

Clarence Valley LEP 2011 – Waterview Heights Rural Residential Rezoning

Proposal Title : **Clarence Valley LEP 2011 – Waterview Heights Rural Residential Rezoning**

Proposal Summary : **The proposal seeks to amend Clarence Valley LEP 2011 by rezoning land at Waterview Heights from RU2 Rural Landscape to R5 Large Lot Residential. The rezoning will enable the land to be developed for rural residential purposes.**

PP Number : **PP_2015_CLARE_008_00** Dop File No : **15/14522**

Proposal Details

Date Planning Proposal Received : **20-Oct-2015** 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 : **Hampton Road**

Suburb : **Waterview Heights** City : Postcode :

Land Parcel : **Lot 5 DP 1179232**

DoP Planning Officer Contact Details

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RPA Contact Details

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DoP Project Manager Contact Details

Contact Name : **Jim Clark**

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Land Release Data

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

Regional / Sub Regional Strategy : **Mid North Coast Regional Strategy** Consistent with Strategy : **Yes**

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MDP Number :		Date of Release :	
Area of Release (Ha) :	4.00	Type of Release (eg Residential / Employment land) :	Residential
No. of Lots :	0	No. of Dwellings (where relevant) :	10
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 and Environment's Code of Practice in relation to communications 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 :	The Northern Region office has not met any lobbyists in relation to this proposal, nor has the Region been advised of any meeting between other officers within the agency and lobbyists concerning this proposal.		

Supporting notes

Internal Supporting Notes :

External Supporting Notes : **The Planning Proposal relates to part of a rural zoned allotment, being Lot 5 DP 1179232. The site has a total area of approximately 52 hectares and the proposal relates to approximately 4 hectares of land along the eastern portion of this site.**

The Planning Proposal has been informed by a number of site investigations/studies to confirm the suitability of the site for rural residential development. The proposed rezoning footprint, land use and minimum lot size provisions respond directly to the recommendations of these studies.

Adequacy Assessment

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

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

Comment : **The 'Statement of Objectives' adequately describes the intention of the Planning Proposal.**

The proposal intends to rezone suitable land at Waterview Heights from RU2 Rural Landscape to R5 Large Lot Residential to enable rural residential development.

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

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

Comment : **The explanation of provisions explains that the intent of the proposal will be implemented through an amendment to the Clarence Valley LEP 2011, including an amendment to the 'Land Zoning' and 'Lot Size Maps'.**

The proposal seeks to apply the R5 Rural Landscape Zone and a 4,000m2 minimum lot size standard to land that will facilitate rural residential development. The part of Lot 5 DP 1179232, which is not subject to this proposal, will remain zoned RU2 Rural Landscape and will retain a 40 hectare minimum lot size.

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

3.1 Residential Zones

3.3 Home Occupations

3.4 Integrating Land Use and Transport

4.1 Acid Sulfate Soils

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

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

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP No 44—Koala Habitat Protection

SEPP No 55—Remediation of Land

SEPP (Rural Lands) 2008

e) List any other matters that need to be considered :

An assessment of the applicable directions and SEPPs is provided within the 'Assessment' section of this planning team report.

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

See the 'Assessment' section of this planning team report.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

The Planning Proposal includes maps that identify the site, current and proposed zones and proposed minimum lot size standards. These maps are considered suitable for community consultation. A map indicating the existing minimum lot size standards for the site and surrounding area should be prepared and included in the proposal prior to community consultation.

Revised maps which comply with the Department's 'Standard Technical Requirements for LEP Maps' would need to be prepared for the making of the LEP.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

The Planning Proposal has indicated a 28 day timeframe for community consultation, however also notes that the proposal is considered to be a 'low impact' proposal.

A 28 day community consultation period is considered appropriate given the proposal relates to the rezoning of a new release area.

Consultation with the Office of Environment and Heritage and NSW Rural Fire Service should be made a requirement as discussed further below.

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 by the Planning Proposal to achieve the outcomes;
3. Providing an adequate justification for the proposal;
4. Providing maps which suitably identify the site and intended outcomes (noting the requirement to prepare additional maps prior to community consultation);
5. Indicating that community consultation of the proposal will be undertaken; and
6. Providing a project timeframe which suggests completion around March 2016 (5-6 months).

