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| ITEM | 13.062/15 | PLANNING PROPOSAL – HELIPAD, GOLDING STREET, YAMBA |
|------|-----------|----------------------------------------------------|

|              |                                                             |             |
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| Meeting      | Environment, Planning & Community                           | 12 May 2015 |
| Directorate  | Environment, Planning & Community                           |             |
| Submitted by | Director - Environment, Planning & Community (Des Schroder) |             |

**SUMMARY**

|                                  |                                                                                                                                                         |
|----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Proponent</i>                 | Johnston Enterprises Australia Pty Ltd                                                                                                                  |
| <i>Owner</i>                     | Kahuna No. 1 Pty Ltd                                                                                                                                    |
| <i>Subject land</i>              | Part Lot 51 DP751395 Golding Street, Yamba                                                                                                              |
| <i>Current Zoning CVLEP 2011</i> | Part R1 General Residential (R1) <b>and</b> Part E3 Environmental Management (E3)                                                                       |
| <i>Proposal</i>                  | To enable the continued use of the land for the purposes of a helipad whilst it remains not required for the purposes of urban residential development. |

This report considers a Planning Proposal which supports a case to enable the continued use of that part of land currently zoned R1 for the purposes of a helipad. The land, which is part of the West Yamba urban release area, has a relatively recent history of approval and use as a helipad with the consent lapsing with the coming into force of the residential zoning of the land initially in 2010.

The Planning Proposal has been lodged jointly with a fresh development application (DA2015/0172) for the helipad use under the provisions of section 72J of the Environmental Planning and Assessment Act 1979 (the Act).

**OFFICER RECOMMENDATION**

That Council:

1. As the relevant planning authority, initiate the Local Environmental Plan “Gateway” process pursuant to Section 55 of the Environmental Planning and Assessment Act 1979 by endorsing the attached Planning Proposal over Part Lot 51 DP751395, Golding Street, Yamba to amend Clarence Valley Local Environmental Plan 2011 to enable the continued use of the land for the purposes of a helipad, subject to it being amended by referring to provisions that will limit the continued use of the site for such purpose for a period no longer than 15 years, the date upon which a subdivision certificate is issued for the residential subdivision of the land, or issue of a development consent for *residential accommodation or tourist and visitor accommodation*, whichever milestone occurs first.
2. Forward the Planning Proposal to the Department of Planning and Environment (the Department) requesting a “Gateway” Determination, pursuant to Section 56 (1) of the Environmental Planning and Assessment Act.
3. Advise the Department that it will accept any plan making delegations that may be offered to Council.
4. Require the proponent, should a Gateway Determination to proceed be issued and prior to exhibition of any Planning Proposal, to identify options for legal and practical access to the site and to nominate a preferred option that enables the continued use of the helipad on the land.
5. Undertake community consultation regarding the Planning Proposal, subject to the determination of the Gateway Process.

**COMMITTEE RECOMMENDATION**

Hughes/Baker

That the Officer Recommendation be adopted.

Voting recorded as follows:

For: McKenna, Baker, Howe, Hughes

Against: Nil

**COUNCIL RESOLUTION – 13.062/15**

(Crs Hughes/Howe)

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4. Require the proponent, should a Gateway Determination to proceed be issued and prior to exhibition of any Planning Proposal, to identify options for legal and practical access to the site and to nominate a preferred option that enables the continued use of the helipad on the land.
5. Undertake community consultation regarding the Planning Proposal, subject to the determination of the Gateway Process.

Voting recorded as follows

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

Against: Nil

**LINKAGE TO OUR COMMUNITY PLAN**

Theme 5 Our Leadership

Objective 5.1 We will have a strong, accountable and representative Government

Strategy 5.1.4 Provide open, accountable and transparent decision making for the community

**BACKGROUND**

On 26 August 2008 conditional consent was granted in DA2008/0481 to the use of Part Lot 51 DP751395 as a helipad. Notably the scale of helipad use was limited to no more than 7 movements per week. More

importantly condition 3 required that *“the use of the allotment for the purpose of a helipad is to cease upon the rezoning and gazettal of the subject, or adjoining land, to a residential zone”*.

The land was first zoned to residential on 23 April 2010, when Amendment No. 20 to Maclean LEP 2001 was made. It also became designated as an urban release area. Clarence Valley LEP 2011 came into force on 23 December 2011 and carried forward the residential zoning and urban release area provisions applicable to the land. A helipad is a prohibited use within the current R1 zone and arguably would not be consistent with the R1 zone objectives.

