

Committee:	ENVIRONMENT, PLANNING & WORKS
Section:	Strategic & Economic Planning
Date:	11 February 2014
Item:	13.002/14 PLANNING PROPOSAL – EXPLOSIVES DEPOT, MORORO

ATTACHMENT**REPORT SUMMARY**

Applicant/Proponent	MikeSvikisPlanning (Applicant) Precision Industries Pty Limited (Proponent)
Owner	N & K Newman
Subject land	Part Lot 2, DP 1055044, Tullymorgan - Jackybulbin Road, Mororo
Site area	4.9 Ha ; (whole of Lot 2 = 357ha)
Current Zoning CVLEP 2011	RU2 Rural Landscape (portion to be developed)
Proposal	Amend Schedule 1 to Clarence Valley LEP 2011 to permit a range of additional uses - explosives depot, machinery storage and an Ammonium Nitrate Emulsion (ANE) mixing plant.

Council is in receipt of an application and request to support a planning proposal (i.e. rezoning application) for an explosives depot, machinery storage and an Ammonium Nitrate Emulsion (ANE) mixing plant on a site at Tullymorgan - Jackybulbin Road, Mororo. The ultimate use will be located on a small part of a larger isolated rural parcel of land also operated as a major quarry.

This report recommends that Council provide its initial support to the Planning Proposal so it can proceed to the Planning Gateway and community/stakeholder consultation.

The nearest dwelling to the proposed site is 700 metres away. The proposed use is complementary to the existing quarry, the main planning issue being that of possible or perceived danger. A preliminary hazard assessment in accordance with State Environmental Planning Policy No. 55 has concluded that the risk associated with the proposal is negligible. The nearest dwelling is 700 metres away. The product proposed to be mixed at the site is inert and is a precursor product to commercial explosive, and only active when mixed at the site of actual usage. Should the site be rezoned, specific conditions will apply to a development application and will be licenced by the appropriate regulatory authorities.

OFFICER'S 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 2, DP 1055044, Tullymorgan - Jackybulbin Road, Mororo to amend Schedule 1 of Clarence Valley LEP 2011 to permit, with consent, development for the purpose of a warehouse or distribution centre, depot and Ammonium Nitrate Emulsion (ANE) mixing plant.
2. Forward the Planning Proposal to the Department of Planning and Infrastructure requesting a "Gateway" Determination, pursuant to Section 56 (1) of the Environmental Planning and Assessment Act.
3. Subject to the Gateway Determination issued, request the applicant/proponent to amend the Planning Proposal document to better reflect how Clarence Valley LEP 2011 should be amended including the acknowledgment of mapping the additional permitted uses and inserting the Additional Permitted Uses Map definition into the LEP.

4. Undertake community consultation regarding the Planning Proposal, subject to the determination of the Gateway Process.
5. That Council's delegate exercise any delegation that may be specified and issued by the Gateway Determination and Written Authorisation to Exercise Delegation.

RECOMMENDATION BY COMMITTEE

Williamson/Hughes

That the Officer's Recommendation be adopted.

Voting recorded as follows:

For: Howe, Hughes, McKenna, Simmons, Williamson

Against: Nil

**COUNCIL RESOLUTION – 13.002/14
(CrsToms/Hughes)**

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 2, DP 1055044, Tullymorgan - Jackybulbin Road, Mororo to amend Schedule 1 of Clarence Valley LEP 2011 to permit, with consent, development for the purpose of a warehouse or distribution centre, depot and Ammonium Nitrate Emulsion (ANE) mixing plant.
2. Forward the Planning Proposal to the Department of Planning and Infrastructure requesting a "Gateway" Determination, pursuant to Section 56 (1) of the Environmental Planning and Assessment Act.
3. Subject to the Gateway Determination issued, request the applicant/proponent to amend the Planning Proposal document to better reflect how Clarence Valley LEP 2011 should be amended including the acknowledgment of mapping the additional permitted uses and inserting the Additional Permitted Uses Map definition into the LEP.
4. Undertake community consultation regarding the Planning Proposal, subject to the determination of the Gateway Process.
5. That Council's delegate exercise any delegation that may be specified and issued by the Gateway Determination and Written Authorisation to Exercise Delegation.

