

Planning and Assessment

Gateway determination report

Clarence Valley Gateway determination: PP_2020_CLARE_003_00

Purpose: To recommend the Director, as delegate of the Minister, determine that planning proposal PP_2020_CLARE_003_00 should proceed.

Analysis: The planning proposal seeks to amend the lot size map at Mountain View Estate and Cronin Estate to facilitate the retention of the existing dwelling entitlements. The planning proposal is considered to have merit and should proceed subject to conditions.

1. INTRODUCTION

LGA	Clarence Valley
PPA	Clarence Valley Council
NAME	Amend the lot size map at Mountain View Estate and Cronin Estate to facilitate the retention of the existing dwelling entitlements (0 homes, 0 jobs)
NUMBER	PP_2020_CLARE_003_00
LEP TO BE AMENDED	Clarence Valley LEP 2011
ADDRESS	Mountain View Estate (10 lots) and 8A Cronin Avenue, Junction Hill (1 lot)
DESCRIPTION	Lots 13, 23, 24, 25, 28, 29, 30, 31, 32, 36 DP 1244553 and Lot 132 DP1263591
RECEIVED	3 August 2020
FILE NO.	IRF20/3938
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

1.1 Description of planning proposal

The planning proposal seeks to amend the minimum lot size map for the Mountain View Estate (10 lots) and Lot 132 DP1263591, in the Cronin Estate, to facilitate the retention of the existing dwelling entitlements beyond 23 December 2021.

1.2 Site description

Mountain View Estate is a 43 large lot residential estate approved under the Copmanhurst LEP 1990 (CLEP 1990). It is approximately 10km north of Grafton CBD and west of the Summerland Way and is approximately 1km east of the Clarence River. Scattered trees are present within the predominantly cleared estate and established forested areas are to the north and west of the estate. Nine lots of Stage 2 and one lot from Stage 1 of the estate are the subject of this planning proposal (Figures 1 and 2). All roads, major stormwater and water reticulation within the estate have been completed and registered. Stage 2 is in the process of being registered.

The Cronin Estate is a 22 large lot residential estate also approved under the CLEP 1990. It is approximately 5km north of Grafton CBD and approximately 1.5km east of the Clarence River.

The estate is situated on the southern boundary of the Junction Hill village and is otherwise surrounded by agricultural land that is predominantly cleared of vegetation (Figures 1 and 3).



Figure 1 – Location of Mountain View and Cronin Estates



Lot No.	DP No.	Size in m ²
13	1244553	3,087
23		3,774
24		3,552
25		3,386
28		3,696
29		3,600
30		3,600
31		3,969
32		3,201
36		2,724

Identified Lots (Figure 2)

Figure 2 – Mountain View Estate subject lots (highlighted)

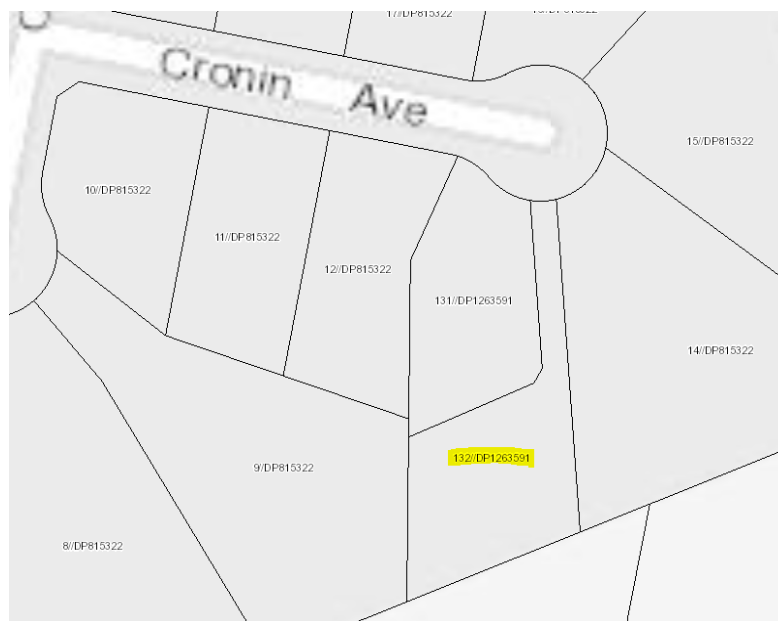


Figure 3 – Cronin Estate subject Lot 132 DP1263591 (highlighted)


