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Our ref: PP_2011_CLARE_007_00 (11/17504)
Your ref: 792441

Mr Stuart McPherson
General Manager
Clarence Valley Council
Locked Bag 23
GRAFTON NSW 2460

Dear Mr McPherson,

Re: Planning proposal to rezone 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)

I am writing in response to your Council's letter dated 23 September 2011 requesting a Gateway Determination under section 56 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") in respect of the planning proposal to amend the Maclean Local Environmental Plan 2001 by rezoning 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).

As delegate of the Minister for Planning and Infrastructure, I have now determined that the planning proposal should not proceed for the reasons outlined in the attached Gateway Determination.

The land proposed for rezoning is subject to flooding and is identified as a 'river bank erosion locality' under the Maclean LEP 2001. Accordingly, the future use of the land requires thorough and detailed assessment in regard to the flood prone nature of the land.

The information submitted with the planning proposal does not satisfactorily address the implications of flooding and river bank erosion on the future use of the site and does not consider implications of the land being located within the 1:20 year flood event area. The Grafton and Lower Clarence Flood Risk Management Plan recommends that intensification of development in the Palmers Island area be avoided because of the high flood risk, which has not been adequately assessed and considered within the planning proposal.

It is considered that the flooding constraints are of such significance that the land is unsuitable for the intended future use and the planning proposal should not proceed until such a time that Council has consulted the Office of Environment and Heritage to resolve the implications of flooding on the future use of the land. Should Council determine that the use of the site as a caravan park is strategically justified, Council is encouraged to consider preparing another planning proposal for the site including further detailed justification in relation to the risks associated with flooding and river bank erosion.

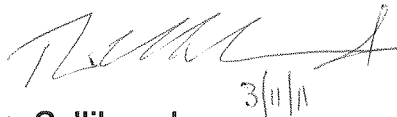
The planning proposal is inconsistent with the Mid North Coast Regional Strategy as the proposed site is situated outside the growth area boundary. It is noted that the land is identified as regionally significant farmland, which is identified as an area for long term protection where rezoning of land for urban or tourist purposes is not supported. The proposed land use is considered urban in nature and given the constraints associated with flooding and foreshore erosion, the land is not considered to be suitable for the proposed development.

The proposed use of the subject land as a caravan park is not supported by any strategic study to justify its inconsistency with a number of Section 117 Directions, SEPP 21 Caravan Parks, the North Coast REP and the SEPP (Rural Lands) 2008. While it is acknowledged that the provision of tourism opportunities is encouraged in the Mid North Coast Regional Study, Councils are required to plan strategically for tourism development within an agreed local growth management strategy. This aspect has not been addressed in the planning proposal and it is considered that the planning proposal does not demonstrate that a caravan park is a suitable future use for the site, notwithstanding the fact that a small scale caravan park previously operated on part of the site.

It is noted that Council's resolution to proceed with submission of this proposal to Gateway acknowledges the need for Aboriginal cultural heritage issues to be investigated should the planning proposal proceed. The need for consultation with the Local Aboriginal Land Council is supported by the Department. However, it is considered that in the absence of satisfactory consideration of the flooding and foreshore erosion risks, as well as the absence of strategic justification for the caravan park, this planning proposal should not proceed in the form as submitted.

Should you have any queries in regard to this matter, please contact Carlie Boyd of the Northern Regional Office of the Department on 02 6641 6600

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Tom Gellibrand', with the date '3/11/11' written below it.

Tom Gellibrand
Deputy Director General
Plan Making & Urban Renewal

Gateway Determination

Planning Proposal (Department Ref: PP_2011_CLARE_007_00): 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)

I, the Deputy Director General, Plan Making & Urban Renewal as delegate of the Minister for Planning and Infrastructure, have determined under section 56(2) of the EP&A Act that an amendment to the Maclean Local Environmental Plan 2001 by rezoning 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) should not proceed for the following reasons:

1. The planning proposal is inconsistent with S117 Direction 4.3 Flood Prone Land as follows:
 - the planning proposal does not satisfactorily address the implications of flooding and river bank erosion on the future use of the site;
 - the planning proposal does not consider the impact of the 1:20 year flood event on the area proposed for rezoning and subsequent use as a caravan park; and
 - the Grafton and Lower Clarence Flood 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, which has not been undertaken.
2. The proposed use of the subject land as a caravan park is not supported by any strategic study to justify its inconsistency with a number of Section 117 Directions, SEPP 21 Caravan Parks, the North Coast REP and the SEPP (Rural Lands) 2008. The planning proposal as submitted does not demonstrate that a caravan park is a suitable future use of the site.
3. The planning proposal is inconsistent with the Mid North Coast Regional Strategy, which identifies the land as regionally significant farmland and is situated outside the growth area boundary. The planning proposal does not demonstrate that an adjustment to the boundary is desirable and is consistent with the Regional Strategy.
4. Council has acknowledged the need for Aboriginal cultural heritage items to be investigated. However, in the absence of satisfactory consideration of the flooding and foreshore erosion risks, as well as the absence of strategic justification for the caravan park, a Gateway Determination conditional upon an Aboriginal Cultural Heritage study cannot be issued.

Dated 3rd day of November 2011.



Tom Gellibrand
Deputy Director General
Plan Making & Urban Renewal
Delegate of the Minister for Planning and Infrastructure