Hence, given condition 3 of DA2008/0481 and the subsequent rezoning of the land for residential purposes, there is some uncertainty regarding the status of the consent. The applicant has lodged a joint rezoning and development application to address this aspect.

According to the Planning Proposal at least \$2 million has been spent establishing the helipad and its support infrastructure. In acknowledging that the land is zoned residential and is part of the broader West Yamba urban release area the land owner wishes to continue the helipad use whilst the land (and land to the west) remain undeveloped and not required for urban development/expansion for the time being.

## KEY ISSUES

### Compliance with the Planning Proposal guidelines

The Planning Proposal in this case is contained within a document entitled “West Yamba Local Helipad Planning Proposal”, prepared by Johnston Enterprises Australia Pty Ltd, April 2015.

A review of the Planning Proposal indicates that it generally complies with section 55(2) of the Act and the Department of Planning and Environment’s “A guide to preparing planning proposals” (October 2012). The main Planning Proposal document otherwise outlines the future intended development and relevant merit issues in a sufficiently detailed manner at the rezoning stage.

### Reasons and justification for continued helipad use

Although a range of justification is provided in support of the continued use of the helipad facility, it would appear that the main reasons advanced for requiring its continuance include:

1. The helipad is predominantly used for the emergency medical care of a family member, who requires urgent access to hospitalization and specialist care; confirmation of this need is by way of a letter from the current attending GP;
2. The use is currently available and will remain available for wider emergency medical evacuation if required and is able to transport people who may have critical injuries at night.

Further it is stated the use is limited to seven (7) trips per week, in line with the previous development consent.

### Proposed period of use

The Planning Proposal acknowledges the “sunset clause” on the helipad operation provided by condition 3 of the consent issued in DA2008/0481, referred to above.

Based on the argument that the land is unlikely to be developed nor will be required for urban development for at least 15 – 20 years the Planning Proposal states that *“the intended outcome for this site*

*to be residential in the longer term and as such when a development application for a residential subdivision is registered over the land the current use should cease”.*

However the suggested “explanation of provisions” in the Planning Proposal do not allude to a temporal limit. Given the sites function for future urban expansion in the West Yamba urban release area it is suggested that allowing a helipad use indefinitely is not acceptable. The argument in the Planning Proposal that the site is unlikely to be required for urban release for 15 - 20 years is a plausible one. Based on this and the proponents short term needs and requirements it would seem reasonable to support the Planning Proposal on the basis that a helipad use of the land not be allowed to continue beyond 15 years from the date that the relevant LEP amendment comes into effect; or from when a subdivision certificate is issued for any approved stage of the residential subdivision of the land, whichever milestone occurs first. Refer also to “Mechanism for amending the LEP”, below.

### **Mechanism for amending the LEP**

The Planning Proposal suggests that the Clarence Valley LEP 2011 be amended by amending Schedule 1 (additional permitted uses) to permit “helipad” as a permitted use on the site within the existing R1 zone. Helipad is already a defined use in the Dictionary of the LEP, as follows:

**“Helipad** means a place not open to the public used for the taking off and landing of helicopters”.

Clause 2.5/Schedule 1 of the Standard Instrument Order, which is incorporated to the CVLEP 2011, allows councils to permit additional uses for particular land. These uses are permitted in addition to those identified in the LEP Land Use Table or other planning instruments such as the Infrastructure SEPP for that site only.

Should Council accept, despite inconsistency with R1 zone objectives, that the continued use of the land as a helipad is an acceptable use of the land for a temporary period (no longer than 15 years) whilst it remains not developed nor required for urban development, the scheduling of a helipad as an additional permitted use in LEP Schedule 1 is the appropriate mechanism to amend the LEP.

Therefore, the proposed amendment to Schedule 1 should be drafted to read as follows:

#### **“5 Use of certain land at Golding Road, Yamba**

- (1) This clause applies to the land at Golding Road, Yamba being part of Part Lot 51 DP751395, identified as “1” on the Additional Permitted Uses Map.
- (2) Development for the purpose of a helipad is permitted with consent.
- (3) Subclause (2) ceases to apply 2 years after Clarence Valley Local Environmental Plan 2011 (Amendment No x) is notified on the NSW Legislation website.
- (4) Any development consent granted for a helipad on land to which this clause applies shall specify that the period in which the consent can operate is limited as follows:
  - (a) Not longer than 15 years after Clarence Valley Local Environmental Plan 2011 (Amendment No x) is notified on the NSW Legislation website; or
  - (b) The date upon which a subdivision certificate is issued for the residential subdivision of the land;
  - (c) The date upon which a development consent is issued for “residential accommodation” or “tourist and visitor accommodation”,
 whichever milestone occurs first.