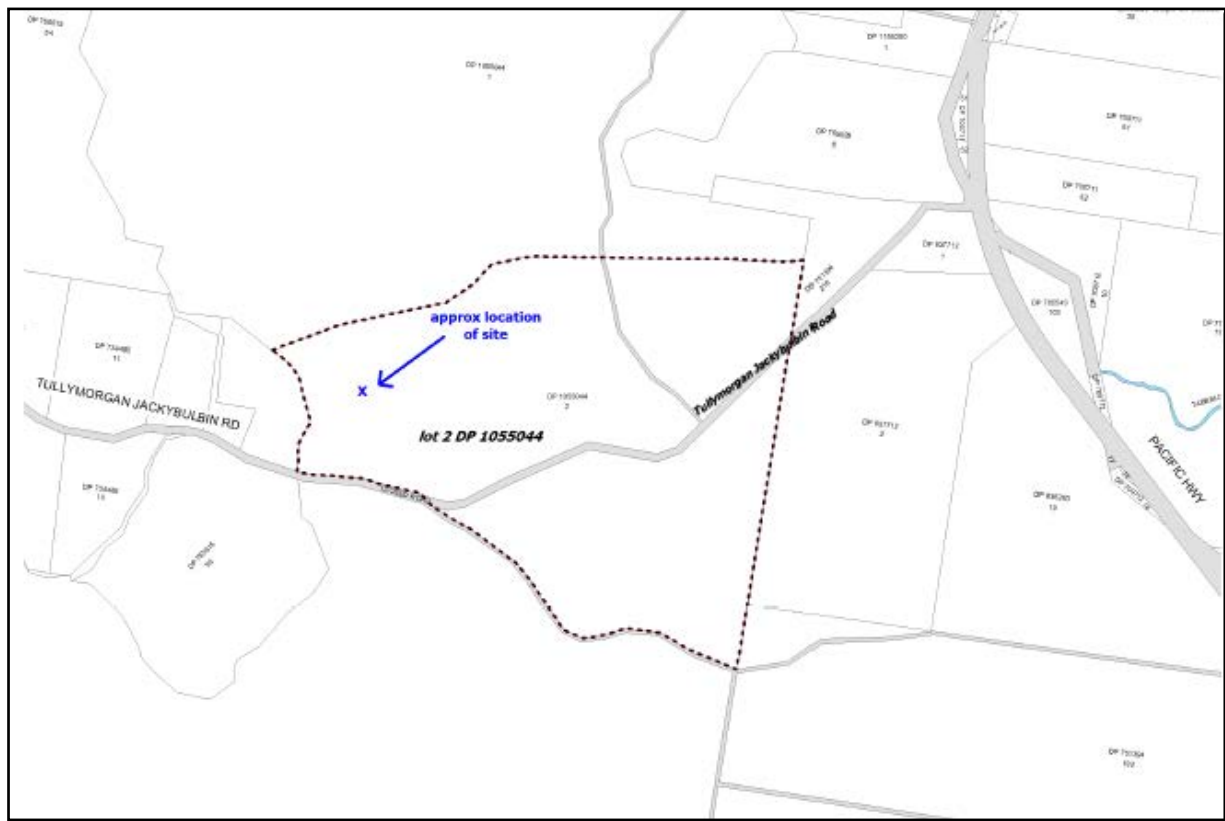
Voting recorded as follows:

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

Against: Nil

BACKGROUND

The location of Lot 2 DP 1055044 and the particular area to be rezoned/developed is indicated in the figure below. The ultimate development is proposed to be undertaken on a part of Lot 2 described as Site C. The particular area to be rezoned/developed is currently zoned RU2 Rural Landscape under the Clarence Valley LEP 2011.



Outline of what is generally proposed

(from p.10 of the Planning Proposal document)

Primary use of the site - depot for the storage and wholesaling of explosives and related products used in drilling and blasting operations for mines and extractive industries.

Additional uses of the site:

- i. storage of drilling and blasting machinery, such as drill rigs and associated plant and equipment.
- ii. 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 explosives depot, storage areas and ANE mixing shed are all proposed to be located on a leased area (described as Site C) of approximately 260m x 200m (with a cut off corner) or 49,000m². Precision Industries Pty Limited (subsidiary of Ron Southon Pty Limited) proposes to sub-lease the land from Newman's Quarries. Sand extraction would not be carried out in Site C while the depot and other uses are in place. Lot 2 DP 1055044 comprises 365 hectares of which 4.9 hectares (or 1.3% of the lot area) is proposed for the depot use.

