

Harwood Marine Industry Precinct Rezoning - Amendment to Clarence Valley LEP 2011

Proposal Title : Harwood Marine Industry Precinct Rezoning - Amendment to Clarence Valley LEP 2011

Proposal Summary : The planning proposal seeks to rezone Lots 1 – 4 DP 1155528, un-notified Crown Land and adjoining accreted land at Carey's Lane, Harwood, to enable the land to be developed as a marine industry precinct.

It is proposed that the subject land will be rezoned from RU1 Primary Production and W2 Recreational Waterways to IN4 Working Waterfront and W3 Working Waterways however the final zone configuration will be determined after consultation and investigations are completed.

The land adjoins the existing Harwood Island Slipway.

PP Number : PP_2013_CLARE_002_00 **Dop File No :** 12/20697

Proposal Details

Date Planning Proposal Received : 21-Dec-2012 **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 : Careys Lane

Suburb : Harwood **City :** **Postcode :** 2463

Land Parcel : Lots 1, 2, 3 and 4 DP 1155528, un-notified Crown Reserve and adjoining accreted land

DoP Planning Officer Contact Details

Contact Name : Paul Garnett

Contact Number : 0266416607

Contact Email : paul.garnett@planning.nsw.gov.au

RPA Contact Details

Contact Name : David Morrison

Contact Number : 0266430204

Contact Email : david.morrison@clarence.nsw.gov.au

DoP Project Manager Contact Details

Contact Name : Jim Clark

Contact Number : 0266416604

Contact Email : jim.clark@planning.nsw.gov.au

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
MDP Number :		Date of Release :	
Area of Release (Ha) :	16.97	Type of Release (eg Residential / Employment land) :	
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	60

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

If No, comment :

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment :

Supporting notes

Internal Supporting Notes :

External Supporting Notes : **Clarence Valley Council has not requested delegation to make the plan in this instance.**

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 the Clarence Valley LEP 2011 by rezoning the subject land to enable it to be developed for marine industry purposes.**

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 proposed amendment will rezone the subject land to part IN4 Working Waterfront and part W3 Working Waterways.**

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

1.1 Business and Industrial Zones

1.2 Rural Zones

1.3 Mining, Petroleum Production and Extractive Industries

1.4 Oyster Aquaculture

1.5 Rural Lands

2.1 Environment Protection Zones

2.2 Coastal Protection

2.3 Heritage Conservation

3.4 Integrating Land Use and Transport

4.1 Acid Sulfate Soils

4.2 Mine Subsidence and Unstable Land

4.3 Flood Prone Land

5.1 Implementation of Regional Strategies

6.1 Approval and Referral Requirements

6.2 Reserving Land for Public Purposes

6.3 Site Specific Provisions

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 55—Remediation of Land

SEPP No 71—Coastal Protection

SEPP (Infrastructure) 2007

SEPP (Rural Lands) 2008

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

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

If No, explain : **See the assessment section of his report.**

Mapping Provided - s55(2)(e)

Is mapping provided? **Yes**

If No, comment :

The RPA has provided maps which show the current zoning (page 5 of the planning proposal) and subject land and proposed zoning. The configuration of these zones may change following consultation and after any further investigation of the site.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

The RPA proposes a 28 day consultation period. The proposal is not considered to be a low impact proposal since the proposal will result in a significant change in the zoning of the area and traffic issues will require further assessment. The planning proposal intends to directly contact key stakeholders including the owners of adjoining lands, the Harwood Sugar Mill and the Yaegl Local Aboriginal Land Council. This consultation period and approach is considered to be appropriate.

An estimated Project Time Line for the planning proposal has been provided by the RPA as follows;

1. Gateway Determination – 31 January
2. Technical studies – 30 April (have allowed three months)
3. Agency Consultation 31 May (have allowed one month after completion of the roads strategy as that strategy would be helpful to that consultation)
4. Community consultation – 3 June – 1 July (allowed 28 days with the benefit of Agency comments)
5. Public hearing – not anticipated
6. Consideration of submissions – 1 July – 19 July
7. Consideration post-exhibition – 13 Aug (i.e. Council Meeting)
8. Resubmission to Department – 31 August

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. Advising that Council do not request delegation to make the plan in this instance.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP :

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

Assessment Criteria

Need for planning proposal :

A marine industry precinct on the Clarence River has been considered for some time and is referred to in several local and regional strategies. The local strategies include;

1. The Clarence Marine Precinct 2009 proposes a marine precinct that extends from Yamba to Grafton and includes marine industry uses.

2. The Clarence River Way Masterplan 2008 proposes the promotion and development of port facilities as part of a regional harbour network and maintenance of the Port as a deep water anchorage and working port. The Port of Yamba extends from the mouth of the Clarence River upstream to the Harwood Bridge and includes the river adjacent to the subject site. The Masterplan also advocates the expansion of shipbuilding and repair facilities and the development of a marine industry cluster.

3. The Clarence Valley Industrial Lands Strategy 2007 supports the expansion and clustering of marine businesses and identifies the Lower Clarence, close to existing industries as the preferred location.

The proposed rezoning of the subject land to facilitate a marine industry precinct is consistent with these strategies.

The proposal to rezone the subject land and apply IN4 and W3 zones is the most appropriate means of achieving the intent of the planning proposal. The land uses permitted in the IN4 and W3 zones permit land uses related to maritime purposes and do not permit broader industrial developments. Therefore the IN4 and W3 zones will enable an appropriate level of control to ensure the land develops for a marine precinct as intended and not as a general industrial estate.

