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**ITEM 13.227/14 PLANNING PROPOSAL – IDENTIFICATION OF RIVERBANK EROSION AT ULMARRA IN CLARENCE VALLEY LEP 2011 & DEVELOPMENT CONTROL PLANS**


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|---------------------|-------------------------------------------------------------|------------------|
| <b>Meeting</b>      | Environment, Planning & Community                           | 11 November 2014 |
| <b>Directorate</b>  | Environment, Planning & Community                           |                  |
| <b>Submitted by</b> | Director - Environment, Planning & Community (Des Schroder) |                  |

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**SUMMARY**

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| <i>Proponent</i>                 | Clarence Valley Council                                                                                                                                                                                                                                                                     |
| <i>Owner</i>                     | Various (including Council though mostly different private landowners)                                                                                                                                                                                                                      |
| <i>Subject land</i>              | 93 land parcels along seven (7) kilometres of Clarence River bank (Ulmarra side) between 1027 Pacific Highway, ULMARRA (upstream point) and 14-16 Cowells Lane (off Pacific Highway), ULMARRA (downstream extent). A Site Identification Map is provided in the Attachment (at Appendix 1). |
| <i>Current Zoning CVLEP 2011</i> | RU1 Primary Production in the rural areas upstream and downstream of Ulmarra village, R2 Low Density Residential, B1 Neighbourhood Centre and RE1 Public Recreation within the village of Ulmarra. The planning proposal does not propose any change to current zoning.                     |
| <i>Proposal</i>                  | Planning Proposal – To identify land subject to riverbank erosion in the vicinity of Ulmarra                                                                                                                                                                                                |

The riverbank adjacent to the village of Ulmarra has been identified as being prone to riverbank erosion and failure. Hence, land and development within the hazard area is subject to risk that should be properly considered in Council's statutory planning functions. It is appropriate that the area affected by this hazard or risk is identified in the Clarence Valley Local Environmental Plan 2011 and consequently, considered in the assessment of new development proposals. This report seeks Council support for referral of a planning proposal to the NSW Department of Planning and Environment's Planning Gateway to amend the Riverbank Erosion Planning Map under the Clarence Valley Local Environmental Plan 2011 as well as amendment to a Council Development Control Plan.

**OFFICER RECOMMENDATION**

That Council:

1. Endorse the planning proposal seeking to amend the Clarence Valley Local Environmental Plan 2011 by addition of an area of riverbank hazard adjacent to the village of Ulmarra in the 'Riverbank Erosion Planning Map' and refer the planning proposal to the Planning Gateway of the NSW Department of Planning and Environment.
2. Amend DCP Development in Environmental Protection, Recreation and Special Use Zones 2011 by inclusion of development controls for Ulmarra village (including the riverbank erosion controls) consistent with the Council's Residential Zones DCP 2011, Business Zones DCP 2011 and Rural Zones DCP 2011 and publicly exhibit those changes in accordance with the provisions of the *Environmental Planning and Assessment Act 1979*.

## COMMITTEE RECOMMENDATION

McKenna/Hughes

That the Officer Recommendation be adopted.

Voting recorded as follows:

For: Williamson, Hughes, McKenna, Howe, Baker

Against: Nil

## COUNCIL RESOLUTION - 13.227/14

(Crs Hughes/Howe)

That Council:

1. Endorse the planning proposal seeking to amend the Clarence Valley Local Environmental Plan 2011 by addition of an area of riverbank hazard adjacent to the village of Ulmarra in the 'Riverbank Erosion Planning Map' and refer the planning proposal to the Planning Gateway of the NSW Department of Planning and Environment.
2. Amend DCP Development in Environmental Protection, Recreation and Special Use Zones 2011 by inclusion of development controls for Ulmarra village (including the riverbank erosion controls) consistent with the Council's Residential Zones DCP 2011, Business Zones DCP 2011 and Rural Zones DCP 2011 and publicly exhibit those changes in accordance with the provisions of the *Environmental Planning and Assessment Act 1979*.

Voting recorded as follows

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

Against: Nil

## LINKAGE TO OUR COMMUNITY PLAN

Theme 4 Our Environment

Objective 4.3 We will establish a healthy balance between development and the environment

Strategy 4.3.4 Ensure that the Clarence Valley is sufficiently prepared to deal with natural disasters

## BACKGROUND

The former Ulmarra Shire Council and Clarence River County Council adopted the Ulmarra Riverbank Management Plan (URMP) in early-2000. The Plan recommended a range of measures to reduce risk associated with riverbank hazard along approximately seven (7) kilometres of riverbank adjacent to Ulmarra village (see site identification plan at Appendix 1 of the Planning Proposal attached to this report). Establishment of a Riverbank Buffer Zone (RBZ) extending 10 metres landward from the top of the riverbank and including the riverbank itself was among four (4) management actions. Development controls within the former Ulmarra Shire Council Development Control Plan (DCP) No 16 *Development adjoining the Ulmarra Riverbank* were adopted in June 2000. Following amalgamation these development controls were incorporated into three of the four relevant Clarence Valley Council zone-based DCPs in October 2006. These DCPs have since been amended in 2011 as part of the process to comply with the Standard Instrument LEPs. The development controls have been adopted with the intention of ensuring that future development is compatible with the risk of riverbank failure. However, as the land has not been

identified as land subject to riverbank erosion under the Clarence Valley Local Environmental Plan (CVLEP) 2011 the requirement to consider the risk in association with development application decisions is less obvious and currently has a lower statutory weight.

