

Rezoning for Caravan Park Development, Palmers Island

Proposal Title : **Rezoning for Caravan Park Development, Palmers Island**

Proposal Summary : **Proposed rezoning of land at 36 River Street, Palmers Island, from 1(a) Rural (Agricultural Protection) to 1(t) Rural (Tourist) and 7(a) Environmental Protection (Ecological Significance) to allow for the development of a caravan park (tourist use only).**

PP Number : **PP_2011_CLARE_007_00** Dop File No : **11/17504**

Proposal Details

Date Planning Proposal Received : **26-Sep-2011** LGA covered : **Clarence Valley**

Region : **Northern** RPA : **Clarence Valley Council**

State Electorate : **CLARENCE** Section of the Act : **55 - Planning Proposal**

LEP Type : **Spot Rezoning**

Location Details

Street : **36 River Street**

Suburb : **Palmers Island** City : **Palmers Island** Postcode : **2463**

Land Parcel : **Lot 27 DP 1130643**

DoP Planning Officer Contact Details

Contact Name : **Carlie Boyd**

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RPA Contact Details

Contact Name : **Scott Lenton**

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DoP Project Manager Contact Details

Contact Name : **Jim Clark**

Contact Number : **0266416604**

Contact Email : **jim.clark@planning.nsw.gov.au**

Land Release Data

Growth Centre : **N/A** Release Area Name : **N/A**

Regional / Sub Regional Strategy : **Mid North Coast Regional Strategy** Consistent with Strategy : **No**

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MDP Number :		Date of Release :	
Area of Release (Ha)	1.63	Type of Release (eg Residential / Employment land) :	Employment Land
No. of Lots :	1	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment : **The Department of Planning Registered Lobbyist Contact Protocol in relation to communication and meetings with lobbyists has been complied with to the best of the Region's knowledge.**

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment : **Northern Region has not met any lobbyists in relation to this proposal, nor has Northern Region been advised of any meeting between other Departmental officers and lobbyists concerning this proposal.**

Supporting notes

Internal Supporting Notes : **The proposal will create jobs, however the number of jobs expected to be created is not known at this time. The proposal provides for 145 tourist sites.**

External Supporting Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The objective and intended outcomes of the planning proposal are adequately expressed for the proposed amendment to Maclean LEP 2001.**

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The planning proposal provides a clear explanation of the intended provisions to achieve the objectives and intended outcomes.**

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.2 Rural Zones

1.5 Rural Lands

2.1 Environment Protection Zones

2.2 Coastal Protection

3.2 Caravan Parks and Manufactured Home Estates

3.4 Integrating Land Use and Transport

4.1 Acid Sulfate Soils

4.2 Mine Subsidence and Unstable Land

4.3 Flood Prone Land

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5.1 Implementation of Regional Strategies

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **No**

d) Which SEPPs have the RPA identified? **SEPP No 21—Caravan Parks
SEPP No 71—Coastal Protection
SEPP (Rural Lands) 2008
North Coast REP 1988**

e) List any other matters that need to be considered : **Clause 15 of the Maclean LEP proscribes a no (permanent) buildings requirement for land within the identified riverbank erosion immediate management precinct. The planning proposal does not vary this requirement.**

Have inconsistencies with items a), b) and d) being adequately justified? **No**

If No, explain : **The proposal will result in the loss of Regionally Significant Farmland as identified for protection under the Mid North Coast Regional Strategy. The loss of this land has not been adequately justified. The proposal is therefore inconsistent with Direction 5.1.**

The land is also flood prone. The proposal is not consistent with Direction 4.3 Flood Prone Land, as the development is not in accordance with Council's Floodplain Risk Management Plan.

Similarly, the proposal is inconsistent with North Coast REP clause 45A, which states that intensification of development on flood prone land should not be permitted unless it is justified within a floodplain risk management plan.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : **The mapping adequately shows the subject land and the proposed zoning. Mapping that complies with the Department's 'Standard Technical Requirements for LEP Maps' will be provided for the making of the LEP.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **The planning proposal acknowledges that community consultation will be required but has not indicated a specific public exhibition period for community consultation. The Gateway will determine the timeframe required for exhibition. Community consultation will be in accordance with the Department's 'A Guide to Preparing an LEP'.**

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment : **The planning proposal satisfies the adequacy criteria by:**

- 1. Providing appropriate objectives and intended outcomes;**
- 2. Providing a suitable explanation of the provisions proposed for the LEP to achieve the outcomes;**
- 3. Providing an adequate justification for the proposal; and**
- 4. Outlining a proposed community consultation program.**

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation
to Principal LEP :

The draft Comprehensive Clarence Valley LEP is to be finalised in the near future.