Net community benefit

The planning proposal identifies a net community benefit ensuing from the increased employment opportunities. It is estimated that 300 jobs will be created in new marine industries on the site and the multiplier effect will positively affect the entire community.

The planning proposal also acknowledges that the use of the land for marine industries will preclude its use for agriculture. The site currently only contributes 0.16% of the cane harvest processed at the Harwood Sugar Mill which would not be a significant loss to the sugar industry.

Consistency with strategic planning framework :

Mid North Coast Regional Strategy (MNCRS).

The subject land is not located within an agreed growth area identified in the MNCRS, nor does the Strategy specifically identify the land as future employment lands, however an action of the strategy states;

In the case of some marine-based industries that depend upon access to navigable waterways, additional opportunities for industry establishment may be provided outside the growth areas. The Department will work with other relevant State agencies on suitable locational criteria to assist in guiding any future development opportunities.

To this end the department has prepared a Draft Marine Based Industry Policy – Far North Coast and Mid North Coast NSW which is due to be exhibited in January 2013. The policy sets locational criteria for consideration of where marine industry land uses may occur outside of the growth areas. These criteria exclude marine based industry on, among other land, land containing habitats of threatened species, populations or ecological communities; seagrass, saltmarsh and mangrove areas.

The subject land appears to satisfy these criteria. However the planning proposal identifies the possibility of native wetland vegetation on the site and mangroves along the river foreshore. The extent and significance of this vegetation and its habitat potential, should be addressed as part of the planning proposal to confirm which areas of the site are suitable for the intended industrial zones.

SEPPs

The planning proposal identifies SEPP 55 – Remediation of Land, SEPP 71- Coastal Protection, SEPP (Infrastructure) 2007 and SEPP (Rural Lands) 2008 as being relevant to the planning proposal.

The planning proposal identifies an inconsistency with the objectives of SEPP (Rural Lands) 2008. The SEPP aims to protect the agricultural production value of rural land while the proposal seeks to use agricultural land for industrial purposes. The subject land is mapped as regionally significant farmland in the Mid North Coast Farmland Mapping

Project 2008 (MNCFMP). The MNCFMP does however allow consideration of the rezoning of regionally significant farmland where there is a need to zone land for marine based industries that depend on access to navigable waterways.

The SEPP also recognises the need to balance the economic interests of the community in the Rural Planning Principles contained in clause 7 of the SEPP. Given the acknowledgement and support for marine industry precincts in the MNCRS and the MNCFMP, and the relatively small size of the subject land, it is considered that the proposal is not inconsistent with the SEPP.

There are no other inconsistencies with State environmental planning policies.

S117 Directions.

The following S117 directions are applicable to the proposal, 1.1 Business and Industrial Zones, 1.2 Rural Zones, 1.3 Mining Petroleum Production and Extractive Industries, 1.4 Oyster Aquaculture, 1.5 Rural Lands, 2.1 Environmental Protection Zones, 2.2 Coastal Protection, 2.3 Heritage Conservation, 3.4 Integrating Land Use and Transport, 4.1 Acid Sulfate Soils, 4.2 Mine Subsidence and Unstable Land, 4.3 Flood Prone Land, 5.1 Implementation of Regional Strategies, 6.1 Approval and Referral Requirements, 6.2 Reserving Land for Public Purposes, 6.3 Site Specific Provisions and 6.3 Site Specific Provisions.

Of the above s117 Directions the proposal is inconsistent with Directions 1.2, 4.1, 4.3.

Direction 1.2 Rural Zones is relevant to the proposal. The Direction states that a planning proposal shall not rezone land from a rural zone to a residential, business or industrial zone. The planning proposal aims to rezone the subject land from RU1 Primary Production and W2 Recreational Waterway to IN4 Working Waterfront and W3 Working Waterway.

The Direction provides that a planning proposal may be inconsistent with the direction if the inconsistency is justified by a strategy, a study, or is of minor significance. The MNCRS identifies the need for marine industry precincts and provides for the development of criteria for their consideration. It appears that, subject to further investigation of the vegetation on the site, the proposal to rezone the subject land is consistent with the draft criteria for Marine Based Industries. It is therefore considered that the inconsistency with the direction is justified in accordance with the terms of the direction.

Direction 4.1 Acid Sulfate Soils is relevant to the draft plan. The direction provides that a draft plan shall not permit the intensification of land containing acid sulfate soils unless a study of the land assessing its suitability has been conducted.

The draft plan proposes to rezone land from RU1 Primary Production and W2 Recreational Waterway to IN4 Working Waterfront and W3 Working Waterway. The land is mapped as containing class 2 and 3 acid sulfate soils. The proposal may be inconsistent with the direction if it is justified by a study or is of minor significance. The planning proposal states that soil investigations have been conducted for the site and identified potential acid sulphate soils below 1m in depth. No actual acid sulphate soils were identified on the site. The proposal concludes that the potential acid sulfate soils are unlikely to be disturbed by future development which will require filling of the land, and in any case the management of acid sulphate soils can be controlled through the development application process. The inconsistency of the proposal with the direction is therefore considered to be justified in accordance with the terms of the direction.

Direction 4.3 Flood Prone Land is relevant to the draft plan. The direction provides that a draft plan must not rezone land within a flood planning area to an industrial zone.

