed Clause 4 of this Direction, which requires the planning proposal to include provisions that give effect to and are consistent with:

- i) the objects of the Coastal Management Act 2016 and the objectives of the relevant coastal management areas;
- j) the NSW Coastal Management Manual and associated Toolkit;
- k) NSW Coastal Design Guidelines 2003; and
- l) any relevant Coastal Management Program that has been certified by the Minister, or any Coastal Zone Management Plan under the Coastal Protection Act 1979 that continues to have effect under clause 4 of Schedule 3 to the Coastal Management Act 2016, that applies to the land.

#### **2.6 - Remediation of Contaminated Land**

On 17 April 2020, cl 6 of the Remediation Policy was repealed and the provisions were directly transferred to a new Ministerial Direction. We consider the operation of these provisions to remain unchanged.

We acknowledge that the site has been remediated and is considered suitable with respect to contamination (refer to the Site Validation Assessment issued by Regional Geotechnical Solutions in December 2019).

Notwithstanding this:

- Under Clause 6, the planning authority must consider the contamination and remediation of the site when assessing the planning proposal. The planning proposal was not consistent with this SEPP when it was submitted for determination under section 3.34 of the Act, which may render it invalid.
- The Phase 1 Site Contamination Assessment Report accompanying the planning proposal presents an inaccurate description of the location of contaminated land in relation to the proposed change in land use zone, which is inconsistent with Clause 6.

#### **4.1 - Acid Sulfate Soils**

The planning proposal is inconsistent with this direction as it seeks to intensify uses on land mapped as containing Class 3 and a small portion of Class 2 ASS and is not accompanied by an acid sulfate soils study consistent with the Planning Guidelines.

The extent to which this inconsistency is justified cannot be determined because the significance of potential impacts from ASS disturbance caused by significant works within the riverbank has not been identified in the planning proposal.

#### 4.3 - Flood Prone Land

The planning proposal is inconsistent with clause 6 of this Direction as follows:

*A planning proposal must not contain provisions that apply to the flood planning areas which:*

(a) permit development in floodway areas,	<b>Inconsistent</b>
(b) permit development that will result in significant flood impacts to other properties,	<b>Inconsistent</b>
(c) permit a significant increase in the development of that land,	<b>Inconsistent</b>
(d) are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or	<b>Unresolved</b>
(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	<b>Consistent</b>

The OEH recommendation for further flood modelling to demonstrate the future development can progress without creating significant offsite flood impacts has not been completed. This recommends that this modelling considers enough architectural and ultimate landform details to demonstrate offsite impacts.

The extent to which the identified inconsistencies are justified cannot be determined without further study.

#### 4.3. Change in circumstances

The Department's Guide to Preparing Planning Proposals allows for the consideration of planning proposals in response changes in circumstances, such as the investment in new infrastructure or changing demographic trends. Changes in circumstances have not been identified as a justification for this planning proposal.

#### 4.4. Conclusions regarding strategic merit considerations

The strategic merits of the planning proposal in its current form are not supported, noting:

- It is not consistent with North Coast Regional Plan
- It is not consistent with the Marine-Based Industry Policy - Far North Coast & Mid North Coast NSW
- It is not consistent with the Clarence Valley Council's *Industrial Lands Strategy* (2007), and
- The need to augment marine industry land supply in this location is not strategically justified.

While the site's geographical proximity to Harwood is relevant, the information accompanying the Planning Proposal does not demonstrate how this site would operate as a 'cluster' with other nearby marine industry activities. This would include, for example, evidence that development and operation within the site would rely on some shared cost associated with infrastructure (e.g. transport, power, water, etc.) or environmental protection measures (e.g. riverbank stabilisation, noise mitigation, etc.). Conversely, the information provided indicates development in this location would require the duplication of a substantial amount of these works. Future development of a marine industry cluster corresponding with the Harwood site should be considered within the context of draft local strategic planning statement action 12.3 to prepare a precinct plan and economic strategy for Harwood.

Rezoning land at the subject site would, in effect, establish a separate 'cluster'. While this is not necessarily an unacceptable outcome, it does warrant the need for additional information to strategically justify the making of the LEP, which:

1. Demonstrates that the proposed development relies on a marine frontage site,
2. Demonstrates that the existing zoned land at Harwood is not be capable of accommodating the proposed development,
3. Justifies this site as the best alternative location within geographical proximity to the Harwood site that would suitable to meeting its operational needs, and
4. Demonstrates that development of the site would be able to proceed once the rezoning has occurred, accounting for the design and constructability of onsite and offsite works.