Timeline:

- An addendum to the Planning Proposal has been provided which includes a project timeline. The timeline estimates the completion of the Planning Proposal by March 2016 (5-6 months). It is considered that a 9 month time frame would be appropriate. This does not restrict Council from finalising the matter sooner.
- The timeline should be exhibited together with the Planning Proposal.

Delegation:

- Council has requested delegation to finalise the proposal and an evaluation checklist has been provided. It is considered that these functions should be delegated to Council given that the proposal relates to a spot rezoning that is consistent with the Regional Strategy (see below).

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP :

The Clarence Valley LEP 2011 is a Principal LEP and came into effect in December 2011. The Planning Proposal seeks to amend this planning instrument.

Assessment Criteria

Need for planning proposal :

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 Mid North Coast Regional Strategy (MNCRS) growth area. It is noted that the growth boundaries under the MNCRS do not include rural residential land.

The proposed rezoning is an outcome of recent development approvals in the area, the existing rural residential character and site investigation studies over the subject land.

The 52 ha site fronts land zoned for rural residential purposes to the north, south and east. The land to the east and south has been developed and is currently being used for rural residential purposes. The land to the north has recently been approved for rural residential subdivision.

The western portion of the site (approximately 48 ha) comprises mature spotted gum forest. The eastern portion of the site (approximately 4 ha) has historically been cleared and used for grazing. Grazing activities have been halted on the land due to the encroaching urban footprint. This 4ha parcel of land is now disused and comprises pockets of regrowth forest vegetation.

A number of specialist site studies that were undertaken for determining the suitability of the land to the north of the site for large lot development also covered the proposed rezoning site. These studies confirmed that the land was relatively unconstrained.

Additional site investigation studies and review of the existing studies have been undertaken as part of the preparation of this proposal to confirm the land's suitability for residential development.

Whilst this land is not identified as being required for urban expansion under any agreed housing strategy, its rezoning presents a logical rounding off to the existing urban footprint. It will promote housing supply and choice over disused and unconstrained land.

The proposal to rezone the land to R5 and apply a minimum lot size of 4,000m² is the most appropriate means for achieving the intent of the Planning Proposal.

A concept development plan has been submitted which indicates that up to 10 x 4,000m² and 1 residue parcel (approximately 48ha) will be achieved on the land. Council will need to determine the suitability of the proposed subdivision layout at Development Application stage, considering site access, servicing, ecological significance and bushfire hazard management.

Consistency with
strategic planning
framework :

MID NORTH COAST REGIONAL STRATEGY (MNCRS)

The Mid North Coast Regional Strategy (MNCRS) includes outcomes for new residential releases, stating that 'opportunities for settlement expansion will be limited to those areas identified within the Strategy's growth area maps or where the proposal meets the Sustainability Criteria set out in Appendix 1, where they apply'.

The site is located west of the coastal zone, and therefore the Sustainability Criteria apply. The proposal includes an assessment against the Sustainability Criteria.

The proposal is considered to satisfy the Sustainability Criteria, providing housing and economic opportunity on land that adjoins existing residential development, can be serviced and is not environmentally constrained to an extent that would preclude its development. Further design review may identify required development responses to ensure the Criteria are maintained (bushfire and ecological management, access, servicing, etc.). This can be informed through the Development Application process.

The proposal is consistent with the aims, objectives and intent of the Strategy.

LOCAL STRATEGIES - CLARENCE VALLEY SETTLEMENT STRATEGY 1999

Council's Settlement Strategy was approved by the Department in 1999, prior to the MNCRS and Settlement Planning Guidelines 2007 being introduced. The Strategy is the relevant local growth strategy for the subject area.

The site is located within the Waterview Heights area, which under the Strategy is an expanding rural residential village. The Strategy notes that the predicted population capacity for Waterview Heights is based on the utilisation of existing zoned land. Council has estimated that there is potential for approximately 180 additional lots on land which is already zoned for large lot residential development in the Waterview Heights area, being an estimated housing supply for 15 years (up to 2019).

The proposal in this regard is not consistent with the intended outcomes of the Strategy, and also appears to be unnecessary in regard to housing supply.

As discussed previously however, the surrounding land uses limit the potential for this site to be used for viable agricultural purposes and the land is relatively unconstrained, making it suitable for more intensive use. Residential use of the site would be more compatible and consistent with the adjoining land uses.

