

## Planning and Assessment

IRF19/6157

### Gateway determination report

<b>LGA</b>	Clarence Valley
<b>PPA</b>	Clarence Valley Council
<b>NAME</b>	Rezoning of environmental lands at Koolkhan
<b>NUMBER</b>	PP_2019_CLARE_004_00
<b>LEP TO BE AMENDED</b>	Clarence Valley Local Environment Plan 2011
<b>ADDRESS</b>	Summerland Way, Koolkhan
<b>DESCRIPTION</b>	Part of Lot 102 DP1221192
<b>RECEIVED</b>	2 December 2019
<b>FILE NO.</b>	IRF19/6157
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

## 1. INTRODUCTION

### 1.1 Description of planning proposal

The proposal seeks to rezone part of Lot 102 DP1221192, Summerland Way, Koolkhan, from E2 Environmental Conservation to E3 Environmental Management.

### 1.2 Site description

The proposal applies to part of Lot 102 DP1221192 (Figure 1). The site has an approved staged subdivision. The rezoning specifically applies to Proposed Lot 2 (Figure 2).

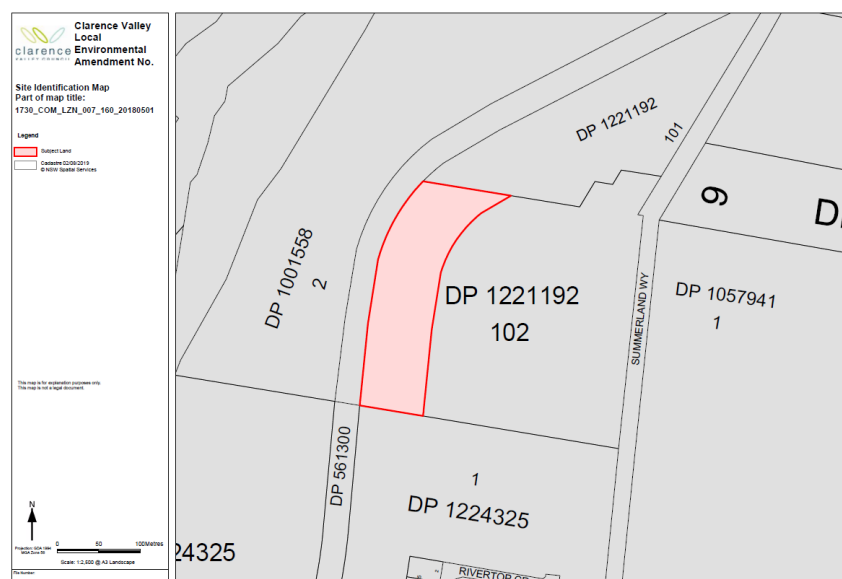


Figure 1: Subject site (Source: Planning proposal report)



Figure 2: Existing approved subdivision layout (Source: Planning proposal report)

