



31 June 2020

Reference: REZ2020/002  
Contact: Stephen Timms

Director, Northern Region  
Local and Regional Planning  
Department of Planning, Industry and Environment  
Locked Bag 9022  
Grafton NSW 2460

Dear Sir/Madam

**Planning Proposal to Amend CVLEP 2011 Lot Size Map as it applies to Mountainview Estate and Cronin Estate.**

Council has received a planning proposal to amend CVLEP 2011 Lot Size map as it applies to:

- Mountain View Estate – Summerland Way, Mountain View, and
- Lot 132 DP 1263591 (No. 8A) Cronin Avenue, Junction Hill

Council considered this matter at the February meeting, resolving to waive its rezoning application fees of approximately \$10,395 and the applicant prepare the planning proposal at their own cost.

Please find attached:

- Attachment 1 – information checklist
- Attachment 4 – Evaluation criteria for the delegation of plan making function
- Council report 6b.20.006

The Planning Proposal prepared by Rob Donges for A Fletcher & Assoc, registered subdivision and proposed LEP map changes are also included in separate documents on email to you.

Council now requests that the Department give consideration to the issue of a Gateway determination to the planning proposal.

If you require further information please contact me on 0400 446 576.

Kind regards,

Stephen Timms  
Senior Strategic Planner (Policy)  
[stephen.timms@clarence.nsw.gov.au](mailto:stephen.timms@clarence.nsw.gov.au)  
m. 0400 446 576

# ATTACHMENT 1 – INFORMATION CHECKLIST

## ▶ STEP 1: REQUIRED FOR ALL PROPOSALS

(under s55(a) – (e) of the EP&A Act)

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>Objectives and intended outcome</li> <li>Mapping (including current and proposed zones)</li> <li>Community consultation (agencies to be consulted)</li> </ul> | <ul style="list-style-type: none"> <li>Explanation of provisions</li> <li>Justification and process for implementation (including compliance assessment against relevant section 117 direction/s)</li> </ul> |
|--|--|

## ▶ STEP 2: MATTERS – CONSIDERED ON A CASE BY CASE BASIS

(Depending on complexity of planning proposal and nature of issues)

PLANNING MATTERS OR ISSUES	To be considered	N/A	PLANNING MATTERS OR ISSUES	To be considered	N/A
<b>Strategic Planning Context</b>			<ul style="list-style-type: none"> <li>Resources (including drinking water, minerals, oysters, agricultural lands, fisheries, mining)</li> <li>Sea level rise</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>Demonstrated consistency with relevant Regional Strategy</li> <li>Demonstrated consistency with relevant Sub-Regional strategy</li> <li>Demonstrated consistency with or support for the outcomes and actions of relevant DG endorsed local strategy</li> <li>Demonstrated consistency with Threshold Sustainability Criteria</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>			
	<input type="checkbox"/>	<input type="checkbox"/>	<b>Urban Design Considerations</b>		
	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> <li>Existing site plan (buildings vegetation, roads, etc)</li> <li>Building mass/block diagram study (changes in building height and FSR)</li> <li>Lighting impact</li> <li>Development yield analysis (potential yield of lots, houses, employment generation)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<b>Economic Considerations</b>		
<b>Site Description/Context</b>			<ul style="list-style-type: none"> <li>Economic impact assessment</li> <li>Retail centres hierarchy</li> <li>Employment land</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>Aerial photographs</li> <li>Site photos/photomontage</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Social and Cultural Considerations</b>		
<b>Traffic and Transport Considerations</b>			<ul style="list-style-type: none"> <li>Heritage impact</li> <li>Aboriginal archaeology</li> <li>Open space management</li> <li>European archaeology</li> <li>Social &amp; cultural impacts</li> <li>Stakeholder engagement</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>Local traffic and transport</li> <li>TMAP</li> <li>Public transport</li> <li>Cycle and pedestrian movement</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Infrastructure Considerations</b>		
	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> <li>Infrastructure servicing and potential funding arrangements</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Environmental Considerations</b>			<b>Miscellaneous/Additional Considerations</b>		
<ul style="list-style-type: none"> <li>Bushfire hazard</li> <li>Acid Sulphate Soil</li> <li>Noise impact</li> <li>Flora and/or fauna</li> <li>Soil stability, erosion, sediment, landslip assessment, and subsidence</li> <li>Water quality</li> <li>Stormwater management</li> <li>Flooding</li> <li>Land/site contamination (SEPP55)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<i>List any additional studies</i>		
	<input type="checkbox"/>	<input type="checkbox"/>			
	<input type="checkbox"/>	<input type="checkbox"/>			
	<input type="checkbox"/>	<input type="checkbox"/>			
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	<input type="checkbox"/>	<input type="checkbox"/>			