The draft plan proposes to rezone land below the 1 in 100 year flood level to enable development of a marine industry precinct. The direction states that the proposal may be inconsistent with the direction if the proposal is consistent with a floodplain management plan or the inconsistencies are of minor significance. The planning proposal includes a flooding and stormwater assessment which concludes that the filling of the site to create

building pads and raise internal road levels will enable development to occur without being restricted by flooding and also without having an adverse impact on the flood affectation of the surrounding area. The inconsistency of the proposal with the direction is therefore considered to be justified in accordance with the terms of the direction.

The proposal is otherwise consistent with S117 Directions.

Environmental social
economic impacts :

The majority of the subject land is cleared rural land used for sugar cane production and cattle grazing. The planning proposal identifies two remnant patches of native vegetation on Lot 1 DP 1155528 which make up approximately 4ha in area. The proposal also identifies stands of mangroves and casuarina along the river foreshore. The proposal states that this land will not be directly impacted by marine industries and therefore may act as a buffer for the houses to the west.

An area of land zoned E2 Environmental Protection is located immediately to the north east of the subject land. It is possible that some of the foreshore vegetation and the native vegetation on Lot 1 may have similar characteristics to this E2 zoned land. An assessment of the type, quality and significance of the vegetation on the subject land should be conducted to determine whether it would be more appropriate to retain a rural zone or apply an environmental protection zone to this land especially since the proposal suggests it will not be directly developed for marine industries.

The development of the site for marine industries will have impacts on the surrounding properties in relation to noise, traffic and amenity. These matters should be able to be adequately addressed at development application stage.

The planning proposal identifies two Native Title Claims over the Clarence River. It is not expected that a change in zoning over the land will impact on the intent of the claims. The planning proposal states that consultation with the Local Aboriginal Land Council will be conducted and this is supported.

The planning proposal has given consideration to the economic impacts of the proposal. The proposal estimates that a further 300 jobs will be created in the long term which will have a positive multiplier effect on the local community.

Assessment Process

Proposal type :	Routine	Community Consultation Period :	28 Days
-----------------	----------------	------------------------------------	----------------

Timeframe to make LEP :	12 months	Delegation :	DG
----------------------------	------------------	--------------	-----------

Public Authority Consultation - 56(2)(d) :	Office of Environment and Heritage NSW Department of Primary Industries - Fishing and Aquaculture Transport for NSW - Roads and Maritime Services
---	--

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, provide reasons :

Identify any additional studies, if required :

Flora

Fauna

Other - provide details below

If Other, provide reasons :

A Road Access Strategy

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 :

Planning Team Recommendation

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

S.117 directions :

- 1.1 Business and Industrial Zones**
- 1.2 Rural Zones**
- 1.3 Mining, Petroleum Production and Extractive Industries**
- 1.4 Oyster Aquaculture**
- 1.5 Rural Lands**
- 2.1 Environment Protection Zones**
- 2.2 Coastal Protection**
- 2.3 Heritage Conservation**
- 3.4 Integrating Land Use and Transport**
- 4.1 Acid Sulfate Soils**
- 4.2 Mine Subsidence and Unstable Land**
- 4.3 Flood Prone Land**
- 5.1 Implementation of Regional Strategies**
- 6.1 Approval and Referral Requirements**
- 6.2 Reserving Land for Public Purposes**
- 6.3 Site Specific Provisions**

Additional Information :

It is recommended that;

- 1. The planning proposal should proceed as a 'routine' planning proposal.**
- 2. That the following studies are completed and included with the material to be placed on exhibition with the planning proposal;**
 - a. An assessment of the type, quality and significance of the native vegetation and its habitat potential on the subject land, including the accreted foreshore, to determine whether the proposed industrial zone is appropriate or whether it warrants the retention of a rural zone or the application of an environmental protection zone over these parts of the land.**
 - b. A road access strategy to address future vehicular access issues to the site.**
- 3. The material to be placed on exhibition is to be forwarded to the Regional Director, Northern Region of the Department of Planning and Infrastructure for review under Section 57(2) of the Act prior to exhibition.**
- 4. The planning proposal is to be completed within 12 months.**
- 5. That a community consultation period of 28 days is necessary.**
- 6. That the RPA consult with the following State Agencies**
 - a. Roads and Maritime Services in relation to road access and maritime issues**
 - b. NSW Office of Environment and Heritage**
 - c. Department of Primary Industries – Fisheries and Aquaculture**
- 7. It is recommended that a delegate of the Director General agree that the inconsistencies of the proposal with S117 Directions 1.2, 4.1 and 4.3 are justified in accordance with the provisions of the direction.**

Supporting Reasons :

The reasons for the recommendation are as follows;

- 1. The development of a marine industry precinct on the Clarence River is supported by local and regional strategies.**
- 2. The site is adjacent to an existing slipway with appropriate deep water access and is**

therefore consistent with the locational criteria of the Draft Marine Based Industry Policy.

3. The proposal is consistent with the broad strategic planning framework for the site however further investigation of specific site constraints and potential development impacts are necessary.

Panel Recommendation

Recommendation Date : **17-Jan-2013**

Gateway Recommendation : **Passed with Conditions**

Panel

Recommendation :

The Planning Proposal should proceed subject to the following conditions:

1. Prior to undertaking public exhibition, Council is to amend the planning proposal to:
 - address vehicular access between the subject site and the surrounding local road network, and
 - assess the type, quality and significance of native vegetation and habitat found on the site. Once this additional work has been undertaken, Council may wish to revisit the proposed zoning of land within Lot 1 DP 11 55528 which contains areas of native vegetation.
2. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
 - (a) the planning proposal must be made publicly available for 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 2012).
3. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:
 - Office of Environment and Heritage
 - NSW Department of Primary Industries – Fishing and Aquaculture
 - Transport for NSW – Roads and Maritime Services

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.