This LEP proposes to zone the land RU1 Primary Production. This zone would not allow the proposal.

If the proposal proceeds it would need to amend either the Maclean LEP or the Clarence Valley Comprehensive LEP, depending on timing.

Assessment Criteria

Need for planning
proposal :

The planning proposal argues that development of the site for a tourist park would provide additional opportunities for visitor accommodation in response to a reduction in similar style accommodation elsewhere in the LGA (eg at Yamba).

The Planning Proposal is not the result of any strategic study. The site is not included within an approved or draft local strategy, nor is it within the mapped MNCRS growth area. Land adjoining the site has, however, been used as a tourist and long-term residential accommodation park in the past. The previous tourist park has been closed for a number of years.

The adjoining land previously used as a tourist park forms part of the current proposed area for development, however, does not require rezoning to allow such a use. The proposal lies within the area identified as a "river bank erosion locality" within Clause 15 of the Maclean LEP. The additional land requiring rezoning is needed to allow the development to expand into land outside the "immediate management precinct" as identified within Clause 15. Development has been determined to be unsuitable within this foreshore precinct and is therefore not permitted under the LEP due to the immediate risk of erosion of the foreshore land as a result of natural processes. Much of the proposed development will still be located within the identified "100 year management precinct", which has been identified as being at somewhat lesser risk, but still requiring strict limitations on the kind of development permitted.

The proposed change to the LEP is the most appropriate means of achieving the proponent's desired outcome for the proposal. The community benefit of the proposal stems from the fact that the land would provide for additional tourist accommodation in an area with a history of such use, to offset that lost in other areas of the LGA.

The land proposed for rezoning is identified as Regionally Significant Farmland under the MNC Regional Strategy. The loss of the existing agricultural land resource on the site is not discussed in detail within the proposal. The proposal suggests that the area of land to be lost to agricultural production is insignificant and points to the site's limited use for agricultural production in recent years. An independent valuation of the agricultural value of the site has not been undertaken.

Council officers have not indicated whether the proposed rezoning is a suitable use of the site. Council officers and Councillors have previously expressed concern with an earlier application for the proposal regarding the flood prone nature of the site and have suggested that some critical issues require further investigation prior to a decision being made on the application, including flooding, agricultural and cultural heritage considerations.

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Consistency with strategic planning framework :

As mentioned above, the land is not included within any draft or approved local council strategy or within the MNCRS growth area. While the provision of tourism opportunities is encouraged within the MNCRS, Councils are required to plan strategically for tourism development within an agreed local growth management strategy. This has not been done.

Council's Clarence Valley Settlement Strategy (1999) also generally encourages low-key tourism in small river villages, however the site the subject of this planning proposal is not considered to be suitable for such development because of constraints discussed elsewhere and two other similar developments already exist nearby. Council's strategy also states that non-agricultural uses should be minimised on better quality agricultural lands at Palmers Island.

SEPPs

Several SEPPs were raised as being relevant to the proposal, including SEPP 21 Caravan Parks, SEPP 71 Coastal Protection and SEPP (Rural Lands) 2008. The North Coast REP is a deemed SEPP and is also relevant to the proposal.

SEPP (Rural Lands)

The planning proposal is considered to be inconsistent with SEPP (Rural Lands) 2008. The planning proposal does not demonstrate consistency with the rural planning principles set out within the SEPP. These principles have not been adequately addressed within the planning proposal. In particular, the value of the current or potential rural land use has not been adequately discussed and the proposal is not consistent with the applicable regional strategy. While the proposal suggests that the land is no longer viable for sugar cane production, tea tree production is proposed on the land earmarked for sewage disposal. No explanation has been provided as to why the current rural zoned land earmarked for the tourist development itself is not suitable for retention as agricultural production land. No local strategy for the proposed tourist development exists. Potential land use conflicts arising from the development have also not been addressed.

North Coast REP

The proposal is inconsistent with clause 45A of the North Coast REP, which states that intensification of development on flood prone land should be avoided unless justified within a floodplain risk management plan (FRMP) applying to the site. Although a FRMP does apply to the site, the development proposed is not considered to be consistent with it. The Grafton and Lower Clarence FRMP states that any intensification of existing development in the Palmers Island locality through future subdivision or rezoning is to be avoided. The FRMP also recommends that a site-based risk assessment be undertaken by Council for existing and proposed caravan park sites prior to determining applications for new developments or extensions. Council has not undertaken such an assessment.

Clause 45 of the REP states that a draft LEP should not permit development for tourism on land subject to certain hazards, including coastal processes, flooding or soil instability, unless the council has assessed the extent of the hazard and included provisions in the plan to minimise adverse impact. The proposal is potentially inconsistent with this clause. It may be possible that some of the risks associated with these hazards can be managed adequately, however, this is not demonstrated.

