

Committee:	ENVIRONMENT, ECONOMIC & COMMUNITY
Section:	Strategic & Economic Planning
Date:	10 July 2012
Item:	12.101/12 REQUEST FOR PLANNING PROPOSAL – REZONING OF LOT 51 DP1171431; LOT 3604 DP834592; & LOT 361 DP751388 AT BOUNDARY ROAD, GULMARRAD

ATTACHMENT**REPORT SUMMARY**

Applicant	Gulmarrad Pty Ltd; B N Farlow; and WA & SJ Campbell
Owner	As above
Subject Land	Part of Lot 51 DP1171431; Lot 3604 DP834592; and Lot 361 DP751388
Proposal	Rezone an area of 12.6ha from RU2 Rural Landscape to R5 Large Lot Residential

Council is in receipt of a request to prepare a Planning Proposal over land at Boundary Road, Gulmarrad, to rezone some 12.6ha of the land from RU2 Rural Landscape to R5 Large Lot Residential. A draft planning proposal has been submitted.

There are two main issues with this proposal; the first being that the land proposed for rezoning is not identified in any planning instrument as a 'growth area'; and the second is that the applicant proposes 'substitution' of a 17.5ha area of drainage buffer, zoned R5 in exchange, which raises the issue of tenure and management of the drainage buffer.

A number of documents have been referred to in assessment of this proposal including the Clarence Valley LEP 2011 and the Residential Zones DCP 2011; the Mid North Coast Regional Strategy; and the Maclean Urban Catchment Local Growth Management Strategy 2011 (LGMS). This proposal is inconsistent with the strategies and vision of those documents.

Any justification for this rezoning would need to demonstrate an overriding environmental or community benefit, which has not been achieved. It is difficult to support such a significant variation to over-arching planning policy, and therefore, the request to prepare a formal planning proposal is recommended for refusal at this time.

OFFICER'S RECOMMENDATION

That the request to prepare a Planning Proposal to rezone Part of Lot 51 DP1171431; Lot 3604 DP834592; and Lot 361 DP751388, be declined as it is considered to be inconsistent with State and local planning policy requirements, and the inconsistency with those policies has not been justified in the current context.

Cr Simmons having declared an interest in this item left the Chambers.

RECOMMENDATION BY COMMITTEE

Williamson/Comben

Council agree to the request to prepare a Planning Proposal to rezone Part of Lot 51 DP1171431; Lot 3604 DP834592; and Lot 361 DP751388, subject to:

- (a) acceptance that the potential benefits of the corridor warrant departure from the strategic LGMS policy; and
- (b) the planning proposal is amended to include a long term management structure, acceptable to Council, that addresses immediate and long-term management of the land independent of Council's ownership.

Voting recorded as follows:

For: Comben, Howe, Hughes, Williamson
Against: Nil

Cr Simmons, having declared an interest in this item, left the Council meeting at 5.27pm.

**COUNCIL RESOLUTION – 12.101/12
(Crs Howe/Tiley)**

That

Council agree to the request to prepare a Planning Proposal to rezone Part of Lot 51 DP1171431; Lot 3604 DP834592; and Lot 361 DP751388, subject to:

- (a) acceptance that the potential benefits of the corridor warrant departure from the strategic LGMS policy; and**
- (b) the planning proposal is amended to include a long term management structure, acceptable to Council, that addresses immediate and long-term management of the land independent of Council's ownership.**

Voting recorded as follows:

For: Councillors Williamson, Dinham, Howe, Hughes, Tiley and Toms
Against: Councillors McKenna and Comben

Cr Simmons returned to the Council meeting at 5.32pm.

BACKGROUND

Rezoning process:

Land rezoning is a formal process that amends the planning controls for the subject parcel/s of land. It is undertaken in accordance with section 55 of the EP&A Act, and the process involves:

1. If the request is applicant-driven, then a draft proposal is submitted with a fee (as per the current proposal) for assessment and reporting by Council officers;
2. Formal consideration of the draft planning proposal must be made by Council. This involves assessment and justification against all relevant SEPPS, Regional Strategies and Council's strategic framework (the Maclean LGMS). If Council decides to support the proposal, a formal planning proposal is then forwarded to the Minister of Planning for a 'Gateway Determination'. If Council finds that the proposal should not proceed, the matter goes no further;

3. The Gateway Determination is where the State first considers the proposal. If it finds that the proposal has merit and should proceed; approval is given for public exhibition;
4. Following public exhibition, Council again considers the proposal and any submissions; and if supportive, the proposal can then be forwarded to the Department of Planning for finalisation.