The infrastructure that is likely to be required to enable the three additional uses to be carried out is as follows:

- One 18 x 30m shed for ammonium nitrate ("prill") storage and general storage;
- Amenities building (donga) containing office and staff amenities;
- 5 x 6m long steel shipping containers (converted to magazines for storage of explosives);
- Two x 12m long steel shipping containers (converted to magazines for storage of detonators);
- Above ground Ammonium Nitrate Emulsion (ANE) bulk storage tank and pump;
- Mixing agents shed, approximately 6m x 3m and covered area for mixing equipment (approximately 5m x 5m) with concrete slab and storage sump, in proximity to the ANE bulk storage tank;

- Above ground, bunded, diesel refuelling tank;
- Vehicle manoeuvring and parking; and
- Perimeter security fence around amenities building (approx. 30m x 30m);
- Perimeter security fence around depot (approx. 200 x 176m);
- Surface water drainage controls;
- Solar electricity, on-site wastewater system, roof water collection for fire fighting, fire fighting pump and drinking water supply.

Recent history of the proposal and the site

The Planning Proposal was lodged following the submission and subsequent withdrawal of DA2013/0212 for Explosives Storage and Wholesale Depot after the applicant was advised that the development was prohibited in the RU2 Rural Landscape Zone; the proposal was considered to be an independent use beyond and above what could be considered ancillary to the existing extractive industry.

Lot 2 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. The proposed site is within the area nominated as Site C for potholing sand extraction. Under the consent sand extraction at Site C was to be undertaken over 1 ha areas (as nominated in a 5 year Plan of Management). As areas were used they were to be closed and rehabilitated.

DA2004/0439 for the placement of fill within extraction areas was approved on 8 September 2004. This was to be done in accordance with the Plan of Management for Site C and rehabilitation of the filled areas to occur immediately once the finished levels (filling of potholes) were reached.

ISSUES

The key issues according to the Planning Proposal document are:

1. Location
2. Traffic generation
3. Access to the site
4. Water, waste water, stormwater and other infrastructure
5. Hazards and risks
6. Bushfire hazards
7. Flooding
8. Site security

A more detailed consideration of the issues discussed in the Planning Proposal document is at Attachment 1.

Other issues identified include:

Compliance with the Planning Proposal guidelines

The Planning Proposal in this case is contained within a document entitled "*Planning Proposal for Explosives Depot Mororo - Lot 2 DP 1055044, Tullymorgan-Jackybulbin Road, Mororo*", prepared by MikeSvikisPlanning, 28 October 2013.

A review of the Planning Proposal indicates that it complies with section 55(2) of the Act and the Department of Planning and Infrastructures "*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.

Mechanism for amending the LEP

The Planning Proposal, in Parts 1 & 2, suggests that the Clarence Valley LEP 2011 be amended by amending Schedule 1 to permit the future intended development as additional uses within the existing RU2 Rural Landscape Zone. The actual additional uses sought in plain English terms are depot and Ammonium Nitrate Emulsion (ANE) mixing plant.

Clause 2.5/Schedule 1 of the Standard Instrument Order 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).

The Department of Planning and Infrastructure (the Department) has until recent times discouraged the use of Clause 2.5/Schedule 1 to permit additional uses. However the circumstances in this particular case are considered appropriate as it would not, as the Planning Proposal document has rationalised, be a good outcome to place an industrial zone (eg IN1, IN2 etc.) over the site; nor to permit for instance either "heavy industry" or "potentially hazardous industry" specifically on this site due to the potential for a greater range of such uses to also be permissible on this site.

The Planning Proposal (p18) suggests that Schedule 1 be amended as follows:

"5 Use of certain land at Tullymorgan - Jackybulbin Road, Mororo

- (1) This clause applies to the land at Tullymorgan-Jackybulbin Road, Mororo being Lot 2, DP 1055044.*
- (2) Development for the purpose of a warehouse or distribution centre, depot and Ammonium Nitrate Emulsion (ANE) mixing plant is permitted with consent."*

This suggested approach is generally agreed with. However to ensure that the future intended use is confined to the specific part of Lot 2, DP 1055044 it is best that the use/s to be scheduled in this instance are mapped on a 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.

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

"5 Use of certain land at Tullymorgan - Jackybulbin Road, Mororo

- (1) This clause applies to the land at Tullymorgan-Jackybulbin Road, Mororo being part of Lot 2, DP 1055044, identified as "1" on the Additional Permitted Uses Map.*
- (2) Development for the purpose of a warehouse or distribution centre, depot and Ammonium Nitrate Emulsion (ANE) mixing plant is permitted with consent."*

It will also require the insertion of another definition in the Dictionary of the LEP as follows:

"Additional Permitted Uses Map means the Clarence Valley Local Environmental Plan 2011 Additional Permitted Uses Map".

