

Clarence Valley LEP 2011 – Amendment to Schedule 1 to permit explosives depot, machinery storage, and a ANE mixing plant, at Tullymorgan-Jackybulbin Road, Mororo

Proposal Title :	Clarence Valley LEP 2011 – Amendment to Schedule 1 to permit explosives depot, machinery storage, and a ANE mixing plant, at Tullymorgan-Jackybulbin Road, Mororo		
Proposal Summary :	Amendment to Schedule 1 Additional Permitted Uses and associated maps of the Clarence Valley Local Environmental Plan 2011 to permit explosives depot; machinery storage; and an Ammonium Nitrate Emulsion (ANE) mixing plant on land located at Tullymorgan- Jackybulbin Road, Mororo (Lot 2 DP 1055044).		
PP Number :	PP_2014_CLARE_002_00	Dop File No :	14/04234

Proposal Details

Date Planning Proposal Received :	03-Mar-2014	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 :	Tullymorgan Jackybulbin Road		
Suburb :	Mororo	City :	Postcode : 2469
Land Parcel :	Part Lot 2 DP 1055044		

DoP Planning Officer Contact Details

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RPA Contact Details

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DoP Project Manager Contact Details

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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) :	0.00	Type of Release (eg Residential / Employment land) :	Employment Land
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	5

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment : **The Department of Planning and Infrastructure's Code of Practice in relation to communication 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 : **Northern Region has not met with any lobbyists in relation to this proposal, nor has Northern Region been advised of any meeting between other Departmental officers and lobbyists concerning this proposal.**

Supporting notes

Internal Supporting Notes : **Nil**

External Supporting Notes : **Any subsequent development application will be designated development requiring an EIS - and will be considered by the Joint Regional Planning Panel.**

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 seeks to amend Schedule 1 Additional Permitted Uses and associated maps of the Clarence Valley Local Environmental Plan 2011 to permit explosives depot; machinery storage; and an Ammonium Nitrate Emulsion (ANE) mixing plant.**

This will enable a development application for these uses to be assessed on its merits. Any subsequent development application will be designated development requiring an EIS - and will need to be considered by the Joint Regional Planning Panel.

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

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

Comment : **The explanation of provisions adequately addresses the intended method of achieving the objectives of the planning proposal.**

The planning proposal seeks to amend Schedule 1 Additional Permitted Uses and include a supplementary Additional Permitted Uses map. The additional uses include the following

- **explosives warehouse or depot;**
- **machinery storage; and**
- **an Ammonium Nitrate Emulsion (ANE) mixing plant**

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The uses are very specific in nature and do not conform to the suite of standard definitions in Clarence Valley LEP 2011. Hence the planning proposal seeks to utilise Clause 2.5 'Additional permitted uses for particular land' and Schedule 1 Additional Permitted Uses to list the proposed non-conforming land uses as an additional permitted use.

The proposal seeks to include the ANE mixing plant as a plain English definition as this term is self-evident. If the proposal attempts to use standard terms such as heavy industry for this, may open up a range of possible uses permitted on the site (with consent) that have nothing to do with the mixing of ANE or storage of explosives. In addition, the site is isolated and not suitable for generic industrial uses.

The explosives warehouse and machinery storage can be defined under the Clarence Valley LEP 2011 standard definitions. A 'warehouse or distribution centre' would be the standard definition that best covers the storage of explosives, detonators and related materials on the site and 'depot' would be the standard definition which best covers the storage of machinery on the subject land. These matters can be determined at the legal drafting stage.

No change to minimum lot size provisions or any other provision of the LEP is proposed.

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

1.3 Mining, Petroleum Production and Extractive Industries

1.5 Rural Lands

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

6.3 Site Specific Provisions

Is the Director General's agreement required? **No**

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

d) Which SEPPs have the RPA identified?

SEPP No 33—Hazardous and Offensive Development

SEPP No 44—Koala Habitat Protection

SEPP No 55—Remediation of Land

SEPP (Infrastructure) 2007

SEPP (Mining, Petroleum Production and Extractive Industries) 2007

SEPP (Rural Lands) 2008

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

Nil

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

If No, explain :

Refer to the the assessment section of his report. Any inconsistency is considered to be of minor significance.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

The proposal includes mapping which adequately shows which properties are affected by the proposed amendments. However,an Additional Permitted Uses map will need to be developed by the RPA.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

The planning proposal suggests a 28 day consultation period. The proposal is not

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considered to be a low impact proposal since the proposal is not consistent with surrounding land zonings and may be considered a sensitive land use. A 28 day consultation period is considered to be adequate.