In this instance, the matter is applicant-driven; a draft planning proposal has been submitted; and Council must now determine whether to support the proposal.

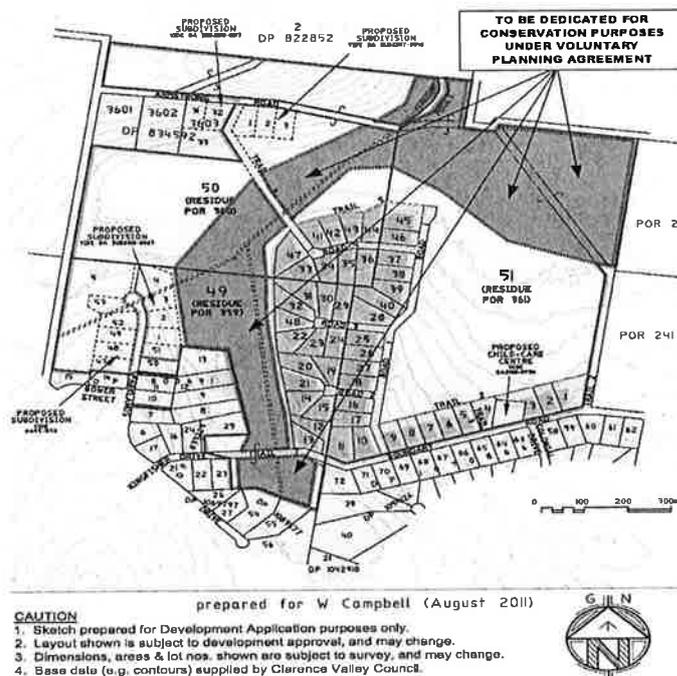
Related matters

On 18 October 2011 Council received a report on a development application for a 51 lot subdivision, part of which was over the subject land. Nine submissions were received against that proposal, and the officer recommendation was for refusal of the application as [among other reasons] the development proposed was not permissible over that section of the land zoned 1(b) Rural Zone (which was the zone applicable at that time, and is equivalent of the RU2 Zone). Council deferred that application for a period of one month at the applicant's request and invited the submission of a planning proposal.

Following the October meeting the applicant advised that they would prepare a planning proposal to address the zoning issue. That planning proposal is now the matter before Council. The development application for subdivision of the land has not yet been returned to Council for a determination.

Context

The 12.5ha of land proposed for rezoning is located at the eastern boundary of the current R5 Zone (see attachments for location and zoning maps as per Planning Proposal). A proposal plan is provided below.



The main strategic planning policy context to provide direction to consideration of this proposal is summarised by the following:

- *Clarence Valley LEP 2011*
- *Residential Zones DCP 2011*
- *Mid North Coast Regional Strategy (Department Planning, March 2009)*

- *the Maclean Urban Catchment Local Growth Management Strategy 2011 (LGMS)*

Proposal

The applicant has put forward the objective of the proposal as;

- (a) *“facilitating the orderly development of isolated pockets of developable R5 land through the utilisation of nearby available infrastructure, old quarry and degraded land; and*
- (b) *to permanently conserve 35.6ha of land as a significant biodiversity corridor.”*

If the proposal were to proceed, approximately 12.6ha of RU2 land would be rezoned as R5 land; and 11 new rural residential allotments would be created with frontage to the unformed section of Boundary Road, with 13 additional lots fronting a new internal road. In effect, the R5 zoning would be extended into the rural parcel to the east in an ‘L-shaped’ configuration.

In respect to vegetated drainage corridor, which the applicant refers to as the proposed biodiversity corridor, that runs north – south through Lots 51 and 3604, it is suggested that this 37ha be held in one parcel and zoned appropriately.

ISSUES

1. Conflict with planning instruments and policies

The main strategic planning policy context which provides direction for consideration of this proposal is summarised by the following:

- *Clarence Valley LEP 2011*
- *Residential Zones DCP 2011*
- *Mid North Coast Regional Strategy (Department Planning, March 2009)*
- *the Maclean Urban Catchment Local Growth Management Strategy 2011 (LGMS)*

The applicant has addressed these strategies in the Draft Planning Proposal (that document is provided in full as an Attachment to this report).