Council also has Riverbank Management Plans for Palmers Island (1995) and Woodford Dale (2004). The riverbank erosion zone at both of these locations is already identified in the 'Riverbank Erosion Planning Map' in the CVLEP.

#### KEY ISSUES

**RIVERBANK BUFFER ZONE** - The 10-metre riverbank buffer zone was adopted in the URMP in order to control the type of development activity that can occur in the zone most at risk of erosion and to ultimately, reduce losses to individual landowners in the event that there is failure or slumping of the riverbank. Erosion of the riverbank is not constant and whilst average annual rates of erosion have been estimated in riverbank investigation reports preceding the URMP, significant episodic erosion usually occurs during or after flood events due to either the shearing forces of floodwaters on the riverbank and/or localised slumps caused by drawdown of flood water from the floodplain soils back into the river channel as floodwaters recede.

The section of riverbank from about the former Butterfactory site to downstream of the Ulmarra-Southgate ferry crossing had experienced the largest recession over the last century (as at 1997). Notwithstanding this, the entire 7km length of riverbank included in the Study and URMP is subject to erosion. Riverbank erosion is a natural process associated with channel migration of river (fluvial) systems that is often more pronounced on floodplains where river reaches of lower gradient provide conditions where the river channel meanders across the floodplain over time. This process also results in deposition at other parts of the river.

Installation of rock works to reinforce and stabilise the riverbank to enhance integrity of the levee wall along a 675 metre section of the riverbank downstream of the former Butterfactory site was completed in 2006/07. Council has recently repaired damage to the earthen levee along 90 metres of riverbank at the southern end of the village behind Lynhaven Crescent. In addition, Council is currently repairing the riverbank 1.6 kilometres downstream of the Ulmarra Ferry to stabilise the adjacent rural levee following flood damage. Whilst these works reduce the risk of erosion through shearing forces from floodwaters they are unlikely to prevent long term recession, although recession rates should be less than compared to the previous 100 years or so provided the rock work is maintained. A prominent example of riverbank stabilisation using rock that subsequently failed and resulted in additional extremely costly stabilisation work by the Roads and Maritime Services exists adjacent to the Pacific Highway, just north of Byrons Lane, Tyndale. Hence, despite rock armouring being installed at some sections of the riverbank it is appropriate that the buffer zone be applied to the entire length of riverbank included in the URMP and as adopted by Council.

**LAND AFFECTED** - There are 93 land parcels partly affected by the riverbank buffer zone as well as sections of the Pacific Highway road reserve. The *Ulmarra Riverbank Management Options Report* (Clarence River County Council, 1998) determined that 109 building structures were located on land predicted to be affected by riverbank hazard over the next 50 years. Of these structures, 45 were residential dwellings. There are fewer structures affected by the adopted 10-metre wide buffer zone.

Existence of the URMP and restriction on the development of land is included as advice on Section 149(2) planning certificates issued by Council.

Background investigations for the riverbank stability were completed in the mid-1990s, nearly 20 years ago. It is unknown what change in the riverbank has occurred since that time and hence, whether the 10-metre buffer remains relevant, not only in sections where rock armouring has been completed. There is a need for follow-up assessment of the erosion hazard or risk for the Ulmarra, Palmers Island and Woodford Dale riverbank, as well as many other riverbanks along the Clarence River and tributaries. This is very relevant to management of public and private assets in the future. Council's 2014-2017 Delivery Program includes Operational Plan Action 4.3.4.11 – Preliminary assessment of riverbank risk (By February 2016). Completion of this risk assessment will assist in determining priorities for more detailed riverbank hazard and associated asset risk assessment.

The changes to CVLEP and DCP provisions recommended in this report ensure consistency in the short term, however with updates to hazard assessments it is likely that the specifics of such development controls will evolve over time as the level of hazard or risk changes.