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 EP&A 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 12 months from the week following the date of the Gateway determination.

Gateway Determination

Decision Date : **27-Feb-2013**

Gateway Determination : **Passed with Conditions**

Decision made by : **Director General**

Gateway Determination : **The Planning Proposal should proceed subject to the following conditions:**

1. Prior to undertaking public exhibition, Council is to amend the planning proposal to:
 - address vehicular access between the subject site and the surrounding local road network, and
 - assess the type, quality and significance of native vegetation and habitat found on the site. Once this additional work has been undertaken, Council may wish to revisit the

proposed zoning of land within Lot 1 DP 11 55528 which contains areas of native vegetation.

2. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:

- (a) the planning proposal must be made publicly available for 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 2012).

3. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:

- Office of Environment and Heritage
- NSW Department of Primary Industries – Fishing and Aquaculture
- Transport for NSW – Roads and Maritime Services

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.

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 EP&A 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 12 months from the week following the date of the Gateway determination.

Exhibition period :	28 Days	Gateway Timeframe :	12 months
		Extension Timeframe :	15 months
		Total Timeframe :	27 months
		Proposal Due Date for Finalisation:	03-Jun-2015
		Status:	Overdue

Revised Determination (e.g. Extensions & Alterations):

**Extension for 6 months requested by Council. Extension for 9 months granted 28/1/2014.
Extension of 6 months granted with alteration to Gateway Determination 26/8/2014
Second Alteration of Gateway Determination issued 15/12/2014**

Implementation

Gateway effective date :	06-Mar-2013		
Exhibition start date :	21-Jan-2015	Exhibition end date :	25-Feb-2015
		Exhibition duration :	36
Public hearing :		Date :	

Date advice received
from RPA :**24-Mar-2015**

Days with RPA :

749**LEP Assessment**Days with DoP : **15** Number of submissions : **107**Additional studies conducted : **Yes**Agency consultation consistent
with recommendation : **Yes**

If No, comment : **The Gateway Determination required consultation with the NSW Office of Environment and Heritage, Department of Primary Industries (Fishing and Aquaculture), and NSW Roads and Maritime Services. Council has consulted with these agencies as required.**

The three (3) State agencies provided comment to Council on the proposal. While no agency objected to the proposal the following concerns were raised:

Office of Environment and Heritage (OEH).

Submissions from OEH suggested that further assessment of flora and fauna on the site should be undertaken as new information relating to a vulnerable plant species had been provided. OEH also advised that the E2 zone should be used to buffer the vegetation on the site.

The amendments to the planning proposal reduced the proposed area of IN4 zone so that it applies to land which had already been disturbed as a result of agricultural activities. The areas of existing native vegetation on the site are retaining an RU1 zone or are being zoned E2. The use of the E2 zone for buffers to existing vegetation is not considered to be appropriate. Council indicated it will require further flora and fauna investigations on the site at development application stage should the rezoning proceed. This approach is considered to be acceptable.

OEH also identified that flooding and aboriginal heritage issues should be addressed further. Council, in its resolution to proceed with the planning proposal, foreshadowed that further investigations in relation to these matters will be required at development application stage when detail of the proposed development is known. This is considered to be appropriate, particularly now that the IN4 zoning will not apply to the accreted land.

NSW Roads and Maritime Services (RMS).

The submission from RMS advised that the traffic assessment report that supported the original planning proposal underestimated the average daily traffic counts and the assumed traffic generation figures for the proposed industrial development. RMS advised that planning for the Pacific Highway upgrade has not included the Harwood Marine upgrade and the proponent will be responsible for any mitigation works. Further assessment of the impact of traffic from the proposed industrial area was recommended.

A Road Access Strategy was prepared that identified a suitable road corridor to service the proposal along existing public roads. These existing roads are predominantly unsealed rural roads and will need to be upgraded. Council has resolved to require a road upgrade staging plan when a development application is submitted, should the rezoning proceed. It is considered that this approach to require further assessment at development application stage, when greater detail will be available, is appropriate.

Department of Primary Industries (DPI).

The submission from DPI suggested remapping of the E2 zone on the land to accurately reflect the vegetation and retention of the W2 zoning to the east of the

E2 zone in the north east corner of the site. The E2 zone in the north east of the site is an existing zone that applies to a SEPP 14 wetland. Council proposes to apply an RU1 zone to the land east of the E2 zone in the north east of the site as this constitutes accreted land and is no longer suited to a waterway zone. The RU1 zone is considered appropriate as an E2 zone should not be applied to land until the vegetative attributes of the land have been verified. No flora and fauna assessment has been conducted over this portion of the site as it is not intended to be part of the marine industry precinct at this stage. In this regard the RU1 zone is considered to be appropriate.

Agency Objections :

No

If Yes, comment :

Community Consultation

The original planning proposal was placed on public exhibition between 20 November and 20 December 2013. Fifty one (51) submissions were received. Seventeen (17) submissions supported the proposed rezoning based on the expected economic and employment benefits for the area. The remainder objected to and raised concerns with the proposal.

In response to the matters raised in the submissions Council resolved to amend the planning proposal. The planning proposal was amended twice. A report detailing the changes to the planning proposal and the alterations to the gateway determinations is at Tab E.

The changes to the planning proposal resulted in the area of IN4 zoned land being reduced from 38.6 hectares, as exhibited, to 16.97 hectares and the length of W3 zoned land along the foreshore being reduced in length from 1500m to 175m.