## A guide to preparing planning proposals

## Attachment 4 – Evaluation criteria for the delegation of plan making functions

### Checklist for the review of a request for delegation of plan making functions to councils

Local Government Area:

Clarence Valley Council

Name of draft LEP:

Amend CVLEP 2011 Lot Size Map as it applies to Mountainview Estate and Cronin Estate.  
REZ 2020/002

Address of Land (if applicable):

Mountainview Estate - Summerland Way, Mountain View  
Lot 132 DP 1263591 (No. 8A) Cronin Avenue, Junction Hill

Intent of draft LEP:

Amendments to minimum lot size provisions in the LEP, to allow 10 lots in Mountainview Estate to retain their dwelling entitlements beyond 23 December 2021 and allow Lot 132 DP 1263591 to retain its dwelling entitlement beyond 23 December 2021.

Additional Supporting Points/Information:

The planning proposal and attached documents provide necessary information.



Evaluation criteria for the issuing of an Authorisation				
(NOTE - where the matter is identified as relevant and the requirement has not been met, council is attach information to explain why the matter has not been addressed)	Council response		Department assessment	
	Y/N	Not relevant	Agree	Not agree
Is the planning proposal consistent with the Standard Instrument Order, 2006?	Y			
Does the planning proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	Y			
Are appropriate maps included to identify the location of the site and the intent of the amendment?	Y			
Does the planning proposal contain details related to proposed consultation?		N/A		
Is the planning proposal compatible with an endorsed regional or sub-regional planning strategy or a local strategy endorsed by the Director-General?	Y			
Does the planning proposal adequately address any consistency with all relevant S117 Planning Directions?	Y			
Is the planning proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	Y			
<b>Minor Mapping Error Amendments</b>	Y/N			
Does the planning proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?		N/A		
<b>Heritage LEPs</b>	Y/N			
Does the planning proposal seek to add or remove a local heritage item and is it supported by a strategy/study endorsed by the Heritage Office?		N/A		
Does the planning proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?		N/A		
Does the planning proposal potentially impact on an item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?		N/A		
<b>Reclassifications</b>	Y/N			
Is there an associated spot rezoning with the reclassification?		N/A		
If yes to the above, is the rezoning consistent with an endorsed Plan of Management (POM) or strategy?				
Is the planning proposal proposed to rectify an anomaly in a classification?		N/A		
Will the planning proposal be consistent with an adopted POM or other strategy related to the site?		N/A		
Will the draft LEP discharge any interests in public land under section 30 of the <i>Local Government Act, 1993</i> ?		N/A		