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 for the LEP to achieve the outcomes.**
- 3. Providing an adequate justification for the proposal.**
- 4. Outlining a proposed community consultation program.**
- 5. Providing a project time line**
- 6. Completing the evaluation criteria for the delegation of plan making functions.**

Time Line

The planning proposal includes a project timeline which estimates the completion of the planning proposal in September 2014. To ensure the RPA has adequate time to complete exhibition (for a period of 28 Days), reporting, map preparation and legal drafting it is recommended that a time frame of 9 months is appropriate from the week following the Gateway determination.

Delegation

Council has indicated it is prepared to accept an Authorisation to exercise delegation for this proposal. An Evaluation Criteria For the Delegation of Plan Making Functions has been provided. The proposal is considered to be consistent with the strategic planning framework and of local planning significance. It is recommended that an Authorisation for the execution of delegation be issued.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP :

The Clarence Valley LEP commenced in December 2011. This planning proposal seeks an amendment to the Clarence Valley LEP 2011

Assessment Criteria

Need for planning proposal :

The planning proposal is not a result of any strategic study or report. The proposal is a result of Clarence Valley Council's support of an application for an LEP amendment by the proponent; Precision Industries Pty Limited (subsidiary of Ron Southon Pty Limited). Precision Industries Pty Limited would sub-lease the subject site from owners, Newman's Quarries.

The subject site is currently used as a sand, gravel and rock quarry (Jackybulbin Quarry) which was approved by the Land and Environment Court (DA1997/0111) for sand and rock quarrying. As areas were used they were to be closed and rehabilitated. Filling and rehabilitation has since commenced on the site.

The subject site is currently zoned predominantly RU2 Rural Landscape under Clarence

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Valley LEP 2011. There is a portion of the northern part of the lot zoned as E3 Environmental Management however the proposed uses will be confined to the currently cleared land zoned RU2 Rural Landscape.

Council has suggested the use of Schedule 1 Additional permitted uses with a specific definition rather than an industrial zone

The closest definition of the proposed uses would include a hazardous industry, warehouse or distribution centre and depot all of which are prohibited under the RU2 Rural Landscape zone. Therefore a planning proposal is the only way to allow the assessment of the proposed uses.

The uses are very specific in nature and do not conform to the suite of standard definitions in Clarence Valley LEP 2011. Consideration was given to rezoning the land to IN3 Heavy Industry (which would be an additional new zone for Council). However, it would inevitably also provide for a large number of uses that are not required or appropriate on this site.

It should be noted that the preliminary hazard analysis explains that although the storage and mixing of materials for use in explosives is heavily regulated, it is not actually a "hazardous industry" it is a "potentially hazardous industry". When a compliant site is set up with compliant buildings and separation distances the use does not "pose a significant risk in the locality to human health, life or property or to the biophysical environment". So the use best fits the definition of heavy industry rather than hazardous industry.

Rezoning the land IN1 General Industry and changing the permissible uses under this zone would allow a sensitive land use to be permissible in areas not generally acceptable. Whilst it is acknowledged that the development consent process would consider issues such as land use conflicts; hazardous industries should not be encouraged in areas in close proximity to urban environments (where IN1 is generally located within the LGA). Allowing a land use to be permissible within a zone such as hazardous industries would allow false expectations to many landowners in areas which consent would unlikely be approved. In addition, separation distances required for components of the uses within the site and from adjacent land uses means that an industrial estate is not appropriate and isolation is essential to its use.

Council clearly did not support an industrial rezoning of the land as this would also then permit a range of other land uses that may not be considered suitable to the site or the locality. Council prefers the amendment of Schedule 1 as it would clearly identify the land uses proposed for the site. Therefore the preferable planning outcome would be to amend Schedule 1 Additional Permitted Uses.