SEPP 21 Caravan Parks

The proposal is also potentially inconsistent with SEPP 21 Caravan Parks. Whether the land is particularly suitable for use as a caravan park has not yet been established, notwithstanding the fact that a small-scale caravan park has previously operated on part of the site. The flood prone nature and agricultural value of the site are of particular concern. It should also be noted that two other tourist accommodation sites are already in operation within close proximity to the proposed development site. It may be argued that there is already adequate provision of tourist accommodation in the locality of the land and that the proposed development does not provide an adequate replacement for the loss of caravan parks in Yamba, which offers a beach-side experience.

SEPP 21 also provides that some caravan park sites may be used for permanent

occupation. This site is relatively remote from significant urban services and is not suitable for permanent residencies. To avoid this occurring should the rezoning proceed, Council would have to include specific consent conditions as part of the development application approval to limit all sites within the caravan park to short term tourist stays.

The proposal is capable of being consistent with all other SEPPs applying to the land, provided that risks associated with river bank erosion and flooding can be adequately managed, particularly with regards to the matters for consideration listed under SEPP 71 Coastal Protection relating to the suitability of the site for the proposed development and the likely impact of coastal processes and hazards on the development.

S117 Directions

Several S117 Directions apply to the proposal.

Inconsistencies:

The planning proposal is inconsistent with S117 Directions 1.2 Rural Zones, 1.5 Rural Lands, 4.3 Flood Prone Land and 5.1 Implementation of Regional Strategies.

1.2 Rural Zones

The planning proposal is not consistent with this direction as it is proposed to rezone land from a rural zone to a tourist zone. The rezoning is not in accordance with an approved strategy or draft LGMS. The site is not within the MNCRS growth area boundary. While the MNCRS allows for minor adjustment to the growth area boundary in defined circumstances, the proposal is NOT a "minor adjustment" and in addition is in the Coastal Zone where the Sustainability Criteria set out in the strategy do not apply. The merits of such an adjustment have not been demonstrated and no study has been prepared to support the proposal. The inconsistency of the proposal with the Direction is therefore not considered to be justified.

1.5 Rural Lands

The planning proposal is not consistent with this direction as it is proposed to rezone land from a rural zone to a tourist zone. The inconsistencies with the rural planning principles were explained earlier. The rezoning is not in accordance with an approved strategy or draft LGMS. The site is not within the MNCRS growth area boundary. For the same reasons as for 1.2, the inconsistency with the Direction is not considered to be justified.

4.3 Flood Prone Land

The application indicates that the land is subject to flooding in a 1:20 year event. The proposal represents a significant increase in the intensity of development of the land. As mentioned earlier, the relevant Floodplain Risk Management Plan does not support further development within the Palmers Island locality and recommends that Council undertake a site-based risk assessment for each existing and proposed caravan park where development is proposed. This has not been undertaken. The planning proposal is not considered to be of minor significance and therefore the inconsistency with this Direction is not considered to be justified.

5.1 Implementation of Regional Strategies

The planning proposal is not consistent with this Direction as the proposed site is situated outside the MNCRS growth area boundary, which identifies both the existing built environment and areas for potential future urban growth. The MNCRS provides an avenue to consider an amendment to the growth area boundary where it is demonstrated through the LGMS or rezoning process that a reasonable adjustment to a growth area boundary is desirable and is consistent with the Regional Strategy. However, this argument has not been made within the planning proposal. As expressed above, the proposal is not minor and the MNCRS Sustainability Criteria do not apply. In addition SEPP 21 may allow some permanent accommodation on the site which would not be appropriate having regard to the factors above.

The land is also subject to constraints associated with flooding and foreshore erosion, and is identified as Regionally Significant Farmland. The Regional Strategy identifies such

farmland areas for long term protection and prohibits rezoning of land for urban or tourist purposes. Although the proposed zone is a rural zone under the Maclean LEP, the resulting development permissible under that zone will be urban in nature. The land is not considered to be suitable for the proposed development.

The proposal is otherwise consistent with the Direction. The inconsistency with the Direction, however, is not considered to be justified.

Potential inconsistencies:

The proposal may be inconsistent with 4.2 Mine Subsidence and Unstable Land. As mentioned previously the land is within an area identified as being potentially subject to future river bank erosion and requiring restrictions on development. It may be possible for the development to meet these restrictions. The inconsistency is not supported by the MNCRS or any approved local strategy. The inconsistency may, however, be considered to be minor if compliance with the restrictions in the Maclean LEP can be met.

The proposal is considered to be capable of being consistent with all other S117 Directions.