If so, has council identified all interests; whether any rights or interests will be extinguished; any trusts and covenants relevant to the site; and, included a copy of the title with the planning proposal?		N/A		
Has the council identified that it will exhibit the planning proposal in accordance with the department's Practice Note (PN 09-003) <i>Classification and reclassification of public land through a local environmental plan and Best Practice Guideline for LEPs and Council Land</i> ?		N/A		
Has council acknowledged in its planning proposal that a Public Hearing will be required and agreed to hold one as part of its documentation?		N/A		
<b>Spot Rezoning</b>	Y/N			
Will the proposal result in a loss of development potential for the site (ie reduced FSR or building height) that is not supported by an endorsed strategy?		N/A		
Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?		N/A		
Will the planning proposal deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?		N/A		
If yes, does the planning proposal contain sufficient documented justification to enable the matter to proceed?		N/A		
Does the planning proposal create an exception to a mapped development standard?		N/A		
<b>Section 73A matters</b>				
Does the proposed instrument		N/A		
a. correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error?;	Y			
b. address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?; or				
c. deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land?	Y			
<b>(NOTE - the Minister (or Delegate) will need to form an Opinion under section 73(A)(1)(c) of the Act in order for a matter in this category to proceed).</b>				
<b>NOTES</b> <ul style="list-style-type: none"> <li>Where a council responds 'yes' or can demonstrate that the matter is 'not relevant', in most cases, the planning proposal will routinely be delegated to council to finalise as a matter of local planning significance.</li> <li>Endorsed strategy means a regional strategy, sub-regional strategy, or any other local strategic planning document that is endorsed by the Director-General of the department.</li> </ul>				

ITEM	6b.20.006	LOT SIZE ISSUE – MOUNTAIN VIEW ESTATE AND CRONIN ESTATE
<b>Meeting</b>	Environment, Planning & Community Committee	18 February 2020
<b>Directorate</b>	Environment, Planning & Community	
<b>Reviewed by</b>	Manager - Environment, Development & Strategic Planning (Adam Cameron)	
<b>Attachment</b>	Yes	

## SUMMARY

This report considers whether Council should remedy a future “lot size” issue for a select number of lots in the Mountain View Estate and Cronin Estate developments in the former Copmanhurst Shire.

## OFFICER RECOMMENDATION

That Council waive its rezoning application fees and the applicant prepare the planning proposal at their own cost.

## COMMITTEE RECOMMENDATION

Baker/Simmons

That Council waive its rezoning application fees of approximately \$10,395 and the applicant prepare the planning proposal at their own cost.

Voting recorded as follows:

For: Williamson, Simmons, Novak, Baker

Against: Clancy

## COUNCIL RESOLUTION – 6b.20.006

Ellem/Novak

**That Council waive its rezoning application fees of approximately \$10,395 and the applicant prepare the planning proposal at their own cost.**

Voting recorded as follows:

For: Simmons, Baker, Ellem, Novak, Williamson, Lysaught, Toms, Clancy

Against: Nil

## LINKAGE TO OUR COMMUNITY PLAN

Theme 5 Leadership

Objective 5.1 We will have a strong, accountable and representative Government

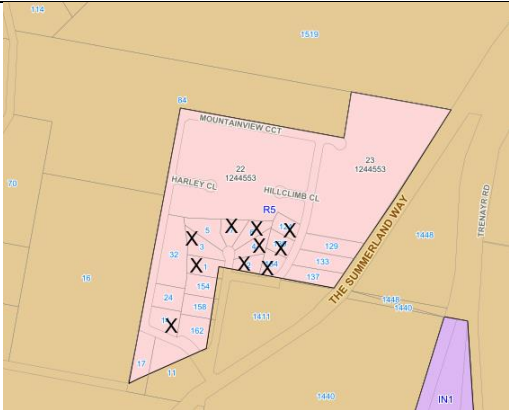


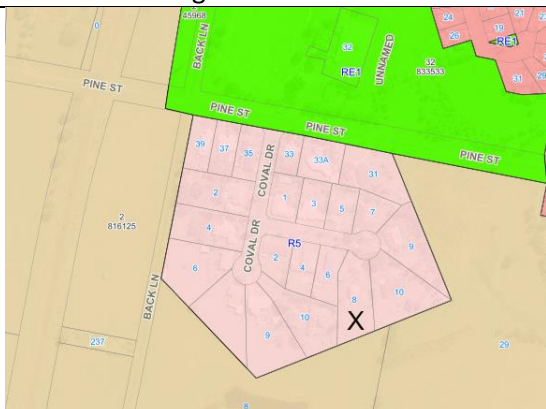

Strategy 5.1.4 Ensure transparent and accountable decision making for our community