This amended version of the planning proposal was placed on public exhibition from 21 January to 25 February 2015. Fifty six (56) submissions were received during this second exhibition period. Thirty three (33) submissions supported the proposal while the remaining submissions objected to the proposal or raised concerns.

Many of the issues raised in the submissions to the amended proposal were the same as those received in response to the original proposal. The key issues arising from the two public exhibition periods are as follows:

1. Compliance/regulatory issues relating to the existing slipway operation

The Harwood Slipway operates on land adjoining the subject site. The submissions state that the current slipway operations cause pollution and any rezoning and expansion of operations will make the situation worse. Council notes that the slipway is licensed by the Environmental Protection Authority under the Protection of the Environment Operations Act 1997, and while the alleged pollution is a concern it is not a direct consideration for the rezoning proposal. Should the rezoning proceed, it is likely that expansion of the facility and changes to the operations at the site will require further approvals, from Council and other State agencies, which could result in improvements to the operations of the current facility. Council's handling of this issue in relation to the proposed rezoning is considered to be acceptable.

2. The scale of the proposal and the need for such a large area

The submissions raised concerns that the area of the land proposed to be zoned IN4 was excessive. Council noted the concerns and in consideration of other constraints to the land reduced the area of land to be zoned IN4 from 36.4ha to 16.97ha and the length of W3 zoned land from 1500m to 175m (see report at Tab E). This reduction in land area will enable some expansion of the marine industry on land most appropriate for this use including the land containing the existing settlement ponds. The land which is considered to be constrained will be zoned either E2 Environmental Conservation or will retain the RU1 Primary Production zoning. It is considered that the area of proposed IN4 zoned land is appropriate

for the development of a marine industry precinct. While the Clarence Valley Industrial Lands Strategy 2007 does not specify a future land area demand for marine industries, it does identify the need for the clustering of marine industries around existing facilities. The area of IN4 zoned land proposed will enable an appropriate level of growth of marine industries adjacent to the existing slipway facility. Council's handling of this issue is considered to be appropriate.

3. Road access

The submissions raised concerns with the proposed road access to the site. Consistent with the condition of the Gateway Determination, a Road Access Strategy was prepared by the proponent which nominated three options for providing upgraded road access to the site. Council's resolution to proceed with the planning proposal included a requirement that the proponent provide a road upgrade staging plan to be submitted with any development application for new construction. Further analysis of the traffic needs of the development, as suggested by the RMS, can be conducted at this stage. Council required that the road upgrade be based on Option 1 in the Road Access Strategy which utilises existing roads and road reserves. Option 1 avoids the need for traffic to use River Road which is subject to the impacts of river bank erosion. Council's handling of this matter is considered to be appropriate as it has ensured a suitable road access route to the site from the Pacific Highway has been identified and will require upgrading of this route at development application stage.

4. Loss of Agricultural Land

The submissions raised concerns that the rezoned land is regionally significant farmland and will no longer be able to be used for agricultural purposes which will contribute to an incremental negative impact on the local sugar industry. Council acknowledges the land has historically been used for cane farming and notes that the use of the land for other employment opportunities has the potential to provide alternative economic benefits to the community. The area of land to be rezoned for marine industry purposes is only 16.97ha which is minor in comparison to the area of regionally significant farmland in the Lower Clarence area which is available for sugar cane production. The land to be rezoned IN4 also includes the existing sediment settlement ponds for the existing slipway operations. This land is not currently being used for sugar cane production. The Mid North Coast Farmland Mapping Project 2008 States that the rezoning of regionally significant farmland can be considered where there is a need to zone land for marine based industries that depend on access to navigable waterways. Given the proposal will constitute an expansion of the existing Harwood Slipway facility the proposal is considered to be consistent with this policy. The site also meets the necessary locational criteria identified in the Draft Marine Based Industry Policy - Far North Coast and Mid North Coast NSW. It is considered that Council's handling of this issue is appropriate.

5. Flood Impacts

The land is flood liable and the submissions raised concerns that development of a marine industry precinct will adversely increase the flood affectation of neighbouring properties and cause further pollution of the river in flood events. Council notes that a flood impact assessment that accompanied the original planning proposal concluded that no significant adverse impact on local flooding would occur. The flood study demonstrates that the depth of flood waters over the site varies from 0.8 to 1.5m. The flow velocities are slow flowing at 0.1 to 0.15m/s. Filling of the site to accommodate buildings is not expected to have a significant impact on flood levels due to the extent of the floodplain. An increase in flood height of 12mm within the site is noted in the modelling. It is considered this impact could be mitigated with appropriate compensatory excavation or different construction measures to those modelled. Flooding generally occurs

slowly over 2 to 3 days allowing time for preparation and evacuation if necessary.

Revised flood modelling of the Lower Clarence floodplain has recently been undertaken by Council using more accurate ground terrain data. The flood levels predicted by the revised modelling are the same or up to 100mm lower than previously estimated. The flood modelling done for the proposal is therefore considered to be adequate for the purposes of rezoning the site. Council also resolved to require additional investigations at development application stage when greater detail of the final development footprint is known.

6. Land use buffers

The submissions raised concern over the proximity of the proposed industrial zone to adjoining houses. Council acknowledged the potential for land use conflict, and in amending the proposal, retained the rural zoning of the land for a distance of 100m from the existing neighbouring dwellings.