Planning Circular PN 11-001 clarifies the instruction for use of Schedule 1: "Councils may insert a list of additional permitted uses in Schedule 1 for particular land, e.g. by lot and DP number. Listings in the LEP Schedule 1 should be minimised, with appropriate justification provided to the Department for any inclusions. Wherever possible, land uses should be governed by the Land Use Table and Schedule 1 should only be used where council has demonstrated why this cannot be achieved.....Consideration should be given to existing uses, appropriate zones and potential future land uses. Therefore it is not considered that many listings will be supported (if any) when the Plan is made"

The planning proposal includes an additional use of the mixing of a gel known as Ammonium Nitrate Emulsion (ANE) on the site and storing it until it is transported to mines or extractive industry sites for use. If mixing of ANE is not undertaken on this site then it will be trucked in from another location and stored on the site until it is used. The planning proposal states that that experience of Ron Southon Pty Limited in the blasting and drilling industry has shown that there is a demand for blasting product to service the lower north coast and mid north coast areas. The existing depot at Alstonville is well placed to service the northern end of the region but has no room for expansion. The establishment of a new

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depot for the storage and wholesaling of explosives and related products in the Clarence Valley provides an excellent opportunity to better serve the region, reduce travel times and expand an important north coast business with inherent employment opportunities. The mixing of an Ammonium Nitrate Emulsion (ANE) is an unusual land use not which is not inheritably governed by the land use table.

For the circumstances, the use of schedule 1 is justified. The issue can be finally determined at legal drafting stage

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Consistency with strategic planning framework :

Mid North Coast Regional Strategy (MNCRS)

The quarry is currently identified under the Mid North Coast Regional Strategy as a 'regionally significant extractive resource'. An action within the MNCRS is LEP's will protect land identified as having extractive resources of regional significance and their haulage routes and that development near these resources should have a suitable buffer. However, within the subject site, the sand resource has been 95% exploited and the remaining resource is no longer economically viable. This is why the quarry operators have been filling the quarry to reinstate it to natural ground level. Rehabilitation of the filled areas will occur immediately once the finished levels are reached.

Although another sandstone quarry is nearby (approved under the same consent as the subject site), the distance between the subject site and the sandstone quarry is more than 1km. The quarry will share a weigh bridge and primary access point and the two uses are compatible. In addition the planning proposal states the traffic generated by the explosives depot will not disrupt the quarry.

Whilst the site has been identified as a 'regionally significant extractive resource', the resource has been exhausted and therefore the inconsistency of the proposal with the MNCRS is therefore justified.

Actions identified in the MNCRS include supporting additional employment opportunities, protection of the environment, reduction in land use conflicts and the management of risks such as flooding and bushfire within the Region. The planning proposal is consistent with the actions presented in the MNCRS due to the following

Employment growth: The existing quarry on the site is closing down as the resources have been exhausted. The proposal will provide additional employment opportunities. The proposed depot is likely to generate 1 to 2 Equivalent Full Time (EFT) positions in its initial phase increasing to 3 or more EFT positions if an ANE mixing process is established. About 5 to 10 EFT positions will be created during the construction phase of the depot. The employment that will be generated by the proposed suite of uses will be a positive effect for the local and regional economy. The planning proposal will ensure a productive use of the site.

Environment: The subject site is substantially cleared from past quarrying activities and has no regrowth vegetation. Approximately seven large "old growth" trees have been left scattered across the site as a requirement of the quarrying consent. The site plans indicate these trees will be retained.

Avoidance of risks: The planning proposal states that potential risks have been managed as the site is located above 40m AHD and is not identified on available Clarence Valley Council on-line flood mapping as being impacted by a regional flood event. Bushfire risks have been assessed and site is substantially cleared from past quarrying activities and has no regrowth vegetation. The bushfire hazards are discussed further below.

Protection of Agricultural land: Given the nature of the existing development on the site and location of the site, the proposal is unlikely to create impacts which would compromise the agricultural use of regionally significant land or result in a direct loss of agricultural productivity.

Therefore in terms of the above the planning proposal is consistent with the Mid North Coast Regional Strategy.

Consistency with Council's Local Strategies:

The Proposal is not inconsistent with the RPA's local strategies or its community strategic plan including the Clarence Valley Economic Development Strategic Plan, 2006 and Clarence Valley Industrial Lands Strategy, 2007.

SEPPs:

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The planning proposal has identified, SEPP No 33 – Hazardous and Offensive Industries, SEPP No 44 – Koala Habitat Protection, SEPP No 55 – Remediation of Land, SEPP (Mining, Petroleum Production and Extractive Industries) 2007 and SEPP (Rural Lands) 2008

The proposed amendments are not inconsistent with these SEPPs.

SEPP (Infrastructure) 2007: Under Clause 104 (Traffic Generating Development), a future development application (should the planning proposal be agreed) may have to be referred to RMS prior to the determination of the application because the 'new premises' on the site has direct vehicular or pedestrian access to a road and is a "bulk store" greater than 8000 m² in size. However, this is not a concern at the planning proposal stage and the estimated traffic to be generated by the site is minimal. This will be assessed in greater detail by Council at the development application stage if the planning proposal is to proceed.