## 5. CONSIDERATIONS FOR SITE SPECIFIC MERIT

The planning proposal in its current form, is not supportable with respect to site specific merit, having regard to the Department's *A Guide to Preparing Planning Proposals*:

Section C - Environmental, social, and economic impact

- Q7 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?
- Q8 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?
- Q9 Has the planning proposal adequately addressed any social and economic effects?

Section C - State and Commonwealth interests

- Q10 Is there adequate public infrastructure for the planning proposal?
- Q11 What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

### Unresolved

**Q7. 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?**

The site's terrestrial areas have been predominantly cleared and, based on its historic and current agricultural use, it is considered unlikely that the site's terrestrial areas would contain any critical habitat for threatened species, populations or ecological communities, or their habitats.

State Government studies identify the Clarence estuary as the largest and most complex estuarine wetland system of the NSW coast. The aquatic habitat mapping provided in the planning proposal was prepared at a high-level for the Clarence River, and is not considered suitable for site-specific considerations. It was prepared based on field data from 2004, and is considered out of date, noting survey methods and protected listings afforded by Commonwealth and State legislation have changed since that time.

The site is also close to mapped coastal wetlands (with the closest to the south-west and north-west on the opposite side of the river).

The planning proposal seeks to facilitate the development of a 50 x 20m (approximate) wide basin and internal boat ramp within the site's river frontage. These works require significant excavation of the riverbank (including vegetation removal) and potential disturbance of acid sulfate soils.

The planning proposal is not accompanied by a study of potential impacts of the proposed slipway and basin on aquatic habitat at the site, as required by the amended Gateway determination issued by the Department on 14 August 2018. There is insufficient information to establish whether the site's aquatic areas contain any critical habitat or threatened species, populations or ecological communities, or their habitats, and, in turn, to what extent the proposal will impact on any such values.

The potential for off-site impacts, including with respect to road upgrades, has also not been considered.

**Yes, and  
Unresolved**

**Q8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

The planning proposal identifies several environmental effects resulting from the proposed development but does not suitably address their significance or identify how these would be managed. Key issues have been summarised in **Table 5**.

*Table 5: Summary of key environmental effects significance and proposed management*

Factor	Impact	Managed response
<b>Flooding</b>	<b>Significant</b>	<p><b>Unresolved</b></p> <p>Changes to flood behaviour have been identified that would adversely affected adjoining properties. The planning proposal does not identify how these impacts would be managed.</p> <p>The OEH recommendation for further flood modelling to demonstrate the future development can progress without creating significant offsite flood impacts has not been completed. This recommends that this modelling considers enough architectural and ultimate landform details to demonstrate offsite impacts.</p>
<b>Acoustic</b>	<b>Significant</b>	<p><b>Unresolved</b></p> <p>The effectiveness of the proposed measures to attenuate all potential noise sources (including construction and off-site traffic) to all potential sensitive receivers has not been adequately demonstrated. The suitability of the proposed acoustic mitigation measures with respect to visual and flooding impacts has not been resolved.</p>
<b>Visual Impact / Character</b>	<b>Significant</b>	<p><b>Unresolved</b></p> <p>The proposal has the potential to adversely impact upon the coastal rural landscape character and amenity of the site and surrounding areas. The planning proposal does not demonstrate that visual impacts can be adequately mitigated.</p>
<b>Acid Sulfate Soils</b>	<b>Significant</b>	<p><b>Unresolved</b></p> <p>Significant excavation of the riverbank has the potential to disturb Class 3 ASS. The planning proposal does not address the potential management of such impacts.</p>
<b>Riverbank Stability / Hydrology</b>	<b>Significant</b>	<p><b>Unresolved</b></p> <p>Construction and ongoing management of coastal protection works is required to minimise potential impacts on adjoining properties and waterways. The planning proposal does consider how these measures will be implemented for the life of the project</p>

Table 5 continued

Factor	Effect	Managed response
<b>Traffic and Transport</b>	<b>Significant</b>	<b>Unresolved</b> At minimum, intersection upgrades to School Rd at Yamba Rd will be required to mitigate traffic impacts. RMS have recommended considering the design and constructability of traffic management infrastructure at this intersection early in the development process. The planning proposal does not consider the feasibility of these upgrades, including with respect to RMS's recommendation, or any associated land acquisition requirements, or potential heritage and biodiversity impacts that may be required for necessary upgrades to the local road network.
<b>Aboriginal Cultural Heritage</b>	<b>Not identified</b>	<b>Not fully considered</b> Potential off-site impacts (e.g. road upgrades or works within the waterway) have not been considered.
<b>European Heritage</b>	<b>Not identified</b>	<b>Not fully considered</b> Potential off-site impacts (e.g. road upgrades) have not been considered.