**Environmental social
economic impacts :**

The land proposed for development is cleared agricultural land and has a history of disturbance. The site has previously been used for sugar cane production. The relative value of this agricultural land and the impact of its loss has not been adequately addressed within the planning proposal. Further assessment in this regard would be required should the planning proposal proceed.

The land is subject to flooding. The area proposed for rezoning and subsequent development would be inundated in a 1:20 year flood event and quickly becomes isolated from nearby settlements. The Grafton and Lower Clarence Flood Risk Management Plan recommends that intensification of existing development in the Palmers Island area be avoided due to the high flood risk.

As mentioned previously, the proposed development would be within the 100 year management precinct as identified within the Maclean LEP to limit the type and intensity of development within a river bank erosion locality.

There is no known critical habitat or threatened species, populations or ecological communities or their habitats which would be adversely affected by this rezoning proposal.

No known heritage items have been mentioned within the planning proposal. However, given the site's position in relation to the river, Council has recommended that Aboriginal cultural heritage issues be considered further, including consultation with the relevant Local Aboriginal Land Council.

There is appropriate water infrastructure to service the application for development; however no sewerage service is currently available to cater to the proposal. Development of the site as proposed would involve the creation of a new 2.5 ha effluent disposal field system on adjoining farmland that is not the subject of this rezoning proposal.

The rezoning proposal potentially has economic benefits due to the job opportunities that will arise during construction and operation of the development and the flow-on effect within the local community as an increase in revenue to the local businesses and wider area.

It is unclear whether there may be positive or adverse social impacts as a result of such intensive development of the site for tourism uses adjacent to a residential area. However, the development would be undertaken away from the riverbank area, which would be zoned for environmental protection, and would thus maintain public access to the river foreshore.

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Assessment Process

Proposal type : **Minor** Community Consultation Period : **28 Days**

Timeframe to make LEP : **9 Month** Delegation : **DDG**

Public Authority : **Office of Environment and Heritage**
Consultation - 56(2)(d) : **Department of Industry & Investment (Agriculture)**
: **State Emergency Service**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **No**

If no, provide reasons : **The planning proposal is inconsistent with several SEPPs and S.117 Directions. The inconsistencies are not justified by a strategy or study that supports the proposal and are not generally of minor significance.**

Resubmission - s56(2)(b) : **Yes**

If Yes, reasons : **Should the planning proposal be supported by the Gateway, resubmission should be required prior to exhibition in light of the significant issues associated with the site that need to be addressed prior to a rezoning.**

Identify any additional studies, if required. :

Heritage

Flooding

Other - provide details below

If Other, provide reasons :

Agricultural land study:

Investigation of the agricultural significance of the land identified as Regionally Significant Farmland under the MNC Regional Strategy should be required.

Site-based flood risk assessment:

The relevant Floodplain Risk Management Plan recommends that Council undertake a site-based risk assessment for individual caravan parks proposed to be developed or extended on flood prone land.

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Planning_Proposal.pdf	Proposal	Yes
Planning_Proposal_Annexure_B_to_D.pdf	Proposal	Yes
Planning_Proposal_Annexure_E.pdf	Proposal	Yes
Planning_Proposal_Annexure_F_to_G.pdf	Proposal	Yes
Palmers_Island_PP_Map.pdf	Map	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Not Recommended**

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S.117 directions:

- 1.2 Rural Zones
- 1.5 Rural Lands
- 2.1 Environment Protection Zones
- 2.2 Coastal Protection
- 3.2 Caravan Parks and Manufactured Home Estates
- 3.4 Integrating Land Use and Transport
- 4.1 Acid Sulfate Soils
- 4.2 Mine Subsidence and Unstable Land
- 4.3 Flood Prone Land
- 5.1 Implementation of Regional Strategies

Additional Information :

It is recommended that:

1. The planning proposal is refused.

Should the planning proposal be supported it is recommended that:

1. The planning proposal is exhibited for a period of 28 days;

2. The planning proposal should be completed within 6 months;

3. The Director General (or an officer of the Department nominated by the Director General) agree that the inconsistencies with s117 Directions 1.2, 1.5, 4.2 and 5.1 are justified as of minor significance; and

4. The following studies be required to be undertaken and be considered by the Department under section 57(2) of the Act prior to exhibition:

- Flooding (section 117 direction 4.3)
- Agricultural land assessment
- Site-based flood risk assessment by Council
- Aboriginal cultural heritage

Supporting Reasons :

The planning proposal is inconsistent with several S117 Directions and SEPP 21 Caravan Parks, the North Coast REP and the SEPP (Rural Lands) 2008. The proposal is not supported by a strategic study.

Signature:



Printed Name:

JIM CLARK

Date:

7 October 2011