SEPP No 33 – Hazardous and Offensive Industries: The SEPP 33 Process was applied to the development proposal and a preliminary screening was undertaken on the proposed potentially hazardous development using the SEPP 33 Guidelines. The SEPP 33 report was attached to the planning proposal. As the Class 1.1 and 5.1 Dangerous Goods thresholds are exceeded, the proposal is classed as 'potentially hazardous development' and a Potentially Hazardous Analysis (PHA) was required.

The Preliminary Hazard Analysis has shown that risk to people, property and the environment are not considered significant. The hazard assessment has documented that the risks can be managed by implementing industry accepted management, designs and standards for the development. Subsequently it is considered that the preliminary analysis is consistent with the guidelines under the SEPP 33 as the issue of risk and hazards can be managed. This will be assessed in greater detail by Council at the development application stage if the planning proposal is to proceed.

No 44 – Koala Habitat Protection: The property itself has been identified as potential koala habitat. The footprint subject to this planning proposal is a cleared pad that has been a quarry and has no significant vegetation present.

SEPP No 55 – Remediation of Land: The subject site has been used as a sand quarry and more recently has been filled using excess clay material taken from the Devils Pulpit highway upgrade. There is no history of known contaminating uses on the site. Under an approved development application the only rehabilitation to the site required for the quarry is the for importation of clean fill.

SEPP (Mining, Petroleum Production and Extractive Industries) 2007: This SEPP applies as the site was used as an extractive industry which has been identified as regionally significant. However, as stated previously, the sand resource has been 95% exploited and the remaining resource is no longer economically viable. This is why the quarry operators have been filling the quarry to reinstate it to natural ground level. The SEPP does not require approval for the mixing and storage of explosives.

SEPP (Rural Lands) 2008: The planning proposal states that there is no intention to subdivide the subject land below the minimum lot size prescribed in the Clarence Valley LEP 2011. The subject site is not of State or regional agricultural significance. Should the land be required for agriculture at some time in the future the removal of infrastructure required for the uses could be undertaken and therefore would not sterilize the land from future agricultural uses. The planning proposal is consistent with the planning principles in clause 7 of the Rural Lands SEPP.

The planning proposal is consistent with the identified SEPP's as explained above.

S117 Directions

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The planning proposal identified the following 117 directions as applicable 1.2 Rural Zones, 1.3 Mining Petroleum and Extractive Industries, 1.5 Rural lands, 2.1 Environmental Protection Zones, 2.3 Heritage Conservation 4.4 Planning for Bushfire Protection and 5.1 Implementation of Regional Strategies.

Of the above s117 Directions the proposal is inconsistent with Directions 1.2 1.3, 4.4, 5.1.

Direction 1.2 Rural Zones provides that a planning proposal must protect the agricultural production value of rural land. While the planning proposal does not rezone land it has requested uses that are not agricultural in its nature. These uses are quite specialised and can only take place in an isolated location. The separation distances required for components within the site and from adjacent land uses means that an industrial estate is not appropriate. The impact on rural land is minor (only 4.9 ha of the 365 ha lot will be directly affected – about 1.3%). On balance the inconsistency with the direction is justified and minor in nature.

1.3 Mining Petroleum and Extractive Industries provides that the future extraction of regional significant reserves is not compromised by inappropriate development. The proposed use will be located on that part of the site that has been 95% exploited and is in the process of being filled and rehabilitated. The important sandstone resource will not be impacted by the proposal and its extraction about 1km to the east will not be compromised. In addition, the infrastructure required to operate the explosives depot, warehouse and ANE mixing plant is easily removed if it was no longer required at some time in the future. Any resource that remains on the site would not be permanently sterilised. The direction provides that the RPA must consult with the Director General of the Department of Primary Industries.

Consultation with the Department of Primary Industries is therefore required and until this consultation has occurred the inconsistency of the proposal with the direction remains unresolved.

Direction 4.4 Planning for Bushfire Protection is relevant to the planning proposal as the land is identified as being bush fire prone. However the site is large enough that asset protection zones can be accommodated within existing cleared land. The direction provides that the RPA must consult with the Commissioner of the NSW Rural Fire Service after the Gateway determination is issued. Consultation with the RFS is therefore required and until this consultation has occurred the inconsistency of the proposal with the direction remains unresolved.