## BACKGROUND

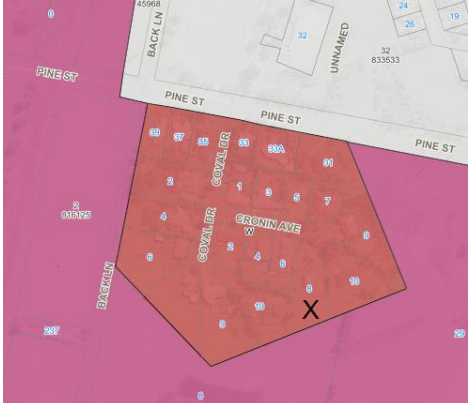
In November 2017 A. Fletcher & Associates (the Applicant) drew Council’s attention to a looming “lot size” issue associated with some lots in the Mountain View Estate and Cronin Estate developments. The particular issue is outlined further in KEY ISSUES below.

Currently, both estates are zoned R5 Large Lot Residential and subject to a Lot Size of 4,000m<sup>2</sup> on the Lot Size map. Prior to this both areas were zoned 1 (c) Rural (Small Holdings) under the former Copmanhurst Local Environmental Plan 1990. Further, clause 20 of the Copmanhurst LEP 1990 enabled the subdivision of 1(c) land into lots as small as 2,000m<sup>2</sup> provided that a majority of the allotments to be created had an area of not less than 4,000 square metres.

A copy of correspondence from the applicant in relation to this matter is at Attachment 1.

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

## KEY ISSUES

The key issues include future dwelling permissibility on lots in the Mountain View Estate and Cronin Estate less than 4,000m<sup>2</sup> after 23 December 2021. The other principal issue is the question of strategic justification.

### Dwelling permissibility after 23 December 2021

On 22 November 2017 the applicant wrote to Council to draw attention to a looming “lot size” issue associated with some lots in the Mountain View Estate and Cronin Estate developments.

The essence of the applicant’s principal concern is that some current lots and yet to be created lots in these estates will lose the ability to have a dwelling house to be approved upon them if a development application is not lodged before the 10 year sunset date specified in clause 4.2B(4) of the Clarence Valley LEP 2011. This situation is explained more in Comment below. The applicant has requested Council to take action to amend the LEP to remedy the situation. The applicant believes that the sunset provisions were not intended to affect these types of lots.

### Comment

The situation can be summarised as follows:

- (i) Both the Mountain View Estate and Cronin Estate developments are zoned R5 Large Lot Residential and are subject to a Lot Size 4,000m<sup>2</sup> on the Lot Size map under the Clarence Valley LEP 2011 (CVLEP 2011). Refer to maps in the table above. The 4,000m<sup>2</sup> “development standard” on the Lot Size map applies to both subdivision and dwelling houses. In the case of dwelling houses it is expressed in clause 4.2B(3)(a) of the LEP, a copy of which is at Attachment 2.
- (ii) Prior to the CVLEP 2011 both areas were zoned 1(c) Rural (Small Holdings) under the former Copmanhurst Local Environmental Plan 1990 (CLEP). Further, clause 20 of the CLEP enabled the subdivision of 1(c) zoned land into lots as small as 2,000m<sup>2</sup> provided that a majority of the allotments to be created had an area of not less than 4,000m<sup>2</sup>. Refer to maps in the table above. A copy of clause 20 is at Attachment 3.
- (iii) Both estates have been approved for subdivision and subdivided in accordance with the former CLEP provisions resulting in some cases with both current lots and future lots with areas between 2,000m<sup>2</sup> and 4,000m<sup>2</sup>. These lots (current lots only) are marked with an X on the maps in the table above.
- (iv) Despite the current 4,000m<sup>2</sup> “development standard” on the CVLEP Lot Size map, Council is currently able to grant consent to dwelling houses on vacant lots in these estates that are less than 4,000m<sup>2</sup>

under the provisions of clause 4.2B(3)(b) and (c) of the CVLEP. However, the 10 year “sunset provision” in clause 4.2B(4) will prevent Council from granting consent to dwelling houses on vacant lots in these estates that are less than 4,000m<sup>2</sup> after 23 December 2021 if a development application (DA) has not been lodged before 23 December 2021.