Mountain View Estate	
Zoning under CVLEP 2011	Zoning under CLEP 1990
	
Lot size under CVLEP 2011	Lot size under CLEP 1990
	<p>clause 20 of the Copmanhurst LEP enabled the subdivision of 1(c) land into lots as small as 2,000m² provided that a majority of the allotments to be created had an area of not less than 4,000 square metres.</p>

Figure 4 – Mountain View Estate current CVLEP and previous CLEP zoning




Cronin Estate	
Zoning under CVLEP 2011	Zoning under CLEP 1990
	
Lot size under CVLEP 2011	Lot size under CLEP 1990
	<p>clause 20 of the Copmanhurst LEP enabled the subdivision of 1(c) land into lots as small as 2,000m² provided that a majority of the allotments to be created had an area of not less than 4,000 square metres.</p>

Figure 5 – Cronin Estate current CVLEP and previous CLEP zoning

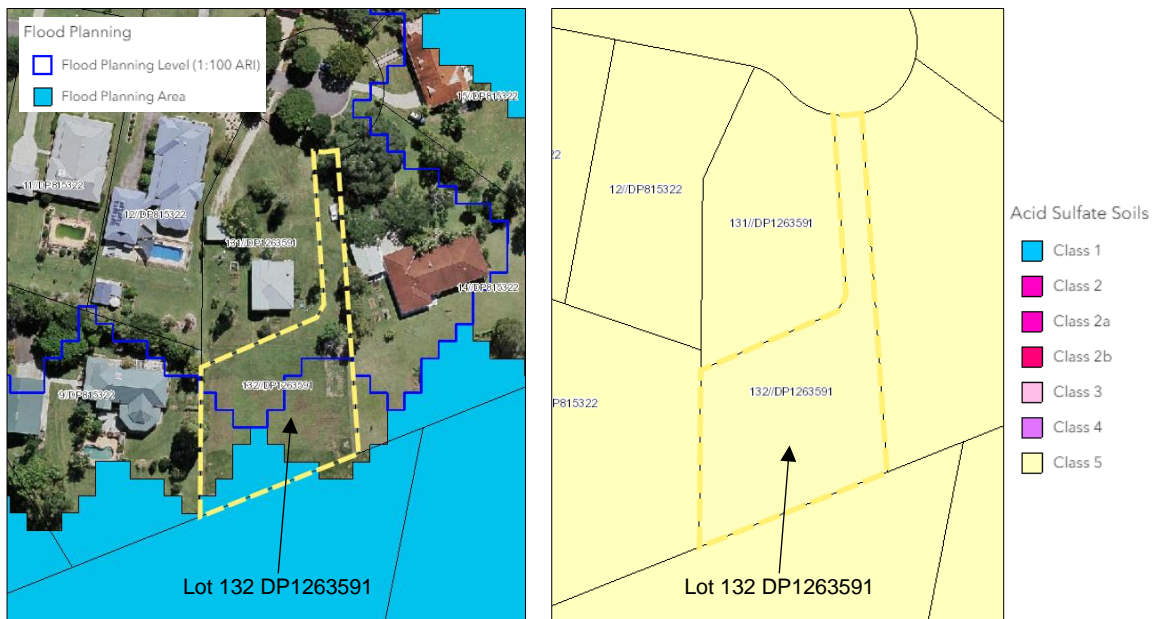


Figure 6 – Cronin Estate subject Lot 132 DP1263591
Flood Prone Land and Acid Sulfate Soils Class 5