Submissions to the amended proposal stated that the buffers should be a minimum of 500m wide and preferably 1000m wide and cited the publication "Living and Working in Rural Areas: A handbook for managing land use conflict issues on the NSW North Coast, 2007, NSW Department of Primary Industries (the "Handbook"). The Handbook lists a 500m buffer between rural dwellings and rural industries and a 1000m buffer between rural dwellings and potentially hazardous or offensive industries. The Handbook qualifies these distances with the statement:

"The buffers recommended should be used as a starting point and guide only in the absence of any other or more appropriate separations arrangements."

The buffer distances specified in the Handbook are not statutory requirements. They constitute a guideline for minimising potential land use conflict. It should be noted that the existing established slipway is located to the west of the land proposed to be zoned IN4. The closest rural dwelling to the existing slipway is approximately 50m from the boundary of the existing slipway site. A 100m buffer to the new area of IN4 zoned land has been achieved to this dwelling.

The next two closest dwellings to the proposed IN4 zoned land achieve buffers of between 100m and 200m. It is likely that the effectiveness of these buffers with regard to noise and amenity mitigation can be improved with the use of other measures, such as siting of buildings, building design and physical barriers, at development application stage.

It is considered that the rezoning of land for marine industry purposes in a location adjacent to an existing slipway results in a better outcome than establishing a completely new marine industry precinct in another location.

7. Possible maritime archaeological heritage

Submissions raised concerns that a ship wreck may be located on the site. Council's investigations could find no definitive evidence of this. It is likely that any shipwreck would be located on the accreted land which is being rezoned RU1. Council resolved that further investigations would be required at development application stage and advised that any future development consent would contain conditions to manage significant heritage items that may be discovered. This approach is considered to be appropriate.

8. Native Title issues

The submissions raised concern that the proposal was inconsistent with the current Native Title Claim over the Clarence River by the Yaegl community. Native

Title only applies to Crown land. The amended planning proposal removes the accreted Crown land from the proposed rezoning. Council is consulting with the claimant group's legal representatives in accordance with the future act provisions of the Native Title Act 1993. In the native title context a 'future act' is a proposed act on land or water that affects native title rights and interests. Where a future act may arise a native title claim group has the right to comment on, be consulted on, object to or negotiate about future acts. Council advised that the Native Title Act does not prevent the rezoning of land. Council has also resolved to require an Aboriginal cultural heritage assessment with the development application. This approach is considered to be appropriate.

9. Impact on Palmers Island Village

Some submissions raised concerns with the potential impact an expanded marine industry precinct would have on the amenity of the Palmers Island Village which is on the south eastern bank of the Clarence River, opposite the subject site. The amendment to reduce the area of the proposed IN4 and W3 zones increases the distance of any potential future developments from Palmers Island village. The distance from the closest part of the IN4 zoned land to the edge of Palmers Island village is approximately 600m. Measures to mitigate noise, light spill and other factors will be addressed at development application stage. This approach is considered to be appropriate.

10. Environmental assessments

Submissions raised concerns with the level of environmental assessment undertaken for the site and the second Alteration of Gateway Determination which omitted the need for additional flora and fauna investigations over part of the site proposed to be zoned IN4.

The majority of the land has historically been used for sugar cane farming though some native vegetation remains on the site. In accordance with a condition of the Gateway determination Council considered the native vegetation on the site and applied an E2 zone to areas of existing native vegetation.

The first alteration to the Gateway determination required additional flora and fauna assessment as the amended proposal included an additional area of IN4 zoned land that was not originally proposed. The IN4 zone for this area of land was abandoned in the second amendment to the proposal and the existing RU1 zone is proposed to be retained. Consequently additional flora and fauna investigations were not considered to be necessary for the second Alteration of Gateway Determination and this requirement was deleted. Many of the submissions to the amended planning proposal object to this deletion of additional flora and fauna investigations.

Further flora and fauna investigations are not required at this stage as the amended planning proposal seeks to apply the IN4 zone to land which has been significantly disturbed and is used for sugar cane farming, other agricultural practices or settlement ponds for the existing slipway operation. Those areas of Lot 1 which contain native vegetation and the accreted land will retain the existing RU1 zone.

Council has resolved to require further flora and fauna assessment at development application stage when greater detail of the proposal is known. At development application stage offsets for any clearing of native vegetation, and rehabilitation of existing vegetation can be required as conditions of consent. This is a more appropriate mechanism for managing the vegetation on this particular site than land use zones. This approach will also allow the existing rural land to continue to be used for extensive agriculture which is prohibited in the E2 zone.

11. Accreted land

Much of the waterfront land that was originally proposed to be rezoned IN4 is accreted land. Submissions have raised concerns over the legality of title to this land. Council received advice from the NSW Crown Lands Division that accreted land adjoining freehold land would most probably become part of the title of that freehold land. Similarly accreted land adjoining Crown Land is likely to become Crown land. Council proposes to apply an RU1 zone over the accreted land until further investigations justify rezoning of this land to IN4. The accreted land is currently zoned W2 Recreational Waterways as a result of the conversion of zones from the previous Maclean LEP 2001 to the Clarence Valley LEP 2011 before surveys indicated that the accreted land existed. However since this area is no longer part of the river and is being used predominantly for agricultural purposes a RU1 zone is proposed, consistent with the majority of the other land in the vicinity. This approach is considered to be acceptable.

12. Future rezoning applications and Council's handling of the proposal

The submissions raised issues with the fact that Council amended the proposal for a second time in response to the proponent's request. This is allowable under the planning legislation and the amended proposal was considered by the Department, at the request of Council, prior to an Alteration of Gateway Determination being issued. The submissions also stated that there should not be the ability for the proponent to lodge a future planning proposal for the rezoning of the remainder of the land. The current proposal cannot prevent future proposals from being considered. Any future proposal will be assessed on its merits. These matters are not relevant considerations for this planning proposal.