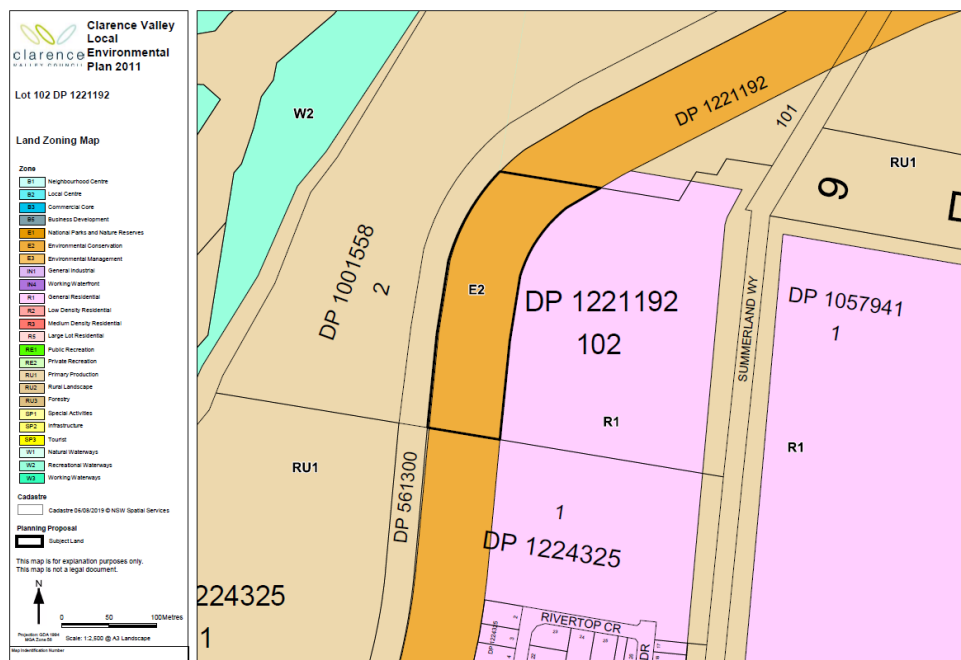


Figure 3: Existing zones (Source: Planning proposal report)

### 1.3 Existing planning controls

Lot 102 is currently zoned part R1 General Residential and part E2 Environmental Conservation (Figure 3). The minimum lot size within the E2 Environmental Conservation zone is 40ha. Table 1 compares the provisions of the current E2

Environmental Conservation and E3 Environmental Management land use tables under the Clarence Valley LEP 2011.

*Table 1: E2 and E3 land use table comparison*

	<b>E2 Environmental conservation</b>	<b>E3 Environmental Management zone</b>
<b>Objectives of the zone</b>	<ul style="list-style-type: none"> <li>• To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.</li> <li>• To prevent development that could destroy, damage or otherwise have an adverse effect on those values.</li> <li>• To protect coastal wetlands and littoral rainforests.</li> <li>• To protect land affected by coastal processes and environmentally sensitive coastal land.</li> <li>• To prevent development that would adversely affect, or be adversely affected by, coastal processes.</li> </ul>	<ul style="list-style-type: none"> <li>• To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.</li> <li>• To provide for a limited range of development that does not have an adverse effect on those values.</li> <li>• To prevent inappropriate development in geologically hazardous areas so as to minimise erosion and other adverse impacts on escarpment areas.</li> <li>• To ensure that development does not unreasonably increase the demand for public services or public facilities.</li> <li>• To ensure development is not adversely impacted by environmental hazards.</li> <li>• To protect prominent hillsides, ridgelines, other major natural features, riparian areas and water catchment areas.</li> </ul>
<b>Permitted without consent</b>	Nil	Extensive agriculture; Home-based child care; Home occupations; Home occupations (sex services)
<b>Permitted with consent</b>	Emergency services facilities; Environmental facilities; Environmental protection works; Flood mitigation works; Oyster aquaculture; Roads	Animal boarding or training establishments; Bed and breakfast accommodation; Camping grounds; Caravan parks; Dual occupancies (attached); Dwelling houses; Eco-tourist facilities; Emergency services facilities; Environmental facilities; Environmental protection works; Farm buildings; Farm stay accommodation; Flood mitigation works; Forestry; Home businesses; Home industries; Oyster aquaculture; Pond-based aquaculture; Recreation areas; Roads; Tank-based aquaculture
<b>Prohibited</b>	Business premises; Hotel or motel accommodation; Industries; Multi dwelling housing; Pond-based aquaculture; Recreation facilities (major); Residential flat buildings; Restricted premises; Retail premises; Seniors housing; Service stations; Tank-based aquaculture; Warehouse or distribution centres; Any other development not specified in item 2 or 3	Industries; Multi dwelling housing; Residential flat buildings; Retail premises; Seniors housing; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3

Clause 4.1A of the LEP also applies due to the existing split zoning of the land. Clause 4.1A states:

*4.1A Exceptions to minimum lot size for certain split zone lots*

- (1) The objectives of this clause are as follows—*
  - (a) to provide for the subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1, 4.1AA or 4.2C,*
  - (b) to ensure that the subdivision occurs in a manner that promotes suitable land use and development.*
- (2) This clause applies to each lot (an original lot) that contains—*
  - (a) land in a residential, business or industrial zone, and*
  - (b) land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone E2 Environmental Conservation or Zone E3 Environmental Management.*
- (3) Despite clauses 4.1, 4.1AA and 4.2C, development consent may be granted to subdivide an original lot to create other lots (the resulting lots) if—*
  - (a) one of the resulting lots will contain—*
    - (i) land in a residential, business or industrial zone that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land, and*
    - (ii) all of the land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone E2 Environmental Conservation or Zone E3 Environmental Management that was in the original lot, and*
  - (b) all other resulting lots will contain land that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land.*
- (4) Despite subclause (3), development consent may only be granted to subdivide an original lot to create a lot referred to in subclause (3) (a) (ii) that is less than the minimum size shown on the Lot Size Map in relation to that land if the consent authority is satisfied that the lot is suitable for the erection of a dwelling house.*