Assessment by Council officers has found that the proposal is inconsistent with the above strategies and insufficient justification has been provided to recommend approval given the degree of inconsistency (see full discussion below).

The Clarence Valley LEP

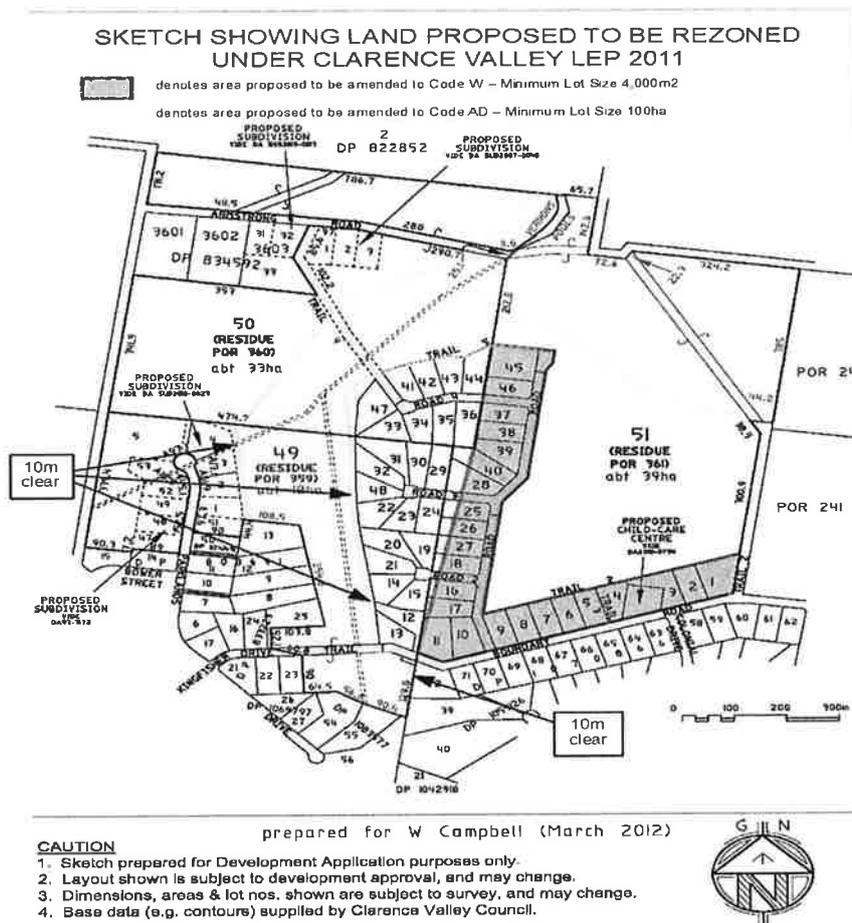
The Clarence Valley LEP zones Lot 361 DP751388 as RU2 Rural Landscape. This land adjoins the other lots which are mentioned in this proposal, which are zoned R5 Large Lot residential. The objectives of the RU2 Zone are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*
- *To provide land for less intensive agricultural production.*
- *To prevent dispersed rural settlement.*
- *To minimise conflict between land uses within the zone and with adjoining zones.*
- *To ensure that development does not unreasonably increase the demand for public services or public facilities.*
- *To ensure development is not adversely impacted by environmental hazards.*

If that lot is rezoned to the R5 Large Lot Residential then the intent to keep this parcel of land in the rural zone will fall away.

The new objectives (of the R5 Zone) will be:

- To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.
- To ensure that large residential allotments do not hinder the proper and orderly development of urban areas in the future.
- To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.
- To minimise conflict between land uses within the zone and land uses within adjoining zones.
- To ensure development is not adversely impacted by environmental hazards.
- To protect areas of vegetation and waterways with conservation value and scenic amenity.



The applicant proposes a 'substitution rezoning'. That is, they wish to trade off the 'unusable area' of land in Lots 51 and 3604, (see plan above) which is zoned R5 Large Lot Residential for a more usable section of land on the adjacent property; which is proposed to be rezoned to accommodate the 'loss'. The unusable area is vegetated drainage buffer that constitutes an area of some 17.5ha.

The fundamental issue to consider with this proposal is the assumption that all of any parcel zoned for a particular purpose (eg, residential, industrial, etc) can be fully utilised for that purpose; and that the maximum yield can be returned. This is not the case. The use of any parcel of land, regardless of its zoning is governed by a number of factors; including constraints on the land (eg, vegetation, watercourses, slope and topography, etc.). Because a site has such constraints is not reason to 'exchange' part of it to achieve full yield on another site.