Submissions to the Minister and the Department

The Department has also received submissions directly from concerned residents and the Clarence Environment Centre. Some of these residents have also written to the Minister. A table summarising the matters raised in the submissions is at Tab G. These submissions raise the same key concerns as those considered by Council above.

Other Relevant Issues

In addition to the matters raised in the submissions the following issues are considered to be relevant to the proposal.

1. Suitability of the Site

The proposal seeks to rezone land to enable the expansion of operations at the existing Harwood Slipway. It is considered logical to enable the expansion of an existing facility rather than force the establishment of a new facility in an alternative location. The flooding, acid sulfate soil, agricultural land and land use conflict constraints of the subject site will be common issues for other potential sites for such a facility along the banks of the Clarence River.

The existing slipway and the proposed rezoning will service the Port of Yamba which is one of only six (6) designated ports in NSW, the others being Sydney Harbour, Botany Bay, Newcastle, Port Kembla and Eden as prescribed by section 47 of the Ports and Maritime Administration Act 1995. The location of the proposed marine industry precinct is therefore appropriate in that it is located within a recognised port with good access to a navigable waterway.

2. Employment Generating Potential

The planning proposal states that the existing slipway facility, which occupies approximately 7 hectares, currently employs approximately 40 permanent staff. The planning proposal estimated that the original proposal to rezone 52 hectares of land would employ up to 300 people once fully developed. The proposal has been significantly amended such that only 16.97ha of land is to be rezoned IN4. Given that approximately 3ha of the proposed IN4 zoned land is currently used as sedimentation ponds for the existing slipway it is estimated that the proposed rezoning could generate approximately 60 additional jobs once fully developed.

3. Potential Pollution Events Resulting from Future Developments

With expansion of marine industry land uses on the Lower Clarence flood plain there exists an increased potential for pollution events, especially during flooding of the site. Submissions from the community have raised the issue of poor management of the facility being exacerbated with an expanded precinct. While the future operation of the existing slipway and the proposed marine industry precinct cannot be foreseen, the expansion of the facility and changes to the operations at the site will require further approvals, from Council and other State agencies, which could result in improvements to the operations of the current facility. There are adequate statutory controls in place which are administered by Council or the NSW Environment Protection Authority to ensure operators of the marine industry precinct operate in a manner that does not have an adverse impact on water quality of the Clarence River.

4. Draft Marine Based Industry Policy

The Department has prepared a Draft Marine based Industry Policy – Far North Coast and Mid North Coast NSW (the 'Draft Policy'). The draft policy has not yet been adopted. The policy sets three sets of criteria for consideration of where marine industry land uses may occur outside of the growth areas nominated in the Mid North Coast and Far North Coast Regional Strategies.

4a. Criteria for Land on which Marine Industries Should Not Occur

The Draft Policy identifies land on which marine industries should not be located. This land includes areas of significant native vegetation or land with Aboriginal cultural heritage significance. The proposal is consistent with these criteria in the draft policy. The proposed IN4 zoned land is located predominantly on land previously used for agricultural purposes and which has therefore been cleared of significant vegetation. Consequently the proposed IN4 zoned land is not likely to have a significant adverse impact on SEPP 14 wetlands, SEPP 26 littoral rainforests, seagrass, saltmarsh or mangrove areas. The reduction in the area of IN4 and W3 zoned land will help to minimise any potential impacts on wetland native vegetation and mangroves along the river foreshore. The accreted land which is proposed to be zoned RU1 will contribute to a buffer area between the river foreshore and the proposed IN4 zoned land. Further investigation of the potential for development of the land to impact on flora and fauna will be undertaken at development application stage when details of proposed developments are known.

The subject land does not contain items of environmental heritage and further investigation of Aboriginal cultural heritage will be conducted at development application stage.

4b. Locational Criteria

The Draft Policy sets locational criteria to ensure the site meets the intent of the Draft Policy as being suitable for marine based industries. The proposal satisfies the locational criteria in the Draft Policy since the proposed precinct has access

to the Clarence River and the waterway is suitable for the type of vessels that use the facility.

4c. Site Criteria.

The draft policy also sets site criteria and states that the criteria can be taken as being met if the issue can be sustainably managed, ameliorated or offset. These site criteria include the following:

Need for Dredging – The proposal does not propose any specific dredging of the river. The river in the location of the proposed marine industry precinct and the existing slipway can accommodate vessels with a draught of 5m, a length of 90m, width of 26m, and up to 2500 tonnes.

Water quality – the impact of a marine industry precinct on the water quality of the Clarence River will depend on the management practices of the facility. The proposed rezoning and expansion of the facility may have a positive or negative impact on water quality as previously discussed in this report. It is considered that any potential negative impact on water quality in the Clarence River can be adequately mitigated with appropriate infrastructure and operational practices and these can be specified through conditions of consent for future development of the site.

Priority Oyster Aquaculture areas – The site does not adjoin any priority oyster aquaculture areas. The nearest oyster leases are in Yamba Bay which is approximately 15km downstream of the site and the existing slipway facility.

Flood Hazard - The site is located on the flood plain and the impact of flooding on the site has been modelled and previously discussed in this report. It is considered that the flood affectation of the land is not a significant constraint to the proposed rezoning.

River Currents and Tidal Movements – the operation of the existing slipway facility demonstrates that the river characteristics are suitable for the proposed marine industry precinct.