<b>No</b>	<b>Q9. Has the planning proposal adequately addressed any social and economic effects?</b>
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The Department's *Guide to Preparing Planning Proposals* recommends the initial planning proposal should identify the scope to be addressed in this section, which may be confirmed in the Gateway determination. As a guide, it identifies this section may address effects on items or places of European or Aboriginal cultural heritage not addressed elsewhere, include estimated jobs growth figures, or impacts on existing social infrastructure (such as schools) or other centres that may arise if the planning proposal proceeds.

The initial planning proposal addressed a limited social and economic effects, as indicated in **Table 6**. The Gateway determination did not specify any additional requirements to be address in relation to this question and the planning proposal proceeded unchanged.



Table 6: Social and environmental effects applying to the planning proposal

Theme	Factor	Comment
<b>Social effects</b>	Separation from adjoining residences	<b>Unresolved</b> On reason for the Gateway refusal of the previous planning proposal in 2014, was insufficient justification that the proposed 100m setback from the existing dwelling will adequately address the potential acoustic and land use conflict impacts on those properties. The current planning proposal does not resolve this issue.
	Acoustic	<b>Unresolved</b> The effectiveness of the proposed measures to attenuate all potential noise sources (including construction and off-site traffic) to all potential sensitive receivers has not been adequately demonstrated. The suitability of the proposed acoustic mitigation measures with respect to visual and flooding impacts has not been resolved.
	Access, Transport & Traffic	<b>Unresolved</b> At minimum, intersection upgrades to School Rd at Yamba Rd will be required to mitigate traffic impacts. RMS have recommended considering the design and constructability of traffic management infrastructure at this intersection early in the development process.  The planning proposal does not consider the feasibility of these upgrades, including with respect to RMS's recommendation, or any associated land acquisition requirements, or potential heritage and biodiversity impacts that may be required for necessary upgrades to the local road network.
<b>Economic effects</b>	Estimated jobs growth	<b>Unresolved</b> The applicant has demonstrated the likely estimated jobs growth that would be facilitated by the proposed development. The planning proposal does address issues raised by the community with respect to the potential impact of the development on the jobs currently sustained by surrounding uses, particularly with respect to agricultural, commercial fishing, and rural tourism industries.

No

**Q10. Is there adequate public infrastructure for the planning proposal?**

The planning proposal has not demonstrated that there is adequate public infrastructure for the proposal, but does foreshadow a multitude of delivery and operational factors nominated for more detailed investigation in preparing a DA that could, either singularly or collectively, render the project unviable. If the proposed rezoning were to occur prior to those factors being fully considered and mechanisms established to fund the delivery of associated works, including off-site works, it would likely lead to a level of reliance on State or Local Government investment to enable the development of the site. Until infrastructure costing is further refined, the economic viability of the proposed development remains unresolved.

These factors include, but are not limited to:

- Upgrading the local road network to enable heavy vehicle access from the Pacific Highway (Yamba interchange), with potential additional design considerations for road safety, flood immunity, and riverbank stabilisation. We note these works may be limited by heritage and biodiversity protection requirements and are likely to rely on land acquisitions that have not been identified in the proposed LEP amendment, which may be inconsistent with Ministerial Direction 6.2.
- Infrastructure servicing, noting the planning proposal confirms connections are available for water and electricity, but does not identify what, if any, augmentations are required to these networks to meet operational requirements.
- Installation of an on-site system to treat and dispose of wastewater required to service the development. No preliminary assessment has been undertaken to demonstrate that the necessary system can be accommodated on site including with respect to flooding, soils and potential water quality impacts.
- Additional environmental protection works, including initial and ongoing maintenance works associated with:
  - Flood mitigation, noting stormwater drainage infrastructure may be required to mitigate flood impacts to adjoining properties;
  - Riverbank stabilisation and ongoing monitoring / maintenance of coastal impacts; and
  - Identification and protection of aquatic habitat, including the protection of commercial fish habitat and identified Priority Oyster Aquaculture Areas.

**Unresolved**

**Q11. What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?**

Our summary of the key issues raised by each agency is provided in **Table 7**.

**Table 7** also comments on the extent to which, in our view, further action is required or otherwise recommended to address the issues raised prior to making the proposed LEP. None of these actions have been undertaken, as the Planning Proposal currently before the Department is the Exhibition version.