To ensure that the helipad use is confined to the specific part of Lot 51 DP751395 it is best that the use to be scheduled in this instance be mapped on an Additional Permitted Uses Map (APU Map). Currently there is no APU Map in use for the Clarence Valley LEP 2011. This approach is recommended when the proposed additional use relates to part of a lot.

### **Access to Lot 51 DP 751395**

The Planning Proposal states that the site has access via an unmade road which is the southern end/extension of Freeburn Street. The unmade road is in fact Quarterdeck Place.

However the current “route in use” access to Lot 51 DP751395 is from the east via Lot 2 DP1161058 being a reserve (Reserve 98072, with notified purpose of public recreation). The Trustee name is Yamba Sporting Complex Reserve Trust and Council is Corporate Manager of the Trust.

The other remaining legal (and physical) access option is via Golding Street; this being an existing legal and physical access to the western part of Lot 51 providing access to an existing dwelling upon the land.

Given that there is no legal private right of access to Lot 51 via Reserve 98072 from the east it will be necessary continuing into the future for the proponent to exercise either the Quarterdeck Place or the Golding Street access option as the likelihood of being granted long term legal private right of access across the reserve is extremely low. The proponent should, during the Planning Proposal and development application process, resolve and nominate an alternative access option for the continued use of a helipad on Lot 51.

## **COUNCIL IMPLICATIONS**

### **Budget/Financial**

Assessment of the Planning Proposal has been undertaken within existing budgets.

### **Asset Management**

Any decision by the proponent to nominate Quarterdeck Place as the alternative access to the existing “route in use” access will involve construction of a new section of road and drainage re-routing within the Quarterdeck Place road reserve immediately north of Lot 51.

### **Policy or Regulation**

Environmental Planning and Assessment Act 1979 – including relevant State environmental planning policies (SEPPs) and Minister’s Section 117 Directions made under the Act.

### **Consultation**

Internal consultation has been undertaken and is summarised below. External consultation with Government Agencies and the general public will occur if firstly Council supports the revised Planning Proposal and then following a Gateway Determination for that revised proposal that authorises public exhibition. That Determination will specify the details of any consultation.

Council’s Development and Regulatory Services section has already advertised the DA ahead of the Planning Proposal.

| <i>Internal Section or Staff Member</i> | <i>Comment</i>                                                                                                                                                                                                                                                                                                            |
|-----------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Development Engineer                    | <p>The landing area would be subject to Civil Aviation Safety Authority (CASA) requirements (refer ‘Guidelines for the Establishment &amp; Operation of Onshore Helicopter Landing Sites – CAAP 92-2(2) :</p> <ul style="list-style-type: none"> <li>static and dynamic take-off/landing loads – certification</li> </ul> |

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|  | <p>required of existing landing pad</p> <ul style="list-style-type: none"> <li>• helipad area position markings - line-marking required (or re-instatement – from aerials)</li> </ul> <p>There are no details for the above recorded on ECM for the previous DA2008/0481 or with this application. Aerial photos indicate a concrete landing pad. Loading would also relate to the type of helicopter used. Being on private property these issues would be determined by the building surveyor.</p> <p>The existing access was accepted by Council for DA2008/0481 however, the site is accessed via crown land, managed by Council.</p> <p>Drainage on the site would not be an issue for the development or surrounding property. Water &amp; sewer servicing are not available to this site. Septic services were provided to the shed constructed on-site with DA2006/1100. It is not clear how power and telephone services are provided.</p> |
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The authorities or agencies that should be consulted at the public exhibition/community consultation stage are:

1. Civil Aviation Safety Authority (CASA)
2. Ambulance Service of NSW
3. NSW Trade & Investment, Crown Lands

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

The Act does not provide for any inbuilt legal appeal rights for third parties who may oppose the proposal.

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|-------------------------------|-------------------------------|
| Prepared by staff member:     | Terry Dwyer/David Morrison    |
| Approved/Reviewed by Manager: | David Morrison                |
| Section:                      | Strategic & Economic Planning |
| Attachment:                   | Draft Planning Proposal       |