

Purpose: To outline the planning proposal, the reasons why the original Gateway determination was made, and the views of the council (if the review was proponent-initiated) and to consider and assess the request for a review of a Gateway determination.

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| Dept. Ref. No: | PGR_2012_CLARE_001_00 |
| LGA | Clarence Valley Council |
| LEP to be Amended: | Clarence Valley Local Environmental Plan 2011 |
| Address/ Location: | Lot 51 DP 1171431, Lot 3604 DP 834592, Lot 361 DP 751388, Boundary Road, Gulmarrad |
| Proposal: | Rezone land currently zoned RU2 Rural Landscape and R5 Large Lot Residential to allow subdivision for 48 rural residential allotments (24 of which are currently zoned R5) and to establish a 35.5 ha biodiversity corridor. |
| Review request made by: | <input checked="" type="checkbox"/> The council <input type="checkbox"/> A proponent |
| Reason for review: | <input checked="" type="checkbox"/> A determination has been made that the planning proposal should not proceed. |
| | <input type="checkbox"/> A determination has been made that the planning proposal should be resubmitted to the Gateway. |
| | <input type="checkbox"/> A determination has been made that has imposed requirements (other than consultation requirements) or makes variations to the proposal that the proponent or council thinks should be reconsidered. |

Background information

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| Details of the planning proposal | <p>The planning proposal (Tag C) seeks to rezone land currently zoned RU2 Rural Landscape at Boundary Road, Gulmarrad to R5 Large Lot Residential to allow subdivision of rural residential allotments. The proposed rezoning in conjunction with the existing R5 Large Lot Residential zone will yield 48 allotments. The proposal also involves establishment of a 35.5 ha biodiversity corridor on the adjoining land which is zoned R5. Part of this adjoining land is proposed to be zoned E2 Environmental Conservation to protect a proposed drainage and biodiversity corridor. The proposed biodiversity corridor includes both cleared and vegetated land.</p> <p>Part of the land currently zoned RU2 and proposed to be zoned R5 is vegetated and has environmental constraints.</p> <p>The planning proposal argues that development of 48 rural residential allotments is justified as it involves an exchange of some constrained land where rural residential development is currently permissible, for land not currently zoned for that use. It argues that it will help facilitate the achievement of the north-south biodiversity corridor identified in the Maclean Urban Catchment Local Growth Management Strategy.</p> |
| Reason for Gateway determination | <p>The Gateway determination dated 7 November 2012 (Tag D) determined, following consideration of the planning proposal (Tag C), Planning Team report (Tag E) and Gateway determination report (Tag F), that the planning proposal would not proceed for the following reasons:</p> <ol style="list-style-type: none"> 1. The planning proposal is inconsistent with both the Mid North Coast Regional |

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| | <p>Strategy and Council's Local Growth Management Strategy (LGMS). The relative merits of the proposal have not been sufficiently addressed to warrant a departure from the regional and local planning strategies.</p> <p>2. Insufficient evidence has been provided to demonstrate the environmental value or otherwise of the subject land. The land's value may not necessarily support the loss of additional vegetated land proposed to be cleared and subdivided.</p> |
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Views of council

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| Date council advised of request: | The review request was made by Council. |
| Date of council response: | N/A |
| Council response: List issues / points provided in response | N/A |

Proponent justification

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| Details of justification: | <p>The department's covering letter (7 November 2012) to the Gateway determination indicated that "further investigations would be required which improve the standard of information to justify the proposal. Should Council decide to resubmit the planning proposal, Council would be encouraged to:</p> <ol style="list-style-type: none"> 1. undertake preliminary investigations with the Office of Environment and Heritage and the NSW Rural Fire Service and provide evidence of their requirements, 2. explain under what framework the land exchange would occur, 3. provide a clearer explanation about the future use and controls for residue Lot 51, and 4. provide greater articulation of the proposal's compliance with any relevant State Environmental Planning Policies". <p>Council has responded to each of the issues identified above (Tag G).</p> |
| Material provided in support of application/proposal: | <p>Council has responded to all four Gateway issues (Tag G). The four responses, in summary, follow:</p> <p>1A. The Office of Environment and Heritage (OEH) response to the Gateway determination had not been received by Council in time for the 40 day deadline to request a review. Council's supporting material comments on the previous advice from OEH that provided comments on the draft planning proposal's relationship to the Mid North Coast Regional Strategy but did not provide advice on the proposed biodiversity or ecological merit of the proposal.</p> <p>A letter has since been received from the OEH (Tag H). Council provided OEH with the additional information that accompanied the Gateway Review request. In summary OEH indicated that "given the inconsistencies of the planning proposal with the provisions of the Mid North Coast Regional Strategy, the lack of adequate information and consideration of biodiversity matters, including threatened species, populations and ecological communities, the questionable impacts of the inundation of the 'conservation corridor', the lack of information regarding flooding and inadequacy of the Aboriginal cultural heritage assessment, OEH is currently unable to comment on the merits or otherwise of the planning proposal". OEH goes on to recommend "that the proponent provides reports documenting detailed biodiversity, flooding and Aboriginal cultural heritage studies of the planning area in support of the planning proposal to enable OEH to comment on the merits or otherwise of the planning proposal regarding these matters". OEH further recommends that a meeting be held between OEH, Council, the proponent and DP&I, to clarify the information required to progress the proposal.</p> <p>1B. A bushfire risk management plan has been provided by the proponent (Tag G). The Rural Fire Service has assessed the plan and considered it to be satisfactory from a bushfire risk management perspective.</p> |

2. The proponent proposes to establish an owners' management association created through restrictions and positive covenants on the land title under Section 88B of the Conveyancing Act. This arrangement would require owners to be members of the association, collect levies from owners for the on-going land management of the 'conservation area' and impose restrictions on any uses inconsistent with the conservation objectives for the land. Council is of the view that further refinement to this proposal is needed, which could await the outcome of the Gateway review.