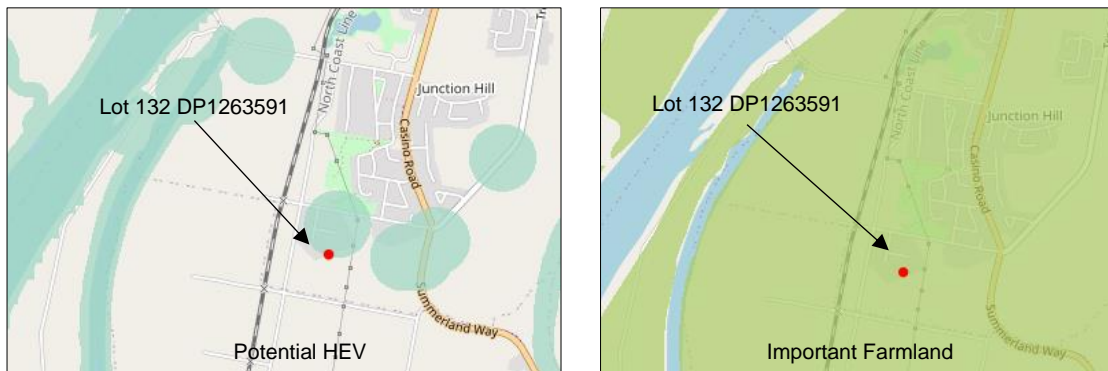


Figure 7 – Cronin Estate subject Lot 132 DP1263591
Potential HEV and Important Farmland (Regional Plan 2036)

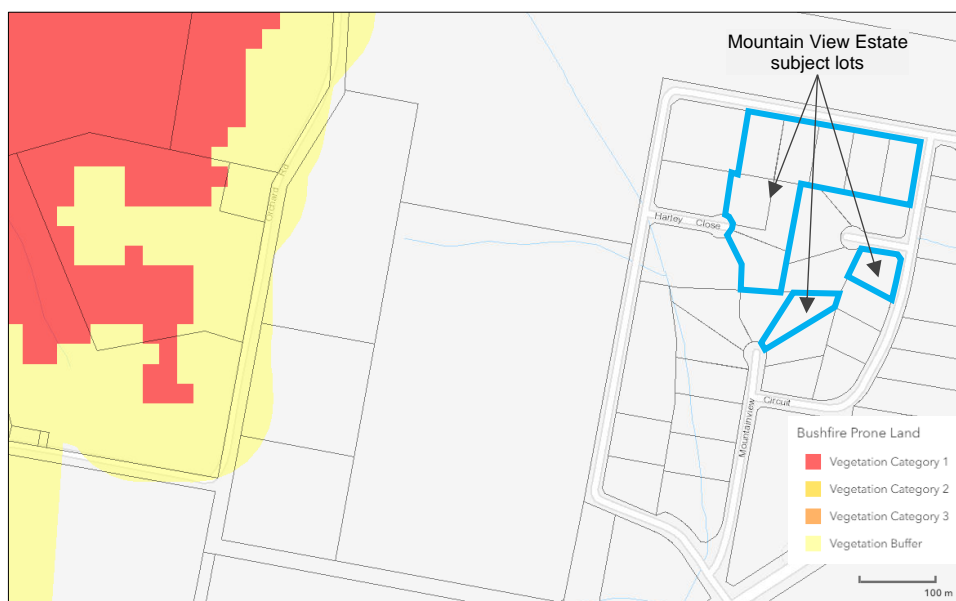


Figure 8 – Mountain View Estate subject lots
Proximity to Bushfire Prone Land

1.3 Existing planning controls

The Clarence Valley LEP 2011 (CVLEP 2011) zones both estates R5 Large Lot Residential and applies a minimum lot size of 4,000m². Previously, under the CLEP 1990 both estates were zoned 1(c) Rural (Small Holdings) (Figures 4 & 5).