Conclusion

It is difficult to assess a proposal like this for consistency against any local, regional strategy or other strategic context as no strategy can project the demand for uses of this nature nor specifically cater or plan for such uses.

The key in this instance is ensure a situation where only the narrow use being contemplated is made permissible on the specific area/site that it seeks to establish within the larger land parcel rather than zoning the specific site to a broader industrial zone which has the potential to permit (with consent) other industrial land uses in this location that were not intended in the event of a change of circumstance with the enterprise, the operator or even the land owner.

There do not appear to be any evident insurmountable issues that prevent the Planning Proposal from progressing to the next stage i.e. to the Gateway for consideration of a Gateway Determination. It is expected that solid development assessment process would ensure that a development consent attach conditions to ensure the safe and proper management and operation of such an enterprise at this location. On this basis Council's initial support of the Planning Proposal is considered warranted.

Should Council support the Planning Proposal it should also resolve to request the applicant/proponent to amend the Planning Proposal document to better reflect how Clarence Valley LEP 2011 should be amended as discussed in "Mechanism for amending the LEP" above, subject to the terms and nature of the Gateway Determination issued.

This is a proposal which Council's delegate can exercise plan making delegations, subject of course to the Gateway Determination. Council should indicate to the Department that it is prepared to accept plan making delegations that the Department may issue.

Should Council be initially supportive of the Planning Proposal the next step is to refer the Planning Proposal to the Department requesting the issue of a Gateway Determination that gives permission to exhibit the matter. That process will also determine the Gateway's further agency consultation and any further detailed investigation/documentation requirements as well as whether or not the Plan making process will be delegated to Council.

CONSULTATION

External Consultation

Public consultation has not occurred as this will occur following the issue of a Gateway Determination.

The following public authorities were written to as a form pf preliminary consultation:

- i. NSW Trade & Investment - Mine Safety
- ii. Workcover Authority of NSW

Responses are at Attachment 2.

The following consultation strategy is recommended at the formal consultation/public exhibition stage following the issue of a Gateway Determination:

Consultation Element	Detail
Referral to the following public authorities	NSW Trade & Investment - Mine Safety, Workcover Authority of NSW, Roads and Maritime Services and NSW Rural Fire Service.
Neighbour/landholder notification	Written notification to all immediately adjoining land owners; and to the owners of the 11 properties within 3 kilometres of the site identified in the Table 2 (p.21) of the Planning Proposal document as having a dwelling upon the respective property.
Advertising	Placement of an advertisement in a newspaper that circulates in the area (Daily Examiner and Lower Clarence Review) affected by the Planning Proposal
Exhibition and consultation period	28 days

Internal Consultation

Internal consultation has been undertaken with the following comments/recommendations made:

Environment Officer (Ecology)

Council's Environment Officer (Ecology) recommends:

1. Native vegetation to remain subject to the Native Vegetation Act 2003 or amended regulations.
2. Soil chemical monitoring/compliance - Soil within the storage container area and mixing precinct should be tested before Spot Zoning the site for base line soil condition data. Further monitoring of soil condition should be undertaken each four years after rezoning and installation of the chemical storage facility. Independent monitoring reports are to be referred to the appropriate Regulatory Authority. In the event of any soil contamination a Clean-up Notice will be issued and ameliorative actions or measures will be required to be undertaken by the proponent or land owner to satisfy the appropriate Regulatory Authority.
3. Revegetation and restoration of the site as per the approved quarry operations should continue at the site at the end of the life of the activity or where practical.

Development Engineer

Council's Development Engineer has provided comments which include the following:

The proposed route must comply with the Australian Code for the Transport of Dangerous Goods by Road and Rail (Dangerous Goods Code) section 13.1.4 (13.1.4.1 to 13.1.4.4).

The applicant must comply with the provisions of the NSW Explosives Act 2003 and Explosives Regulation 2005, in particular, clause 86 - Prohibition on transport of explosives by vehicles in certain areas. It is noted that information on the transport agency and licencing is provided in the submission.

The applicant's submission advises that the existing quarry operation utilises 'B-Double' and HRV trucks on a regular basis. Confirmation of this would be required as Council and RMS are currently of the understanding that this is not an approved route. Council's Civil Services Branch (Works Engineer East) has verbally advised that Tullymorgan-Jackybulbin Road is not a designated RMS 'B-Double' route and has not been designed nor constructed to carry such vehicles. Written confirmation from the RMS and the Local Road Authority (Clarence Valley Council Civil Services Branch) would be required to determine acceptance of the existing road and intersections without any upgrade works, as submitted by the applicant.