The provision of an additional 11 allotments would not result in a dwelling and population density that would significantly impact on service availability for the area. Another consideration is that not all of the existing residential land zoned in the Waterview Heights may be unconstrained and suitable for residential development.

The Strategy does contain actions regarding rural residential development such as:

- "rural residential settlement will be contained in areas linked to existing settlements"; and
- "rural residential development is to be clustered in areas having a direct functional relationship with town or village settlements".

The proposal is considered to be consistent with these actions.

STATE ENVIRONMENTAL PLANNING POLICIES

The proposal is consistent with the provisions of all applicable SEPPs relevant to the site. Comments are provided below regarding key relevant SEPPs for the proposed rezoning.

- SEPP 44

The site is greater than 1 hectare in area and contains preferred Koala Food Trees. The site is also mapped to contain Potential Koala Habitat under a Koala

Plan of Management (KPOM) that was prepared for the area under the Development Application process for the approved rural residential development to the north.

A concept development plan for the site has been prepared which indicates that minimal vegetation clearing will be required, limiting development to the historically cleared areas of the site. The Planning Proposal notes that no preferred food trees are required to be removed under this concept design.

It is considered that the information submitted justifies that the proposal does not trigger the requirement for a site specific plan of management at this stage of the development process. Further review at Development Application stage will be required to ensure compliance with SEPP 44.

- **SEPP 55 – Remediation of Land**

This SEPP requires a RPA to appropriately consider the potential for contamination prior to rezoning land.

The land has historically been used for agricultural purposes (grazing). A historical investigation into land uses across the site, a search of the contaminated land register and a site walkover has not indicated that any potentially contaminating activities have been undertaken on the site. This review is considered appropriate in determining that the land is suitable for rezoning.

Further site testing could be undertaken prior to development occurring on the site. This should not preclude consideration of the site for rezoning.

- **SEPP (Rural Lands)**

SEPP (Rural Lands) is applicable as the land is currently zoned rural. The proposal is not inconsistent with the SEPP given that it is consistent with the Mid North Coast Regional Strategy. The proposal is consistent with the Rural Planning Principles under the SEPP.

Land within the site that will remain zoned rural, will not be subject to rural residential development and can continue to contribute to the rural area's landscape of the area.

SECTION 117 DIRECTIONS

The following directions are applicable to the proposal:

1.2 Rural Zones, 1.3 Mining, Petroleum Production and Extractive Industries, 1.5 Rural Lands, 2.3 Heritage Conservation, 2.4 Recreational Vehicle Areas, 3.1 Residential Zones, 3.2 Caravan Parks and Manufactured Home Estates, 3.3 Home Occupations, 3.4 Integrating Land Use and Transport, 5.1 Implementation of Regional Strategies, 6.1 Approval and Referral Requirements and 6.2 Reserving Land for Public Purposes

Of the above s117 Directions the proposal is considered to be inconsistent with Direction 1.2, 1.3 and 3.4.

- **1.2 Rural Zones**

The Planning Proposal is inconsistent with this Direction as it seeks to rezone land from Rural to Residential. The inconsistency is justified as the proposed rezoning is consistent with the Mid North Coast Regional Strategy and is considered to be of minor significance given the potential minimal increase in allotment density in an existing rural residential area.

- **1.3 Mining, Petroleum Production and Extravive Industries**

Sand quarrying activities are known to occur in the local area. The potential for extraction minerals over the site is not known. The proposal is inconsistent with this Direction as the change in zoning will prohibit open cut mining and extractive industries on land to be rezoned to R5 Large Lot Residential.

The inconsistency is considered to be of minor significance given the location of the subject land adjoining an established rural residential estate. The likelihood of this land being used for mining activities is low.

3.4 Integrating Land Use and Transport

The Proposal is inconsistent with this Direction as it does not reduce travel demand including the number of trips generated by the development and the distances travelled, especially by car. The inconsistency is justified as the proposed rezoning is consistent with the Mid North Coast Regional Strategy and is considered to be of minor significance given the potential minimal increase in allotment density in an existing rural residential area.

The proposal is not considered to be inconsistent with Direction 1.5 Rural Lands, as the proposal is consistent with the Rural Planning Principles under SEPP Rural Lands. It will provide opportunities for rural lifestyle and housing and is consistent with the Regional Strategy.