CLEP 1990 allowed the subdivision of 1(c) zoned land as follows:

Subdivision and Dwelling-Houses in Zone No. 1(c)

20 (1) The council shall not consent to the subdivision of land within Zone No. 1(c) if the land is intended to be used for the purpose of the erection of dwelling-houses unless:

- (a) the area of each allotment to be created will be not less than 2000 square metres, and*
- (b) a majority of the allotments to be created will have an area of not less than 4000 square metres,*

The CLEP 1990 enabled both estates to be subdivided into lots as small as 2,000m² provided that a majority of the allotments to be created had an area of not less than 4,000m².

Under the CLEP 1990, Mountain View Estate was subdivided into a 43 lots, of which 19 lots (10 in Stage 1 and 9 in Stage 2) were between 2,000m² and 4,000m². One lot remains without approval for a dwelling in Stage 1. Stage 2 is proposed for 9 lots of between 2,000m² and 4,000m².

Under the CLEP 1990, Cronin Estate was subdivided into a 21 lots including a subsequent resubdivision of one lot, to create Lot 132 DP1263591. Lot 132 was issued consent on 20 September 2011 for subdivision by the Clarence Valley Shire Council and is 2,287m² in size.

The adoption of the CVLEP 2011 applied a minimum lot size for all lots in both estates of 4,000m² (Figures 4 & 5).

As the subject lots are below the 4000m² minimum lot size, the dwelling entitlements for these lots depend on clause 4.2B(3)(b) of the LEP which enables lots that could be built on prior to 2011 to still have a dwelling erected. There is however a time limit for the retention of dwelling entitlements for a period of 10 years after the commencement of the CVLEP 2011 outlined in clause 4.2B(4).

- 4.2B(4) Land ceases to be a lot referred to in subclause (3)(b), (c) or (f), or a holding referred to in subclause (3)(d), if an application for development consent referred to in subclause (3) is not made in relation to that land before the date 10 years after the commencement of this Plan.*

The CVLEP 2011 was adopted on 23 December 2011, meaning that subclause 4.2B(4) has an expiration date of 23 December 2021, meaning that dwellings will not be able to built on the subject lots under the current planning controls after that date.

Lot 132 at Cronin Estate is partially effected by flood prone land, has Class 5 acid sulfate soils (Figure 6), has some identified potential High Environmental Value land and is mapped as important farmland in the Regional Plan (Figure 7).

Neither Mountain View Estate or Cronin Estate are mapped as bushfire prone land, however Mountain View Estate is within 700m from land with mapped Vegetation Category 1 bushfire prone land (Figure 8).

1.4 Surrounding area

The immediate vicinity of Lot 132 Cronin Estate is the Junction Hill village, established large lot residential housing and agricultural land.

Mountain View Estate is an existing large lot residential area located approximately 10km north of Grafton off the Summerland Way. There is forested areas to the north and west of the Estate and Summerland Way is to the east.

1.4 Summary of recommendation

It is recommended that the proposal proceed subject to conditions as it is considered the best way to facilitate the subject lots retaining their existing dwelling entitlements under the CVLEP 2011 beyond 23 December 2021.

2. PROPOSAL

2.1 Objectives or intended outcomes

The objective of the proposal is to amend the minimum lot size maps of the CVLEP 2011 to include a new standard minimum lot size of 2,000m² for the subject lots in the Mountain View Estate (10 lots) and Cronin Estate (1 lot) to facilitate the retention of the existing dwelling entitlements beyond the sunset clause 4.2B(4) expiration of 23 December 2021.

It is noted that the proposed 2,000m² minimum lot size would however potentially also allow the further subdivision of Lot 31 in the Mountain View Estate by utilising clause 4.6 of the CVLEP 2011. To be consistent with the intent of the proposal, it is recommended prior to agency and community consultation, that the proposal be amended to apply a 2,500m² minimum lot size to the subject lots in the Mountain View Estate to limit any further subdivision. Council staff have advised they support the adoption of a 2,500m² minimum lot size for the subject lots.

2.2 Explanation of provisions

The objective of the proposal will be achieved by amending the CVLEP 2011 Lot Size Map Sheet LSZ_007 to include a new standard minimum lot size for the subject lots.