*Table 7: Summary of issues raised by consultation with public authorities*

Agency response / date	Summary of response, by issue	Comment
Transport - Roads & Maritime Services  5 June 2019 (30 days)	<b>Neutral (Roads)</b> <ul style="list-style-type: none"> <li>Recommends considering the design and constructability of traffic management infrastructure at the intersection of School Rd and Yamba Rd early in the development process.</li> <li>Identifies that development enabled by the rezoning will trigger clause 104 of the SEPP (Infrastructure) 2007 provisions for traffic-generating development and will so be referred to RMS at DA stage.</li> </ul>	<b>Further action recommended</b>  The extent to which the design and constructability of traffic management infrastructure at the intersection of School Rd and Yamba Rd needs to be considered prior to amending the LEP still needs to be confirmed.
	<b>Neutral (Maritime)</b> <ul style="list-style-type: none"> <li>Development enabled by this rezoning has the potential to impact the safety of navigation in the Clarence River. It is reasonable to consider these impacts through subsequent DAs.</li> <li>Increased vessel activity may also impact bank erosion and require future revetment works to minimise the damage caused.</li> </ul>	<b>No further action</b>  Noting the developer may be liable for costs to provide revetment works arising from increased vessel activity.

Table 7 continued

Agency response / date	Summary of response, by issue	Comment
<p>Department of Primary Industries - Fisheries</p> <p>17 June 2019 (42 days)</p>	<p><b>Neutral (commercial fishing)</b></p> <ul style="list-style-type: none"> <li>Subject site is unlikely to contain 'key fish habitats' for the purpose of applying the Fisheries Management Act 1994.</li> <li>Based on the assumption that development facilitated by the Planning Proposal would not require capital or maintenance dredging of the Clarence River to maintain navigable access.</li> <li>The development of the subject land, including shoreline excavation works and on-site sewage management systems, have the potential to impact commercial fishing areas relevant to the site, which are: <ul style="list-style-type: none"> <li>Priority Oyster Aquaculture Areas located within 10km of the subject site;</li> <li>Set Pocket Prawning Shot, located directly adjacent to the subject site; and</li> <li>Mud crabbing along the riverbank surrounding the subject site.</li> </ul> </li> </ul>	<p><b>Further action required</b></p> <p>DPI have advised that the planning proposal proposes land uses that may result in adverse impacts to Priority Oyster Aquaculture areas, to be consistent with Ministerial Direction 1.4 Oyster Aquaculture, Council (5a), as planning proposal authority should have completed its consultation with Department of Primary Industries - Fisheries and provided a copy of any objection or supporting information with the statement to the Director-General of the Department of Planning before undertaking community consultation.</p> <p><b>Further action recommended</b></p> <p>The extent to which planning controls can identify requirements for development applications to address water quality and other potential impacts to commercial activities needs to be confirmed.</p>
<p>Department of Primary Industries - Agriculture</p> <p>7 June 2019 (32 days)</p>	<p><b>Not supportive (farmland)</b></p> <ul style="list-style-type: none"> <li>Site identified as 'Regionally Significant Farmland' through the Mid North Coast Farmland Mapping Project 2008.</li> <li>If rezoned, the proposed development would not be consistent with the land use objectives for surrounding lands and would lead to the fragmentation of what is currently a contiguous tract of Regionally Significant Farmland.</li> <li>Strategic justification has not been provided, with reference made to: <ul style="list-style-type: none"> <li>The North Coast Regional Plan 2036; and</li> <li>Marine-Based Industry Policy - Far North Coast &amp; Mid North Coast</li> </ul> </li> </ul>	<p><b>Further action required</b></p> <p>No further response has been provided to justify the rezoning with respect to impacts to Regionally Significant Farmland.</p>