If this is accepted as fact, then the issue to consider comes down to the justification and need for the rezoning of part of Lot 361 DP751388 for rural residential purposes. The need to do this has not been sufficiently demonstrated.

Mid North Coast Regional Strategy

Part 4 of the Strategy – Settlement and Housing for Rural Residential Development states:

“The growth area maps in this Strategy include enough land to accommodate the expected population, plus any additional capacity to assist with housing affordability, market choice, avoidance of constraints within growth areas, and to allow possible greater population growth than expected” (reference – ‘Outcomes’); and

“Future rural residential land will only be zoned for release if it is in accordance with a local growth management strategy agreed between Council and the Department of Planning and is consistent with the principles of the Settlement Planning Guidelines”...and

“No new rural residential development will be permitted within the Coastal Area other than development already zoned or in an approved current or future local growth management strategy (or rural residential land release strategy)”.

The site proposed for rezoning is outside the Gulmarrad rural residential settlement area, and therefore the proposal has not been contemplated by the Strategy. It is also within the Coastal Area referred to above. As such, the proposal is inconsistent with the Mid North Coast Strategy.

The applicant contends that the proposal is not inconsistent with this Strategy as it involves ‘substitution’ of land within the R5 Zone for land within the RU2 Zones, thereby neither increasing nor decreasing the potential yield from the existing R5 land.

Concern is raised about a precedent that would be set should Council accept this premise. There are many areas where the R5 Zone adjoins RU2 Zoned land, and should Council approve this rezoning to secure a yield that cannot be achieved within the existing appropriately zoned site, further applications could result promoting a similar argument.

The Maclean Urban Catchment Local Growth Management Strategy 2011 (LGMS)

The applicant rests their argument for compliance with the LGMS on the premise that the rezoning *“merely substitutes 17.5ha of R5 zoned land for 12.6ha of degraded RU2 land so that a more orderly pattern of serviced rural residential development can be achieved...”*

The opening statement in the LGMS recognises that further urban growth opportunities are influenced by physical and natural constraints. It also noted that *in the past five years, two thirds of developments within the Maclean urban catchment area have been in the form of rural residential developments.* The Strategy acknowledges that *this existing balance between urban and rural residential development is inefficient and has significant potential for environmental impacts...and therefore aims to reverse the trend for future development in the catchment.*

The LGMS does identify a biodiversity corridor in this area, as a desirable outcome. However, this could be achieved in a variety of ways; with public ownership with offsetting being just one option.

When the full extent of the LGMS is considered, it is quite clear that it does not support extended rural residential development in this location.

2. Management of the drainage buffer area

As mentioned previously in this report, the applicant proposes a ‘substitution’ rezoning. In exchange for an extended 12.6ha of R5 zoned land; the area of some 17.5ha of land will be removed from the R5 Zone and held in a single parcel zoned for environmental protection. The This is Page 93 of the Minutes of the Ordinary Council Meeting of Clarence Valley Council held on 17 July 2012.

argument for this element of the application rests on the premise that protection of that area is better if the parcel is held in a single lot with single ownership.

While that proposal may have some merit, it is unclear as to the tenure and management structure for that area. It is unlikely that the applicant would retain, and manage the lot; and it is unlikely that the area is of such high environmental value to warrant Council taking ownership of the lot. Further, it must be noted that the area is a constraint to development of the site, and as such cannot be cleared or development for rural residential living purposes ...so it is in fact already 'protected'.

Should Council be of a mind to approve the rezoning; it is likely that ownership and management of the proposed 'biodiversity corridor' will fall to Council.

CONSULTATION

Office of Environment and Heritage Advice

Following an inspection of the site by Council officers and officers from the Department of Environment and Heritage; advice was received opposing the rezoning proposed (see attachment for copy of correspondence). The basis of the opposition was the perceived inconsistency with the Mid North Coast Regional Strategy.

SUSTAINABILITY ASSESSMENT

Summary Statement

Given the degree of conflict with planning policy and Strategies as discussed in this report, it is difficult to support the planning proposal as requested. The extension of the rural residential zoning into an adjoining rural parcel of land is not sustainable use of the land.

Ecology

While it is recognised that the subject land has been disturbed by quarrying; and there is now significant regrowth of native vegetation, the ecological value and sustainability of the proposed corridor has not been fully demonstrated.