#### **1.4 Surrounding area**

The site forms part of the northern stage of the Junction Hill village redevelopment. The subject site fronts Summerland Way to the east and the North Coast Railway corridor to the west. The area to the south of the site is an existing residential area. The land to the north is zoned RU1 Primary Production, R1 General Residential and E2 Environmental Conservation and is currently undeveloped. Figure 3 shows the surrounding area of the subject site.

#### **1.5 Summary of recommendation**

It is considered that the planning proposal has merit to proceed to a Gateway determination. It is recommended that the planning proposal proceed subject to conditions as it will rezone the land to better reflect the existing level of ecological value and permit additional development more consistent with that value.

## **2. PROPOSAL**

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### **2.1 Objectives or intended outcomes**

The objective of the proposal is to rezone part of Lot 102 DP1221192, Summerland Way, Koolkhan, from E2 Environmental Conservation to E3 Environmental Management (Figure 4).

The proposal adequately outlines the objectives and intended outcomes.

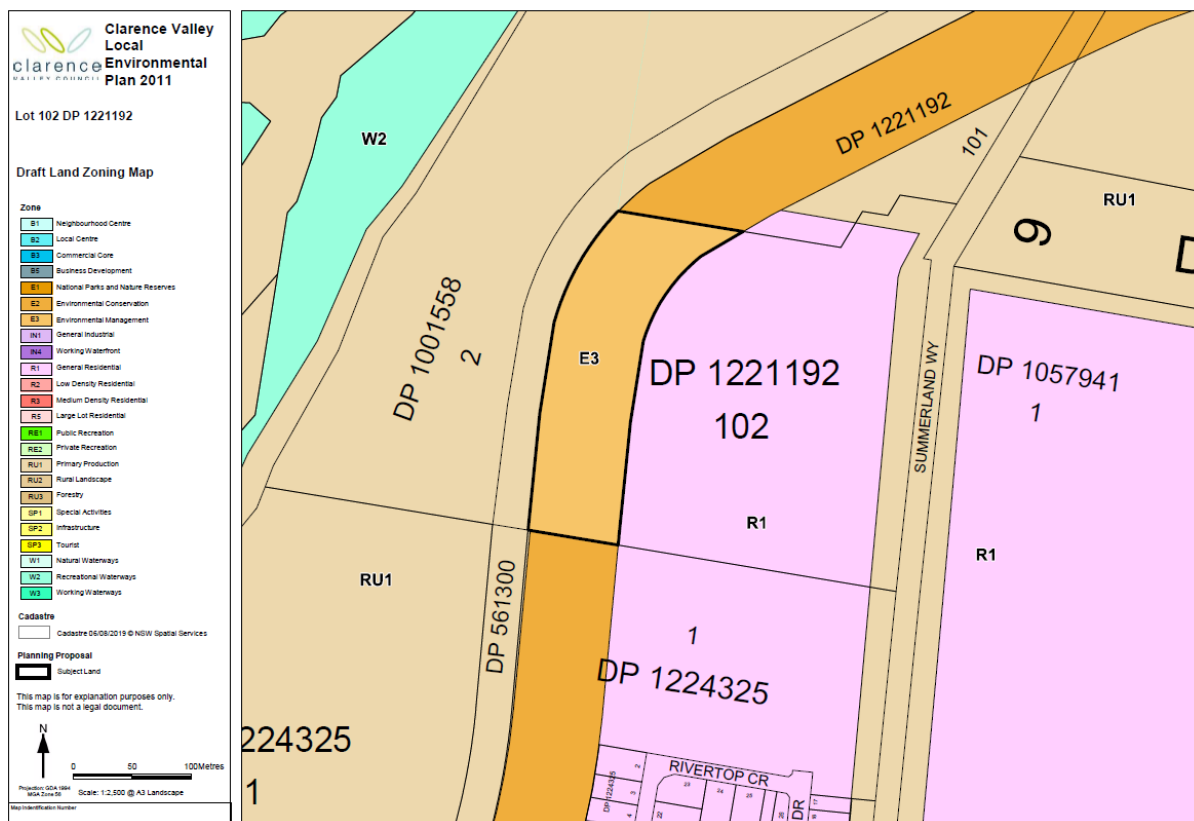


Figure 4: Proposed land use zone of the site (Source: Planning proposal report)