5.1 Implementation of Regional Strategies: As stated previously quarry is currently identified under the Mid North Coast Regional Strategy as a 'regionally significant extractive resource'. Whilst the site has been identified as a 'regionally significant extractive resource', the resource has been exhausted and therefore the inconsistency of the proposal with the MNCRS is therefore justified.

It should be noted that the development application will need to consider the Explosives Act 2003 and Explosives Regulation 2013, where they relate to mining workplaces. NSW Trade & Investment, Regional Infrastructure & Services – Mine Safety Operations Branch (MSOB) is the public agency responsible for all workplace safety matters on mine and extractive sites in NSW. The proponent has previously consulted with NSW Trade and Investment with regards to this Act.

Environmental social
economic impacts :

Environmental Impacts

The site is currently substantially cleared of native vegetation as it has been the site of a sand quarry and then filled with excess fill from the Pacific Highway upgrade. Approximately seven large "old growth" trees have been left scattered across the site as a requirement of the quarrying consent. The planning proposal states that no clearing is required to meet buffer requirements. The site is totally surrounded by dense native vegetation but this will not be affected by the proposal.

Therefore, the planning proposal will not have any direct adverse impact on critical habitat

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or threatened species, populations or ecological communities, or their habitats. Similarly the planning proposal will not have any direct adverse effect on the natural, built or socio-economic environment.

Economic Impacts

The planning proposal has given consideration to economic impacts of the proposed amendments to the Clarence Valley LEP 2011. The planning proposal suggests that the economic impacts will be positive as employment will be generated due to the establishment of a new enterprise within the LGA.

Social Impacts

The planning proposal has given consideration to social impacts. Use of this site for explosives storage and related uses will have a minor impact on the neighbouring land owners. The nearest dwelling is located on Tullymorgan-Jackybulbin Road, Jacky Bulbin Flat at an approximate distance of 0.7km west-southwest from the subject land. There are eleven dwellings within 3km of the subject site. The proposed uses will be quiet and very low key, generating considerably less truck movements than an extractive industry. In the circumstance where an accident were to occur involving stored materials, there may be a potential impact causing land use conflict with adjoining properties however the likelihood of this is very low and the consequence is not likely to be extreme as demonstrated in the preliminary hazard assessment. Therefore it is unlikely there will be significant social impacts as a result of the planning proposal.

Assessment Process

Proposal type : **Minor** Community Consultation Period : **28 Days**

Timeframe to make LEP : **9 months** Delegation : **RPA**

Public Authority Consultation - 56(2) (d) : **NSW Department of Primary Industries - Minerals and Petroleum
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. :

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 :

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Documents

Document File Name

DocumentType Name

Is Public

Planning Team Recommendation

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

S.117 directions: **1.2 Rural Zones**
 1.3 Mining, Petroleum Production and Extractive Industries
 1.5 Rural Lands
 4.4 Planning for Bushfire Protection
 5.1 Implementation of Regional Strategies
 6.3 Site Specific Provisions

Additional Information : **It is recommended that;**
 1. The planning proposal should proceed as a routine planning proposal.
 2. The planning proposal is to be completed within 9 months.
 3. That a community consultation period of 28 days is necessary.
 4. It is recommended that a delegate of the Director General agree that the inconsistency of the proposal with S117 Directions 1.2 and 5.1 are justified in accordance with the provisions of the directions.
 5. As required by S117 Direction 1.3 Mining Petroleum and Extractive Industries, prior to public exhibition of the planning proposal consultation with the director General of the Department of Primary Industries is to be undertaken and the planning proposal amended in accordance with any comments received.
 6. As required by S117 Direction 4.4, prior to public exhibition of the planning proposal consultation with the NSW Rural Fire Service is to be undertaken and the planning proposal amended in accordance with any comments received.
 7. A written authorisation to exercise delegation is issued to Clarence Valley Council in this instance to enable Council to make the plan.

Supporting Reasons : **The planning proposal aims to permit additional uses with development consent on the subject site that are specific in nature. In addition, the subject site is isolated and the proposed use is complementary to the existing quarry. Therefore the reasons for the recommendation are as follows;**
 1. The proposed amendments will ensure a site specific land use within the realm of the Clarence Valley LEP and provide confidence and clarity in the planning controls.
 2. The inconsistencies of the proposal with the S117 Directions are of minor significance.
 3. The proposal is otherwise consistent with all relevant local and regional planning strategies, S117 Directions and SEPPs

Signature:



Printed Name:

JIM CLARK

Date:

7 March 2014