Economic

The economic sustainability of this rezoning has not been adequately proven.

Social & Cultural

There is potential to increase rural residential sprawl if additional rural land is rezoned to accommodate a further 24 rural residential lots. It is also likely to impact on the expectations of the neighbouring community, who understood that the land would be retained in a rural state.

Human Habitat & Infrastructure

Rezoning of the land, and subsequent subdivision into rural residential lots would provide additional large residential housesites in the Gulmarrad area. This can put pressure on Council and community infrastructure.

Governance

Compliance with the strategic planning policy context is important. At this stage, it is considered that there is insufficient ecological and community benefit to depart from the Local Growth Management Strategy recently adopted by Council. This is a matter that must now be decided by Council to determine if the planning proposal will go forward into the Gateway Process; or if it will be rejected.

Guiding Sustainability Principles

The following guiding sustainability principles are relevant to this issue:

- Supporting social and intergenerational equity.
- Taking a precautionary and anticipatory approach.

CONCLUSION

In summary it is concluded that the proposal is based upon:

1. Accepting that the land to be 'exchanged' has strong environmental values that warrant dedication of the land, in one parcel, to Council.

Comment: This has not been adequately justified by either the applicant or by Office of Environment & Heritage. If this exchange is to take place, then Council needs to confirm whether it will accept dedication of the land, and therefore its long term management.

2. Assigning development potential to the land despite it being identified as drainage reserve in the DCP with no development potential.

Comment: The applicant is effectively claiming a 24 lot 'offset' in exchange for that land. The R5 zoned land is constrained by drainage and hence does not currently have any development potential. To give support to the rezoning would in effect grant development potential to that area of drainage buffer.

3. The need to devise a long term land management strategy, and legal mechanisms, which should potentially be funded from the additional 24 lots proposed by the rezoning.

Comment: Land management mechanisms and funding have not been offered, and in their absence it is assumed that Council will accept the corridor which may well be handed over in a degraded state without sufficient long term funding for rehabilitation and management. Any approval granted should be conditional on this matter being fully addressed to the satisfaction of Council.

4. Likely cumulative pressures for rezoning of other lands at the zone boundaries, where zoned yield is affected by physical constraints.

Comment: All zones interface at some point with zonings of lesser density. It is always possible that the higher density zoned land is affected by topographical constraints; vegetation constraints; wildlife habitat and wetlands, which has never been sufficient reason to exchange these constrained areas for adjoining non-constrained compensatory land.

5. The benefit of rezoning the land outweighs the identified inconsistencies with strategic planning policies.

Comment: The draft planning proposal does not adequately demonstrate sufficient ecological value and community benefit from the proposed 'exchange' to warrant overriding the strategic planning policies.

OPTIONS

1. That the request to prepare a planning proposal to rezone Part of Lot 51 DP1171431; Lot 3604 DP834592; and Lot 361 DP751388, be declined as it is considered to be inconsistent with State and local planning policy requirements, and the inconsistency with those policies has not been justified in the current context; OR

2. Council agree to the request to prepare a Planning Proposal to rezone Part of Lot 51 DP1171431; Lot 3604 DP834592; and Lot 361 DP751388, subject to:
 - (a) acceptance that the potential benefits of the corridor warrant departure from the strategic LGMS policy; and
 - (b) the planning proposal is amended to include a long term management structure, acceptable to Council, that addresses immediate and long-term management of the land and associated funding; OR

3. Council defer consideration of the planning proposal pending the applicant demonstrate:
 - (a) that the potential benefits of the corridor warrant departure from the strategic LGMS policy; and
 - (b) amendment of the planning proposal to include a long term management structure, acceptable to Council, that addresses immediate and long-term management of the land and associated funding;

Option 1 is the preferred option as it retains the integrity of Council's strategic planning policies, and does not set an undesirable precedent.

FINANCIAL IMPLICATIONS

The applicant for the planning proposal has paid Council's fee. Should option 2 be taken, Council may incur costs for short-term rehabilitation and long-term management of the corridor.

Des Schroder
DEPUTY GENERAL MANAGER – ENVIRONMENTAL & ECONOMIC

Prepared by staff member:	Cheryl Sisson, Acting Planning Services Coordinator
Approved/Reviewed by Manager:	David Morrison
Section:	(on behalf of) Strategic & Economic Planning
Attachment:	1. Planning Proposal application 2. Letter from Office of Environment & Heritage