CLARENCE VALLEY LOCAL ENVIRONMENTAL PLAN 2011 – Clause 7.6 of the CVLEP 2011 states,

**7.6 Development on land subject to riverbank erosion**

- (1) The objectives of this clause are as follows:*
  - (a) to avoid significant adverse impacts on development and the environment as a result of riverbank soil erosion,*
  - (b) to ensure land uses are compatible with riverbank erosion processes and risks.*
- (2) This clause applies to land identified as "Riverbank Erosion Area" on the Riverbank Erosion Planning Map.*
- (3) Development consent must not be granted to the carrying out of any development on land to which this clause applies unless the consent authority is satisfied that:*
  - (a) the proposed development is not likely to adversely affect, or be adversely affected by, riverbank erosion, and*
  - (b) the development is designed, sited and will be managed to avoid any adverse environmental impact from exposure to riverbank erosion or, if that impact cannot be avoided, after having taken into consideration feasible alternatives, the development is designed, sited and will be managed to minimise that impact or to mitigate that impact if that impact cannot be minimised, and*
  - (c) there is no immediate threat to any building from riverbank erosion, and*
  - (d) provision has been made for the relocation, modification or removal of the development if required as a result of a threat to the development from riverbank erosion.*

Identification of land subject to the riverbank erosion at Ulmarra in the Riverbank Erosion Map would require application and consideration of this clause whenever Council received a development application proposing development on land subject to the riverbank erosion hazard. The action recommended in this report will provide the legal mechanism to ensure consistency between riverbank erosion areas at Palmers Island and Woodford Dale under the terms of the CVLEP.

CLARENCE VALLEY DEVELOPMENT CONTROL PLANS – Development controls for the Ulmarra Riverbank Erosion area are contained in Council's development control plans (DCP) based on land zoning and include the Residential Zones DCP 2011 (Part U), Business Zones DCP 2011 (Part P) and Rural Zones DCP 2011 (Part Q). Some land within the Ulmarra riverbank erosion area is zoned RE1 Public Recreation and hence, DCP Development in Environmental Protection, Recreation and Special Use Zones 2011 should contain development controls however it doesn't. This report also recommends inclusion of development controls for Ulmarra village (including the riverbank erosion controls) consistent with the other three DCPs.

Within the riverbank buffer zone new development, redevelopment and major additions are NOT permitted for residential, commercial, industrial and agricultural land uses. Further, new infrastructure (other than maintenance) is either NOT permitted or discouraged unless there is an overriding community benefit. Given that the riverbank recession can be expected to place assets on or adjacent to the riverbank at threat into the future the best risk management approach for new works would be to adopt the concept of prudent avoidance and locate new works further from the hazard. For land outside the riverbank buffer zone development is generally permitted under the DCP.

OVERVIEW – Identification of the riverbank erosion at Ulmarra within the Riverbank Erosion Map under the CVLEP 2011 formalises and strengthens knowledge of an existing risk that could affect current and future development of land. Existing provisions in the Council DCPs relating to riverbank hazard and the potential restriction on development is notified through issue of Section 149 Planning Certificates for affected properties. A Section 149 Certificate is required to be obtained by property vendors prior to marketing land for sale. Updating of the LEP as recommended will provide better consistency in application of development controls between the three (3) riverbank erosion areas along the Clarence River that are managed under specific riverbank management plans.

### **COUNCIL IMPLICATIONS**

#### **Budget/Financial**

N/A

#### **Policy or Regulation**

NSW Environmental Planning & Assessment Act 1979  
Clarence Valley Local Environmental Plan 2011  
Clarence Valley Development Control Plans  
Ulmarra Riverbank Management Plan (2000)

#### **Consultation**

No consultation has been undertaken at this stage. In the event that the Planning Gateway supports the planning proposal then the Gateway Determination will contain requirements for consultation. Ordinarily such consultation will occur with the affected landowners and relevant government agencies, such as Local Land Services and the Office of Environment and Heritage. Amendments to the DCP will also be publicly exhibited. It would be preferred to undertake both exhibition periods concurrently.

#### **Legal and Risk Management**

Council has a duty of care to its constituents to make them aware of hazards in the environment and further, to ensure decisions made by Council properly consider the level of risk. Inclusion of the area of riverbank erosion hazard adjacent to Ulmarra within the mapping under the Clarence Valley Local Environmental Plan 2011, as identified in the Ulmarra Riverbank Management Plan and Council Development Control Plans, ensures consistency in planning provisions between the Ulmarra riverbank and riverbank erosion areas at Palmers Island and Woodford Dale. Providing consistency reduces legal liability for Council. Any consultation on the planning proposal will also raise awareness of the hazard, especially to affected landowners, which enhances consideration of the risk when landowners are managing their land and assets thereon. This further reduces potential damage and liabilities resulting from riverbank erosion events.

The existing development controls for the riverbank erosion area adjacent to Ulmarra village are contained in DCPs only. Hence, these provisions are less robust and more open to legal challenge. Given the merits of ensuring any development in the riverbank buffer zone is compatible with the assessed hazard or risk then perpetuating this potential legal liability would be best for Council to avoid.

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|-------------------------------|--------------------------------------------------|
| Prepared by staff member:     | Scott Lenton                                     |
| Approved/Reviewed by Manager: | David Morrison                                   |
| Section:                      | Strategic & Economic Planning                    |
| Attachment:                   | Planning Proposal – Riverbank Erosion at Ulmarra |