3. The proponent proposes that the residue of Lot 51 be zoned RU2 Rural Landscape and that it be combined in ownership with an approved child care centre which fronts Boundary Road. Council considers this would facilitate on-going management of the residue.

4. Council attached a schedule of assessment against the Rural Lands SEPP (Tag G). In summary, Council acknowledges an inconsistency with the Mid North Coast Regional Strategy and the Local Growth Management Strategy, both of which are called up by the Rural Lands SEPP and Section 117 directions. However Council is of the view that the intent to establish the biodiversity corridor has considerable merit, is consistent with other aspects of the LGMS and Council's Biodiversity Management Plan, and hence any inconsistency is justifiable. In supporting the planning proposal, Council seeks to balance a range of competing strategic planning directions.

Assessment Summary

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| <p>Department's assessment</p> <p>Provide a summary assessment of the department's position/views on the request for review</p> | <p>The Gateway determined that the planning proposal should not proceed as it was inconsistent with the strategic planning framework and insufficient evidence was provided to demonstrate the environmental value of the land. The letter accompanying the determination outlined four issues for Council to consider if it sought to further justify the proposal.</p> <p>As outlined above Council has provided additional information to address these issues. Council has adequately addressed the issues raised by the Gateway in relation to bushfire, the management framework for the proposed biodiversity corridor and the future use and controls for residue lot 51.</p> <p>In terms of the strategic planning framework Council notes that the proposal is inconsistent with the Mid North Coast Regional Strategy and LGMS. However, Council argues that the provision of the proposed biodiversity corridor and other biodiversity outcomes outweigh strict compliance with the strategic framework and as such the proposal is justifiably inconsistent. From the information provided the assessment as undertaken in the original Planning Team report (Tag E) remains unaltered.</p> <p>It is noted that the planning proposal does not propose a significant departure from the approved strategies in terms of the area affected. However, the proposal does propose development on land with vegetation and biodiversity values without further justification. The Gateway suggested that preliminary investigations be undertaken with OEH and provide evidence of their requirements. From the information submitted it appears that no further investigations have been undertaken to determine the merits of the proposal in terms of ecological and biodiversity outcomes.</p> <p>The response from OEH outlines that there is a lack of adequate information and consideration of biodiversity matters to comment on the merits or otherwise of the proposal.</p> <p>Conclusion - Based on an assessment of the information supplied with the request to review the Gateway determination, it is considered that the initial assessment in the Planning Team report and the determination made by the Gateway should stand.</p> |
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RECOMMENDATION

Reason for Review: A determination has been made that the planning proposal should not proceed.

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| Recommendation: | <input checked="" type="checkbox"/> | The planning proposal should not proceed past Gateway. |
| | | <input type="checkbox"/> no amendments are suggested to original determination. <input type="checkbox"/> amendments are suggested to the original determination. |
| | <input type="checkbox"/> | The planning proposal should proceed past Gateway in accordance with the original submission. |

Reason for Review: A determination has been made that the planning proposal should be resubmitted to the Gateway.

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| Recommendation: | <input type="checkbox"/> | The planning proposal should be resubmitted to the Gateway |
| | | <input type="checkbox"/> no amendments are suggested to original determination. <input type="checkbox"/> amendments are suggested to the original determination. |
| | <input type="checkbox"/> | The planning proposal should not be resubmitted and should proceed past Gateway in accordance with the original submission. |

Reason for Review: A determination has been made that has imposed requirements (other than consultation requirements) or makes variations to the proposal that the proponent or council thinks should be reconsidered.

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| Recommendation: | <input type="checkbox"/> | Requirements should be imposed or variations made to the planning proposal |
| | | <input type="checkbox"/> no amendments are suggested to original determination. <input type="checkbox"/> amendments are suggested to the original determination. |
| | <input type="checkbox"/> | The suggested requirements or variations of the original Gateway determination are not necessary and the planning proposal should proceed past Gateway in accordance with the original submission. |

Any additional comments:

If it is decided that a new Gateway Determination be made to enable the proposal to proceed, appropriate conditions should be added to the determination to address the issues raised by OEH in regard to: biodiversity, flooding and Aboriginal cultural heritage.

If it is decided that the original Gateway Determination is to remain unaltered, Council could be advised to have further discussions with OEH to ascertain the level of information and investigation that would be needed to determine if a future planning proposal could be supported.

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Endorsed by: *Steve Murray* 11 January 2013
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