Table 7 continued

Agency response / date	Summary of response, by issue	Comment
Office of Environment and Heritage  11 June 2019 (36 days)	<b>Not supportive (flooding)</b> <ul style="list-style-type: none"> <li>Recommends further flood modelling to demonstrate the future development can progress without creating significant offsite flood impacts.</li> <li>Recommends that this modelling considers enough architectural and ultimate landform details to demonstrate offsite impacts.</li> </ul>	<b>Further action required</b> <p>No further flood assessments have been undertaken to address OEH's recommendations.</p> <p>This action is required to ensure the planning proposal is consistent with Ministerial Direction 4.3.</p>
	<b>Not supportive (Aboriginal heritage)</b> <ul style="list-style-type: none"> <li>Recommends an Aboriginal cultural heritage assessment is undertaken, or alternatively, evidence is provided of consultation with Yaegl Prescribed Body Corporate.</li> </ul>	<b>Further action required</b> <p>The extent to which the letter from Yaegl Local Aboriginal Land Council suitably meets this recommendation has not been confirmed, noting the LALC is not the same entity as the Yaegl Prescribed Body Corporate.</p> <p>This action is required to ensure the planning proposal is consistent with Ministerial Direction 2.3.</p>
	<b>Neutral (other matters)</b> <ul style="list-style-type: none"> <li>No objection based on potential impacts to NPWS estate, historic heritage or biodiversity.</li> </ul>	<b>Further action recommended</b> <p>This response was based on the mapping of aquatic habitat provided, which, in our view, is out of date.</p> <p>Recommended considerations for offsite works (e.g. the intersection of School Rd and Yamba Rd) may also warrant re-consideration of potential impacts to these matters that would be facilitated by the Planning Proposal.</p>
Yaegl Local Aboriginal Land Council  4 July 2019	<b>Neutral (Aboriginal cultural heritage)</b> <ul style="list-style-type: none"> <li>No objection on cultural grounds based on a site visit completed 1 July 2019.</li> </ul>	<b>Further action required</b> <p>The extent to which the letter from Yaegl Local Aboriginal Land Council suitably meets this recommendation has not been confirmed, noting the LALC is not the same entity as the Yaegl Prescribed Body Corporate.</p>

Based on our review, the following actions should be completed before the proposed LEP could be considered for approval. These actions may singularly or collectively lead to modifications to the Planning Proposal to an extent that may also warrant further consultation with nominated agencies or its re-exhibition.

At minimum:

- Confirm whether the inconsistency with Ministerial Direction 1.4 Oyster Aquaculture warrants the re-exhibition of the Planning Proposal.
- Prepare a statement that justifies the rezoning with respect to impacts to Regionally Significant Farmland to address the objection raised by NSW Department of Industry (Agriculture).
- Confirm whether the letter from Yaegl Local Aboriginal Land Council suitably meets OEH's requirements to address the potential risk to Aboriginal Cultural Heritage, noting the Local Aboriginal Land Council is not the same entity as the Yaegl Prescribed Body Corporate. The outcome of this may necessitate further action in line with OEH's original recommendation
- Complete further flood modelling as advised by OEH, to consider whether the future development can progress without creating significant offsite flood impacts, or to make provisions that would allow these impacts to be suitably managed. This is required to fulfil Ministerial Direction 4.3.

To improve the transparency of the decision-making process, we also support:

- RMS's recommendation to consider the design and constructability of traffic management infrastructure at the intersection of School Rd and Yamba Rd before making the LEP. This would, at minimum, allow any requirements for land acquisitions to be reflected in the LEP controls, consistent with Ministerial Direction 6.2, and supported by other delivery mechanisms (e.g. Planning Agreements).
- Addressing DPI Fisheries' advice to pro-actively identifying measures that would be required to protect water quality and avoid or minimise potential impacts to commercial activities, including Priority Oyster Aquaculture Areas.

## 6. CONCLUSIONS AND RECOMMENDATIONS

Our assessment concludes the planning proposal is inconsistent with the Marine-Based Industry Policy - Far North Coast & Mid North Coast NSW, as the locational criteria established in the Policy have not been satisfied. We also understand the intention of this policy, in conjunction with Clarence Valley Council's Industrial Lands Strategy (2007), is to establish a cluster of marine industries that would provide for efficiency of infrastructure and minimise environmental impacts. While the site's geographical proximity to Harwood is relevant, the development facilitated by this planning proposal would require the duplication of a substantial amount of infrastructure and environmental protection works.

Future development of a marine industry cluster corresponding with the Harwood site should be considered within the context of a precinct plan and economic strategy for Harwood, or other Council-led initiatives to support land use planning for the marine industry within the Clarence River as foreshadowed in Clarence Valley Council's draft local strategic planning statement.

We therefore recommend the Department, as the Minister's delegate, not proceed with making the proposed LEP, for the following reasons:

- It is not consistent with the Marine-Based Industry Policy - Far North Coast & Mid North Coast NSW,
- It is not consistent with North Coast Regional Plan,
- It is not consistent with the Clarence Valley Council's Industrial Lands Strategy (2007),
- It has unresolved inconsistencies with several State Environmental Planning Policies and Ministerial Directions.
- The need to augment marine industry land supply in this location is not strategically justified, and
- There may be better ways to achieve the planning proposal objectives than proposed amendment, which have not been considered.

Our assessment has also concluded the planning proposal has not adequately addressed the matters raised for consideration by the relevant public authorities and the community, noting

- several issues raised by relevant public authorities remain unresolved, and
- while community objections to the planning proposal did not raise any new issues, they did reiterate issues associated with flooding, noise, traffic, visual impacts, and loss of agricultural land, that largely remain unresolved.