High Risk Acid Sulfate Soils – The land is mapped as Class 2 and 3 acids sulfate soils in the Clarence Valley LEP 2011. It is considered that the potential disturbance of any acid sulfate soils on the site can be adequately managed so as not to have an adverse impact on water quality in the Clarence River. It is likely that the majority of the earthworks on the site will involve filling of the land to address flooding issues.

Setback of Industrial Complex from River Bank – There is adequate area within the proposed 16.97 hectares of IN4 zoned land to located industrial buildings away from the river bank to address any potential bank erosion issues.

Disturbance of Native Vegetation– it is considered there is adequate area within the proposed IN4 and W3 zoned land to develop the site for marine industry purposes without having to disturb significant native vegetation. The IN4 zone will be applied to land which has already been cleared for agricultural land uses while the proposed W3 zoned land adjoins an area of riverbank which has been disturbed by adjoining residential and agricultural land uses. The retention of a rural zone over the majority of Lot 1 also provides scope for the offsetting of riparian vegetation in this area should disturbance of such vegetation in the W3 zone occurs.

Land Use Conflict – The proposal incorporates 100m buffers to existing rural dwellings. It is envisaged that the impact of future marine industry land uses can be designed in a manner to further mitigate any potential impact on these

dwelling.

Provision of Infrastructure– The Road Access Strategy demonstrates that a suitable road corridor is available once the roads are upgraded. The proposal considers the options for the provision of water, electricity and communications and the disposal of wastewater. It concludes that extension of existing facilities will be possible or the provision of future communication or alternative power supplies is envisaged. It is considered that the infrastructure necessary for the expansion of the marine industry precinct is available or can be made available.

Documentation consistent with Gateway :

Yes

If No, comment :

A gateway determination was issued for this planning proposal on 27 February 2013. The Gateway determined that the proposal should proceed subject to conditions.

Council varied the planning proposal on two occasions and as a result two Alterations of Gateway Determination were issued on 26 August 2014 and 15 December 2014 respectively. Discussion on these variations to the planning proposal is contained in the attached report Tab E.

The Council has fulfilled the requirements of the Gateway in progressing this planning proposal.

Council was consulted on the draft LEP pursuant to s.59(1) of the Act. On 28 May 2015 Council advised that the draft instrument was satisfactory.

A PC opinion was issued on 2 June 2015. It is considered that the draft plan is suitable for publication.

Mid North Coast Regional Strategy (MNCRS)

The proposal is not inconsistent with the actions and outcomes of the MNCRS. The consistency of the proposal with the Draft Marine based Industry Policy – Far North Coast and Mid North Coast NSW has been discussed previously in this report.

Mid North Coast Farmland Mapping Project - Final Recommendations Report 2008 (MNCFMP)

The subject land is mapped as regionally significant farmland by the MNCFMP. However the MNCFMP specifically provides for consideration of the rezoning of regionally significant farmland where there is a need to zone land for marine -based industries that depend on access to navigable waterways. The proposal is considered to be consistent with the MNCFMP.

SEPPs

It has been demonstrated that the proposal is not inconsistent with any State environmental planning policies.

S117 Directions

On 27 February 2013 the Director General agreed that the inconsistencies with section 117 directions 1.2 Rural Zones, 4.1 Acid Sulfate Soils and 4.3 Flood Prone Land, were justified in accordance with the terms of the directions.

The proposal is otherwise consistent with S117 Directions.

Proceed to Draft LEP :

Yes

If No, comment :

It is recommended that the Minister's delegate make the LEP under section 59(2) (a) of the Act as submitted by the Council as the relevant planning authority.

Have all necessary changes requested by Council / Department / Agency / Other been made? **Yes**

If No, comment : **No changes to the LEP are considered to be necessary.**

LEP Determination

Date sent to legal : **07-Apr-2015** Total Days at PC : **15** Total Days at Legal/DoP : **50**

PC Dates Details

Date sent to PC : **19-May-2015** Date returned from PC : **02-Jun-2015** Days at PC : **15**

Other referrals : Date Sent : Date Received :

Elapsed Days : **80**

Date PC provided an opinion that draft LEP could be made : **02-Jun-2015**

Have changes been made to the draft LEP after obtaining final PC opinion? **No**

Determination Date : Determination Decision :

Notification Date : Decision made by :

Link to Legislation Website :

Internal Supporting notes :

Documents

Document File Name	DocumentType Name	Is Public
Clarence Valley Council cover letter Harwood Marine Industry Precinct PP.pdf	Proposal Covering Letter	Yes
Council Minutes and report Harwood Marine Industry Precinct PP.pdf	Determination Document	Yes
Harwood Marine PP - submitted by GHD.pdf	Proposal	Yes
Harwood Marine PP - GHD Flood Assessment.pdf	Study	Yes
Harwood Marine PP - Traffic - GHD_2642_Final_30Oct2012.pdf	Study	Yes
Site_Identification_Map for Harwood Marine Industry Precinct CVLEP Amendment_No6.pdf	Map	Yes
Draft zoning map showing proposed zoning of the Harwood Marine Industry Precinct site.pdf	Map	Yes
1. Clarence Valley Gateway.pdf	Determination Document	Yes
2. Clarence Valley PR Report.pdf	Determination Document	Yes
8.01 Clarence Valley (002) PT Report.pdf	Determination Document	Yes
2014-08-26 Alteration to Gateway Determination - Harwood Marine Industry Precinct.pdf	Determination Document	Yes
2014-12-15 Alteration of Gateway Determination for PP_2013_CLARE_002_00.pdf	Determination Document	Yes