## 2.2 Explanation of provisions

The intended outcome of the proposal will be achieved by the rezoning of the site and amending the land zoning map. The proposal adequately outlines the intended explanation of provisions.

## 2.3 Mapping

The proposal will involve amending the land zoning map under the Clarence Valley LEP 2011 and contains the existing and proposed map sheets. This mapping is considered sufficient for public exhibition.

## 3. NEED FOR THE PLANNING PROPOSAL

The proposal was not the result of a strategic analysis or study. The planning proposal has arisen due to the proponent's desire to subdivide along the existing zone boundary and facilitate a dwelling on the residue lot.

The proposal is needed as dwellings are prohibited in the E2 Environmental Conservation zone under the Clarence Valley LEP 2011 zone table and the subdivision is unable to comply with clause 4.1A Exceptions to minimum lot size for certain split zone lots of the LEP. The change in zoning to E3 Environmental Management will permit both the subdivision and a dwelling subject to consent.

## 4. STRATEGIC ASSESSMENT

### 4.1 State

The proposal is consistent with State Planning Frameworks.



## **4.2 Regional / District**

### *North Coast Regional Plan 2036 (NCRP)*

The planning proposal is generally consistent with the Directions and Actions within the NCRP and aligns with the Clarence Valley Local Government Narrative for housing and the Urban Growth Area Map for Junction Hill. As the proposal seeks to reduce the environmental standards applying to the land, until this is confirmed as being appropriate by the NSW Biodiversity and Conservation Division, a potential inconsistency with Direction 2 applies in terms of not directing development away from environmentally sensitive areas. It is recommended that the potential inconsistency with the Regional Plan remain unresolved until after consultation with Department of Planning, Industry and Environment (Biodiversity and Conservation Division) can confirm the suitability of the proposed rezoning.

## **4.3 Local**

### *Clarence Valley Settlement Strategy*

The Department approved Clarence Valley Settlement Strategy identifies Junction Hill as an area that has the potential to function as a major village with its own identity. The subject site is located within the 'future extension village area' which was rezoned for residential purposes in 2007. The proposal will result in one additional dwelling. It is considered that the proposal is in accordance with the Clarence Valley Settlement Strategy.

## **4.4 Section 9.1 Ministerial Directions**

The proposal is consistent with all relevant section 9.1 Directions except the following:

### *Direction 1.5 Rural Lands*

The proposal is inconsistent with this Direction as it affects land in an environmental zone and does not implement all the required actions of the Direction such as supporting farmers in exercising their right to farm. This inconsistency is considered to be of minor significance as the land is already zoned for environmental purposes.

### *Direction 2.1 Environmental Protection Zone*

The proposal is inconsistent with this Direction as the proposal will reduce the environmental protection standards that apply to the land. This inconsistency is considered to be of minor significance as a preliminary biodiversity assessment has been prepared which concluded no significant environmental value associated with the land. It is recommended that this Direction remain unresolved until after consultation with Department of Planning, Industry and Environment (Biodiversity and Conservation Division) can confirm the suitability of the proposed rezoning and will have no adverse impact on primary production activities.

### *Direction 4.1 Acid Sulfate Soils*

The proposal is inconsistent with this Direction as it involves an intensification of the permitted land uses on class 5 acid sulfate soils and is not supported by an acid sulfate soils study. This inconsistency is of minor significance as the Clarence Valley LEP 2011 contains suitable provisions that can appropriately address acid sulfate soils at the development stage.

### *Direction 5.10 Implementation of Regional Plans*

Until the reduction in environmental protection standards applying to the land can be confirmed as being appropriate, the proposal is considered to be potentially

inconsistent with the North Coast Regional Plan (Direction 2), and it is recommended that it remains unresolved until after consultation with the Biodiversity and Conservation Division.

