

## Planning and Assessment

IRD20/16812

### Plan finalisation report

**Local government area:** Clarence Valley Council

#### 1. PLANNING PROPOSAL

PP\_2017\_CLARE\_007\_00

#### 2. SITE DESCRIPTION

The planning proposal applies to land at Lot 2 DP 598769, Schools Road, Palmers Island.

#### 3. PURPOSE OF PLAN

The planning proposal seeks to amend Clarence Valley LEP 2012 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 21.2ha lot comprising:

- IN4 Working Waterfront (10.6ha);
- W3 Working Waterway (1.1ha); and
- RU1 Primary Production (9.1ha retained).

#### 4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Clarence state electorate. Christopher Gulaptis MP is the State Member.

The site falls within the Page federal electorate. Kevin Hogan MP is the Federal Member.

To the regional planning team's knowledge, neither MP has made any written representations regarding the proposal.

**NSW Government Lobbyist Code of Conduct:** There have been no meetings or communications with registered lobbyists with respect to this proposal

**NSW Government reportable political donation:** There are no donations or gifts to disclose and a political donation disclosure is not required.

#### 5. GATEWAY DETERMINATION AND ALTERATION

On 10 November 2017, the Deputy Secretary, as delegate of the Minister, determined that a planning proposal to rezone 11.7 hectares of land at Palmers Island, near Yamba, in the Clarence Valley LGA for a marine-based industry (boat building) should not proceed as it lacked strategic planning merit and the proposed land use was considered incompatible with existing development.

On 27 December 2017, the proponent requested a review of that decision.

In April 2018, the Northern Joint Regional Planning Panel reviewed the decision and additional information provided by the proponent and recommended the planning proposal proceed. Based on the panel's advice, the Acting Secretary supported the planning proposal and issued an amended conditional Gateway determination allowing the proposal to proceed to exhibition.

The Gateway determination issued on 14 August 2018 by the Acting **Secretary (Attachment C)** determined that the proposal should proceed subject to conditions.

## **6. PUBLIC EXHIBITION**

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 13 May 2019 and 12 July 2019.

Clarence Valley Council received 185 submissions from the public during the exhibition period. A total of 131 objected and 52 supported the proposal. Two petitions, one supporting and one against the proposal were also received.

Matters raised in submissions included the adverse impact from noise, traffic and flooding on nearby residents and local primary school, environmental and agricultural land use impacts, a reduction in visual amenity for the area, the lack of need for the rezoning of this site and concerns with the process undertaken by Council in assessing this proposal.

The legal implications of Council's non-compliance with the provisions of SEPP 55 at the time were also raised.

Council sought an independent review of the submissions received during the exhibition period. The review concluded that:

*"The support for the Planning Proposal is almost entirely and simply support of the business/boat building industry rather than supporting a change in zoning for this particular site. The submissions objecting to the Planning Proposal provide compelling evidence as to the adverse site impacts and comprehensively dispel the reasons put forward by the proponent for not locating the business on Harwood Island. Council has completed a proper strategic planning process that establishes Harwood Island as a suitable Marine Precinct."*

A number of matters raised in the public submissions were not resolved by Council including the impacts of flooding, noise, traffic, visual amenity and loss of agricultural land.

## **7. ADVICE FROM PUBLIC AUTHORITIES**

Council was required to consult with the following agencies in accordance with the Gateway determination:

- NSW Roads and Maritime Services (RMS);
- NSW Department of Primary Industries (Fisheries);
- NSW Department of Primary Industries (Agriculture); and
- NSW Office of Environment and Heritage (OEH).

Council consulted with these authorities concurrently during the public exhibition period.

The RMS recommended the consideration of the design and constructability of traffic management infrastructure at the intersection of School Rd and Yamba Rd be undertaken early in the development process and the potential to impact the safety of navigation in the Clarence River be considered through subsequent development applications.

DPI Fisheries identified the subject site is unlikely to contain 'key fish habitats' and the development of the subject land, shoreline excavation works, and on-site sewage management systems may have the potential to impact commercial fishing areas.



DPI Agriculture raised significant concerns with the loss of regionally significant farmland at the site as identified in the Mid North Coast Farmland Mapping Project 2008 and that if rezoned, the proposed development would not be consistent with the land use objectives for surrounding lands and would lead to the fragmentation of contiguous tract of regionally significant farmland. They also identified that strategic justification has not been provided, with reference made to the North Coast Regional Plan 2036 and the Marine-Based Industry Policy – Far North Coast & Mid North Coast.

The former OEH recommended further flood modelling be undertaken to demonstrate the future development can progress without creating significant offsite flood impacts and that this modelling considers enough architectural and ultimate landform details to demonstrate offsite impacts will not be significant.

Council also consulted the Yaegl Local Aboriginal Land Council who raised no objection.

A number of matters raised in the Government agency submissions were not resolved by Council including the need for further flood modelling to demonstrate the impacts on nearby land would not be significant and loss of regionally significant farmland.

## **8. POST-EXHIBITION CHANGES**

No changes were made to the planning proposal after the exhibition period.

## **9. COUNCIL RESOLUTION**

Council, as the planning proposal authority, forwarded the planning proposal to the Minister, as the local plan-making authority, for consideration and determination without making a recommendation supporting or opposing the plan.

The Department's *A guide to preparing local environmental plans* outlines the process for councils to follow where they are not a local plan-making authority. This includes a council resolving to support a draft LEP and requesting the Minister's delegate make the plan. Alternatively, if a council does not support the planning proposal, it can request the Minister's delegate determine the matter not proceed.

In this instance, and noting that the Department's *A guide to preparing local environmental plans* is not a statutory document, Council has based its approach on the following legal advice they obtained from Marsden Lawyers in September 2019:

*"Whilst it is generally accepted that a Council in its capacity as the PPA [planning proposal authority] for a planning proposal will provide a report and recommendation to the Minister in respect of the planning proposal following completion of the public exhibition and consultation requirements of the gateway determination, there is no statutory obligation imposed on the PPA to do so."*

As Council has not fulfilled the expected role of a planning proposal authority in addressing and resolving the matters raised in public and agency submissions, the Department sought an independent assessment of the planning proposal.

## **10. ASSESSMENT**

Due to the lack of a Council resolution advising of its position in relation to the planning proposal, the Department's previous recommendation that the proposal not proceed, and to ensure a fair and transparent decision-making process, the Department commissioned an independent assessment of the planning proposal. Planning consultants City Plan undertook the independent review of the Palmers Island marine based industry planning proposal process and provided recommendations regarding the determination of the application (**Attachment A**).

The independent assessment concluded that 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 associated with flooding, noise, traffic, visual impacts, and loss of agricultural land largely remain unresolved.

The independent assessment recommended the Minister's delegate not proceed with making the LEP amendment as:

- 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 2036;
- 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.

Department staff have reviewed the independent assessment and support the findings and the reasoning made. The recommendations are considered to be reasonable and appropriate in this instance.

## 11. RECOMMENDATION

It is recommended that the Minister's delegate as the local plan-making authority determine not to make the draft LEP under section 3.36(2)(b) of the Act as:

- the planning proposal has not adequately addressed the matters raised for consideration by the relevant planning authorities and the community;
- 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 2036;
- 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.



28/4/2020

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30/4/20