Environmental social
economic impacts :

The Planning Proposal has been informed by a number of site investigations/studies, to an extent that the proposed land use zone boundaries and minimum lot size provisions respond directly to the recommendations of these studies. These site specific studies satisfy the strategic and statutory considerations for the land at this stage in the development process.

Biodiversity

The rezoning footprint generally comprises open grassland, with some copses of regrowth dry sclerophyll/spotted gum forest vegetation. There is a natural drainage line (tributary off Munus Creek) that traverses the site and a dam. This dam and a portion of the drainage line are located in the rezoning footprint.

The proposal is supported by an ecological assessment that was prepared for the site in 2011. This study identified that some spotted gum trees in the northern portion of the site contained hollows and displayed Koala scats. No other key habitat areas were identified. Council's ecologist was contacted to discuss the suitability of this 2011 study for determining the ecological significance of the site, particularly that there is evidence of more regrowth vegetation onsite today than what was considered under this study. Council's ecologist indicated that the study remains up to date, that the regrowth vegetation may be cleared without Council approval given the historical use of the site for grazing and that the vegetation does not constitute protected regrowth as defined under the Native Vegetation Act.

Significant natural resources within the proposed rezoning footprint, such as preferred koala food trees, hollow bearing trees, drainage lines and vegetated corridors, could be retained and setback from through appropriate residential subdivision and building envelope design. If significant vegetation is required to be cleared, its impacts could be offset through plantings in the retained forest areas west of the rezoning footprint and / or through new planting / landscaping onsite. The impacts for any required tree clearing onsite will need to be reviewed at DA stage.

The Planning Proposal has nominated that it 'expects' consultation to be undertaken with the Office of Environment and Heritage. It is considered appropriate that the Gateway determination include a condition requiring this consultation to occur, as an additional public agency review regarding ecological significance and management on the land.

Topography & Flooding

The rezoning site is relatively flat with slope angles varying from 0 – 5 degrees. The site is above the flood plain.

- **Land Contamination**

The land has historically been used for agricultural purposes (grazing). A historical investigation into land uses across the site, a search of the contaminated land register and a site walkover has not indicated that any potentially contaminating activities have been undertaken on the site. This review is considered appropriate to determine that the land is suitable for rezoning.

- **Bushfire**

The site is not identified as being Bushfire Prone under Council's mapping. This mapping does not appear to reflect the vegetation communities on the western portion of the site or wider area, being land dominated by dry sclerophyll forest. A bushfire event did occur in this locality in 2013/14.

Council officers as well as officers from NSW Rural Fire Service were contacted to discuss the status of the bushfire mapping for the area. Neither offices were able to confirm the history of the mapping (i.e. why this land has not been captured under any bushfire mapping) and both confirmed that there is no current mapping review being undertaken for the area.

From a preliminary review of the vegetation type on site (Forest), the effective slope under the vegetation (0- 5 degrees), the size of the allotments (4,000m²), site access, availability of services and ability to provide Asset Protection Zones (APZs) it is considered that rural residential development on the site could achieve compliance with 'Planning for Bushfire Protection 2006' and AS 3959-2009. Dwelling envelopes could be achieved on each new rural residential lot that would achieve a maximum Bushfire Attack Level of 29. Further review would be required at Development Application stage, particularly for the residue parcel that will be entitled to have a dwelling (being greater than 40 hectares).

Officers of the NSW RFS have requested that the Gateway determination include a condition that requires the proposal to be referred to their office during community consultation. This will provide opportunity for the RFS to review the proposal and, if deemed required, issue a letter to Council that it should consider the impacts of bushfire under Section 79C of the Act when considering any future Development Application that seeks to subdivide or erect a dwelling on the land. This is because the provisions of Section 79BA of the Act and the Rural Fires Act do not directly apply. The RFS officers also mentioned that they may issue a letter requesting that Council consult with the RFS when considering a future Development Application over this land.

The Planning Proposal has nominated that it 'expects' consultation to be undertaken with the NSW RFS. It also indicates that consultation should be undertaken with RFS to address the requirements of s117 Direction 4.4 Planning for Bushfire Protection.

Considering the matters above, it would be appropriate that the Gateway determination include a condition requiring this consultation to occur.