#### **4.5 State environmental planning policies (SEPPs)**

The proposal is consistent with all relevant SEPPs.

##### *SEPP 55 – Contaminated land*

Additional information was sought from Council on 19 September 2019 to demonstrate compliance with Clause 6 of SEPP 55.

The following additional information was provided by Council on the 2 December 2019:

*Council has considered a Stage 1 Site Contamination Assessment prepared by Regional Geotechnical Solutions and dated 27 November 2019 and is satisfied that this report comprises a report/investigation of the type required by clause 6(2) of State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55).*

*Council is satisfied that the:*

*1. Stage 1 Site Contamination Assessment prepared by Regional Geotechnical Solutions and dated 27 November 2019, which supports the planning proposal, adequately complies with the guidelines referred to in clause 6(2) of SEPP 55; and*

*2. planning proposal complies with Clause 6 of SEPP 55.*

It is recommended that the planning proposal be amended prior to consultation to address clause 6 of SEPP 55 and the additional information that has been provided.

## **5. SITE-SPECIFIC ASSESSMENT**

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### **5.1 Social**

It is not anticipated that the proposed rezoning will result in any negative social impacts.

### **5.2 Environmental**

The information supporting the planning proposal confirms the land has limited ecological value and does not provide any habitat linkage / connectivity and is inconsistent with the intent of the E2 Environmental Conservation zone. The proposed rezoning will enable a broader range of uses on the land more consistent with its environmental value. The land is also not identified by the North Coast Regional Plan as having any potential high environmental value. No adverse environmental impact has been identified subject to consultation with the Biodiversity and Conservation Division.

### **5.3 Economic**

The proposal will result in one potential additional dwelling and no adverse impact has been identified.

### **5.4 Infrastructure**

The proposal does not generate the need or requirement for any additional infrastructure. It is understood that the original 'environmentally sensitive land' designation of the land in this location under Copmanhurst LEP 1990 (Amd 13) may

have related primarily to its proximity to the North Coast Railway line and minimising any potential land use conflicts. As the proposal will increase the development potential of the land, it is recommended that consultation be undertaken with the Australian Rail Track Corporation.

## **6. CONSULTATION**

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### **6.1 Community**

This proposal is consistent with the description of a low impact proposal in A guide to preparing local environmental plans (Department of Planning and Environment 2016) which recommends a 14 day exhibition period. This proposed exhibition period is considered appropriate.

### **6.2 Agencies**

Consultation is recommended with:

- Department of Planning, Industry and Environment (Biodiversity and Conservation Division).
- Australian Rail Track Corporation.

## **7. TIME FRAME**

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The planning proposal includes a project timeline which estimates completion by April 2020.

To ensure the local plan-making authority has adequate time to complete the proposal, it is recommended that a timeframe of nine (9) months be provided.

## **8. LOCAL PLAN-MAKING AUTHORITY**

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Council is seeking an authorisation to act as the local plan-making authority under section 3.36(2) of the *Environment Planning and Assessment Act 1979* for this LEP amendment.

The proposal deals primarily with minor matters of local significance. It is recommended that an authorisation to act as the local plan making authority be issued to Council in this instance.

## **9. CONCLUSION**

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It is considered that the planning proposal has merit to proceed to a gateway determination. It is recommended that the planning proposal proceed subject to conditions as it will rezone the land to better reflect the level of ecological value and permit additional development more consistent with that value.

## **10. RECOMMENDATION**

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It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions 1.5 Rural Lands and 4.1 Acid Sulfate Soils are minor or justified; and



2. note that the consistencies with section 9.1 Directions 2.1 Environmental Protection Zones and 5.10 Implementation of Regional Plans are unresolved and will require justification.

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. The proposal is to be amended prior to agency and community consultation to revise Section 4.8.2 and Annexure J to confirm compliance with Clause 6 of SEPP 55.
2. The planning proposal should be made available for community consultation for a minimum of 14 days.
3. Consultation is required with the following public authorities:
  - Department of Planning, Industry and Environment (Biodiversity and Conservation Division)
  - Australian Rail Track Corporation
4. The time frame for completing the LEP is to be nine months from the date of the Gateway determination.
5. Given the nature of the planning proposal, Council should be the local plan-making authority.



18/12/19

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7/01/2020

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