As noted above, the explanation of provisions will need to be amended prior to community and agency consultation to include a 2500m² minimum lot size for the lots in the Mountain View Estate to prevent any further subdivision.

The proposal will also need to update the objectives of the planning proposal 3(ii) to replace 'subject land' with 'Lot 132 DP1263591' prior to public exhibition and community consultation.

There are no other proposed changes to the zoning of any of the subject sites or other development controls in the CVLEP 2011 applying to the sites.

2.3 Mapping

The proposal includes only images of the current lot size maps at Annexure A and Annexure B. The images are illegible and new maps showing the current lot size will be required for both estates prior to public consultation.

Council has included proposed draft maps which identify the subject sites; however, amendments prior to public exhibition will be required as follows:

- amend proposed LSZ_007H to show Lot 132 DP 1263591 with a 2,000m² minimum lot size labelled 'V1'; and
- amend the Mountain View Estate site identification map and proposed LSZ_007 map to include Lot 13 DP1244553 identified with a 2,500m² minimum lot size labelled 'V2' corresponding to the Mountain View Estate subject lots.

Maps consistent with the Standard Technical Requirements will also need to be prepared before the making of the LEP amendment.

3. NEED FOR THE PLANNING PROPOSAL

The proposal is not the result of any strategic study or report.

The proposal has arisen due to the subject lots being due to lose their existing dwelling entitlements in December 2021. Clause 4.2B(4) in CVLEP 2011 states that if a development application (DA) has not been lodged '*before the date 10 years after the commencement of this Plan*', being 23 December 2021, and has the effect of preventing Council from granting consent to dwelling houses on vacant lots in these estates that are less than 4,000m² without the use of a clause 4.6 variation and the agreement of the Department. Whilst the use of clause 4.6 has some merit it can cause uncertainty for potential purchasers of land. This approach is therefore not considered appropriate in this instance.

The proposal also discusses the possibility of applying a minimum lot size of 2,000m² to the entire Mountain View Estate, however, this opens the opportunity to allow any lots greater than 4,000m² to be further subdivided. This is not considered to be an appropriate approach.

As noted above, applying the proposed 2,000m² minimum lot size to only the subject lots could potentially still allow the further subdivision of Lot 31 in the Mountain View Estate. It is therefore considered that amending the proposal to apply a 2,500m² minimum lot size to the subject land in the Mountain View Estate to limit any further subdivision is more appropriate and consistent with the intent of the proposal.

4. STRATEGIC ASSESSMENT

4.1 State

The planning proposal does not contain any matters of state or regional significance and is not inconsistent with the Premier's Priorities.

4.2 Regional / District

The proposal is inconsistent with Direction 2 Enhance biodiversity, coastal and aquatic habitats, and water catchments of the North Coast Regional Plan 2036 as the Cronin Estate has an area of potential HEV land and important farmland (Figure 7). This is considered to be of minor significance as the subject lot is part of an already approved rural residential area and was identified in the Mid North Coast Farmland Mapping Project 2008 as a proposed urban area.

It is also noted that the proposal is consistent with the principles of Direction 24 as both estates are planned rural residential release areas and are not in the sensitive coastal strip identified in the Plan.

4.3 Local

Mountain View and Cronin Estates were approved under the CLEP 1990. Retention of the dwelling entitlements for all the lots within these estates is considered consistent with the existing local approvals for the land.

4.4 Section 9.1 Ministerial Directions

The proposal is considered to be consistent with all relevant s9.1 Directions except:

4.1 Acid Sulfate Soils

The planning proposal is inconsistent with this Direction as Lot 132 DP1263591 in the Cronin Estate contains acid sulfate soils and is not supported by an acid sulfate soils study. The inconsistency is considered to be of minor significance as CVLEP 2011 contains existing provisions (Clause 7.1) that allow this matter to be adequately addressed at the development application stage.

4.3 Flood Prone Land

The proposal is inconsistent with this Direction as it permits the development of flood prone land at Lot 132 DP1263591 Cronin Estate. The inconsistency is considered to be of minor significance as:

- the land is only partially flood affected;
- sufficient land outside of the flood area for a building envelope is available; and
- a dwelling can currently be considered on the land until December 2021.