- **Aboriginal and Cultural Heritage**

The site has not been identified to potentially contain items or places of cultural heritage through an AHIMS database search. Considering the historical use of the site and that the area is characterised by residential development, it is considered that the likelihood of the land containing heritage significance is low.

Further testing and unexpected finds protocols could be required under any future Development Application process.

The referral of the Planning Proposal to the Office of Environment and Heritage,

as recommended above, will provide opportunity for this office to review the proposal on matters relating to heritage.

Infrastructure

The proposal indicates that the site has access to electrical, telecommunication and reticulated water services. Onsite waste water management would be required for each allotment. Onsite water would also be an opportunity considering the proposed minimum lot size standards.

Given the proposal will only facilitate the creation of up to 11 new allotments and the provisions under the Clarence Valley LEP 2011 (Clause 7.8 Essential Services), it is considered that there is suitable justification for the proposal to proceed without a preliminary infrastructure study being made a requirement.

The Planning Proposal has nominated that it 'expects' consultation to be undertaken with Essential Energy and Telstra. This consultation is not considered necessary. The landowner will need to seek provisioning letters from these service providers at construction certificate stage, once the final development layout and yield is known.

Traffic and Access

The proposed concept layout confirms that access to future allotments on the site can be achieved from Hampton Road. No issues of existing or future road capacity have been raised. Given that the proposal will potentially yield an additional 11 lots, no further traffic review is considered necessary as part of the rezoning process.

Social & Economic Considerations

The site adjoins the existing Waterview Heights rural residential area. Development of the site for rural residential purposes would yield approximately 11 additional allotments, contributing to housing and lifestyle choice within the area.

Assessment Process

Proposal type :	Routine	Community Consultation Period :	28 Days
Timeframe to make LEP :	9 months	Delegation :	RPA
Public Authority Consultation - 56(2)(d) :	Office of Environment and Heritage NSW Rural Fire Service		

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

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

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If Other, provide reasons :

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 Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 1.2 Rural Zones
- 1.5 Rural Lands
- 3.1 Residential Zones
- 3.3 Home Occupations
- 3.4 Integrating Land Use and Transport
- 4.1 Acid Sulfate Soils
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies

Additional Information : It is **RECOMMENDED** that the General Manager, as delegate of the Minister for Planning, determine under section 56(2) of the EP&A Act that an amendment to the Clarence Valley Local Environmental Plan 2011 to rezone land at Waterview Heights for rural residential purposes should proceed subject to the following conditions:

1. Prior to the commencement of community consultation, Council is to:
 - (a) revise the Planning Proposal so that Council's timeline for completing the LEP amendment is incorporated into the body of the Planning Proposal; and
 - (b) include a map that identifies the current minimum lot size standards for the site and surrounding land.
2. Community consultation is required under sections 56(2)(c) and 57 of the Act as follows:
 - (a) the Planning Proposal must be made publicly available for a minimum of 28 days; and
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of Planning Proposals and the specifications for material that must be made publicly available along with Planning Proposals as identified in section 5.5.2 of A Guide to Preparing LEPs (Department of Planning and Infrastructure 2013).
3. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act and to comply with the requirements of relevant S117 Directions:
 - Office of Environment and Heritage
 - NSW Rural Fire Service
4. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
5. The timeframe for completing the LEP is to be 9 months from the week following the

date of the Gateway determination.

6. Section 117 Directions - It is recommended that:

(a) The Secretary's Delegate determine that inconsistencies with s117 Directions 1.2 Rural Lands, 1.3 Mining, Petroleum Production and Extractive Industries and 3.4 Integrated Land Use and Transport are justified in accordance with the terms of the Directions (consistency with the Regional Strategy).

7. Plan making functions should be delegated to Council, given that the proposal relates to a spot rezoning that is consistent with the strategic planning framework.

Supporting Reasons :

The reasons for the above recommendations for the Planning Proposal are as follows:

1. Release of the land for rural residential purposes will promote housing supply and choice over disused and unconstrained land.
2. The inconsistencies with the s117 Directions are justified by the proposal's consistency with the Regional Strategy.
3. The proposal is otherwise consistent with all relevant local and regional planning strategies, s117 Directions and SEPPs.
4. The recommended conditions to the Gateway are required to provide adequate consultation, accountability and progression.

Signature:



Printed Name:

JIM CLARK

Date:

21 October 2015

Team Leader, Local Planning