A report and assessment of the traffic volume carried by the existing road and the pavement condition. This should include quantification of the heavy vehicle traffic volumes for both the quarry and the proposed development. The report should be provided by a suitably qualified traffic engineer/geotechnical consultant.

Any requirements for road upgrade works (including associated drainage) to become an approved 'B-Double' route (RMS) for the safe transport of explosives (SEPP 33), from the Pacific Highway to the proposed development site, would need to be in accordance with the engineering design and construction standards of the RMS, 'Austroads' and Council. This would also include any required works to the intersection with the Pacific Highway and the access intersection at the existing quarry

Internal road networks (including associated drainage) would require upgrades to cater for the proposed design service vehicles (HRV & B-Doubles) with consideration of the existing quarry operation vehicle movements.

Survey drawings of the existing topography and infrastructure. Engineering plans and documentation prepared by a suitably qualified engineer/surveyor would be required for approval of any proposed upgrade works under the Roads Act and the EP & A Act.

Written responses to referrals from associated NSW Government agencies such as Trade and Investment Resources and Energy - Mineral Resources/Mine Safety, EPA, Workcover and Primary Industries would be required

A Stormwater Management Plan will be required. Topographic maps indicate a catchment of some 30 ha above the proposed depot site and a catchment of approximately 50 ha contributing to an existing creek system that crosses the proposed access road, local catchment flood flows are to be considered. Overland flow and existing creek/gullies that form part of these catchments must be considered by the Stormwater Management Plan. Culvert designs will be required.

The current preliminary hazard analysis prepared by Greg Alderson & Associates does not include a risk assessment that considers the public users of Tullymorgan-Jackybulbin Road.

SUSTAINABILITY ASSESSMENT

Summary Statement

The site is in a relatively isolated rural location and has attributes which should ensure that any possible environmental and social impacts and other risks can be managed and minimised.

Ecology

No significant impacts anticipated.

Economic

The proposal has the potential to have some positive economic impact by the establishment of a new business enterprise within the Council area which will employ between 1 and 3 persons full time when operational. Any further impacts such as sourcing from any existing suppliers within the LGA are not known.

Social & Cultural

Significant social and cultural impacts are not expected.

Human Habitat & Infrastructure

The site is located within an isolated rural and natural setting on a site with regulated accessibility. The site and the ultimate use will have sufficient infrastructure to be able to safely operate and be readily managed within codes, standards and regulations that apply to such use.

Governance

This is a proposal which can be approved, operated, managed and monitored within a clear and transparent approval and regulatory framework.

Guiding Sustainability Principles

The following guiding sustainability principles are relevant to this issue:

- Supporting social and intergenerational equity.
- Encouraging community involvement and awareness.
- Taking a precautionary and anticipatory approach.
- Focusing on continuous improvement.

OPTIONS

That Council:

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2. Forward the Planning Proposal to the Department of Planning and Infrastructure requesting a "Gateway" Determination, pursuant to Section 56 (1) of the Environmental Planning and Assessment Act.
3. Subject to the Gateway Determination issued, request the applicant/proponent to amend the Planning Proposal document to better reflect how Clarence Valley LEP 2011 should be amended including the acknowledgment of mapping the additional permitted uses and inserting the Additional Permitted Uses Map definition into the LEP.
4. Undertake community consultation regarding the Planning Proposal, subject to the determination of the Gateway Process.
5. That Council's delegate exercise any delegation that may be specified and issued by the Gateway Determination and Written Authorisation to Exercise Delegation.
6. That Council, at this stage, not support the Planning Proposal over Part Lot 2, DP 1055044, Tullymorgan - Jackybulbin Road, Mororo for reasons that Council should specify.

Options 1 to 5 are the preferred options.

FINANCIAL IMPLICATIONS

The applicant has paid the Council adopted rezoning application fee which is expected to cover the reasonable costs associated with dealing with this matter excluding the cost of any additional studies or other documentary requests that may be specified in any Gateway Determination.

Des Schroder
DIRECTOR – ENVIRONMENT, PLANNING & COMMUNITY

Prepared by staff member:	Terry Dwyer/David Morrison
Approved/Reviewed by Manager:	Des Schroder
Section:	Strategic & Economic Planning
Attachments:	1. Detailed consideration of the issues discussed in the Planning Proposal document 2. Responses from NSW Trade & Investment - Mine Safety and WorkCover Authority 3. Planning Proposal