5.10 Implementation of Regional Plans

The proposal is considered to be justifiably inconsistent with the Regional Plan as discussed above and therefore of minor significance.

4.5 State environmental planning policies (SEPPs)

The proposal is considered to be consistent with all applicable SEPPs.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

It is considered that there will be positive social impacts by permitting the land to be used consistent with the already approved rural residential estates.

5.2 Environmental

The subject sites are predominantly cleared land. Both areas are already approved rural residential areas and are only seeking, in this proposal, to retain the existing dwelling entitlements and as such there are no environmental impacts on the subject lots that can't be adequately considered at the development application stage.

5.3 Economic

The retention of all the lots keeping their dwelling entitlements will allow for construction jobs for potential dwelling houses and the flow on economic benefits.

6. CONSULTATION

6.1 Community

The proposal has proposed a period of 14 days for community consultation. The proposal also states that written notification will be provided to landowners in the immediate vicinity of the subject land. As the estates are already approved, and the proposal is only altering the lot size map for the specific lots to retain their dwelling entitlements, this is considered an appropriate timeframe for exhibition.

6.2 Agencies

No agency consultation is considered necessary.

7. TIME FRAME

The proposal does not outline a proposed timeframe. It is considered that a nine month timeframe for completion of the LEP amendment would be appropriate.

Prior to public exhibition the proposal should be updated to include an appropriate timeframe for the completion of the LEP within nine months.

8. LOCAL PLAN-MAKING AUTHORITY

As the proposal deals only with matters of local significance and already approved subdivisions, it is considered appropriate that Council be provided authorisation to act as the local plan-making authority.

9. CONCLUSION

It is recommended that the proposal proceed subject to conditions as the proposal is seeking to facilitate the retention of dwelling entitlements beyond the expiration of the sunset clause being 23 December 2021 in two existing large lot residential estates.

10. RECOMMENDATION

It is recommended that the Director, as delegate of the Secretary:



1. **agree** that any inconsistency with section 9.1 Directions 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land and 5.10 Implementation of Regional Plans is justified in accordance with the terms of the Directions; and

It is recommended that the Director, as delegate of the Minister:

1. **note** the planning proposal (**Attachment A**);
2. **determine** that the planning proposal should proceed subject to the following conditions:
 1. The planning proposal should be made available for community consultation for a minimum of 14 days.
 2. Consultation is not required with any public authorities.

3. The time frame for completing the LEP is to be nine months from the date of the Gateway determination.
 4. Given the nature of the planning proposal, Council should be the local plan-making authority to make this plan.
 5. Prior to agency or community consultation, the proposal is to be amended to:
 - amend the proposal to apply a 2,500m² minimum lot size to the subject land in the Mountain View Estate;
 - amend the objectives of the planning proposal 3(ii) to replace 'subject land' with 'Lot 132 DP1263591';
 - include new legible current lot size maps for both subject areas;
 - amend proposed LSZ_007H to show Lot 132 DP 1263591 with a 2,000m² minimum lot size labelled 'V1';
 - amend the Mountain View Estate site identification map and proposed LSZ_007 map to include Lot 13 DP1244553 identified with a 2,500m² minimum lot size labelled 'V2' corresponding to the Mountain View Estate subject lots; and
 - update the project timeline to accurately reflect the Gateway determination and expected completion date.
3. **sign** the Gateway determination (**Attachment B**) noting that Clarence Valley Council is the local plan-making authority and the letter to Council (**Attachment C**).

Director Approval

 Craig Diss Manager, Local and Regional Planning Northern Region Date: 1/9/20	 Jeremy Gray Director, Northern Region Local and Regional Planning Date: 3-9-2020
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Assessment officer: Helen Willis
 Admin Para Planner, Northern
 Phone: 5778 1489

Attachments

Attachment	Title
A	Planning proposal
B	Gateway determination
C	Letter to Council
D	Site identification map and Proposed Lot Size Map