#### Reason

The sunset provision in the exhibited draft Clarence Valley LEP 2010 was 5 years. The rationale for a sunset provision for dwelling entitlement is contained in the draft CVLEP Background Paper for Rural Zones. Although the land at Mountain View and Cronin Estates is now zoned R5 Large Lot Residential, the zoning under the former CLEP, as explained above was 1 (c) Rural (Small Holdings). Therefore, the proposed zoning and other provisions for the proposed CVLEP were discussed in a Rural Zones Background Paper.

The standard LEP did not address the issue of dwelling eligibilities in rural zones. Therefore, it was recommended that a local provisions clause be included in the CV Draft Integrated LEP 2007 based on the Council endorsed approach for dwelling eligibilities. In order to enable property owners to make use of existing provisions for dwelling houses for a limited time period, specific provisions were proposed to be included in the LEP clause to allow existing LEP controls for dwelling controls where the lot was approved by Council for a dwelling house to apply for up to 3 years (as was proposed in the Background Paper at the time). The inclusion of a time limit for the exercise of dwelling eligibilities for undersized rural lots appears to be more associated with the issues and difficulty with maintaining a dwelling entitlement that may have existing a long time ago including that a non-time limited dwelling eligibilities would keep facilitating rural settlement into inappropriate areas. Council supported a longer sunset period of 10 years when it resolved (in September 2010) to adopt the draft CVLEP 2010, which became the CVLEP 2011.

- (v) Mountain View Estate – in the current released stage (DP1244553) of 18 lots there are 10 lots less than 4,000m<sup>2</sup>. Of these 10 lots, 9 of the lots already have approved DAs or complying development applications for dwelling houses on them. A further 25 approved lots remain to be released of which 9 will be less than 4,000m<sup>2</sup>. This amounts to a total of 10 lots less than 4,000m<sup>2</sup> that will be affected by the lapsing of the LEP dwelling house “sunset provisions” on 23 December 2021 if a DA has not been lodged and/or approved before that date.
- (vi) Cronin Estate – only one lot (8 Cronin Avenue) will be affected by the lapsing of the LEP dwelling house “sunset provisions” on 23 December 2021 if a DA has not been lodged and/or approved before that date.

In October 2018 the applicant was advised that the situation he had raised had merit and it is something that “Council can tackle that an *in a house keeping amendment planning proposal, most likely in 2019*”. Due to competing priorities the housekeeping amendment was not undertaken in 2019 and the applicant has again questioned when the work will be undertaken.

In an effort to progress the matter, it was proposed to the applicant that his client has *the option of exercising clause 4.6 Exceptions to development standards of the LEP to request a variation of the lot size development standard in individual circumstances, after December 2021*.

*It was further advised that other options include:*

- (i) *Council outsourcing the preparation of a planning proposal at the cost to yourself or client/s.*
- (ii) *A planning proposal being prepared and lodged by you or your clients or on behalf of yourself or you client/s.*

In response to this the applicant advised that:

- It is unacceptable that (his) clients pay to have the LEP amended given that Council made the mistake by not including the 2,000m<sup>2</sup> minimum in the lot size mapping at the time the CVLEP 2011 was being prepared and gazetted.
- It is unacceptable that the purchasers of these lots have to go through the “lottery” of Clause 4.6. Council should accept that they’ve made a mistake (or oversight) and get it fixed asap. If Council haven’t got the resources to do the amendment then CVC should be outsourcing the preparation of the planning proposal at Council cost.

### **Strategic justification and addressing statutory requirements**

A planning proposal that seeks a change to the LEP to permit the erection of dwelling houses on vacant lots in these estates that are less than 4,000m<sup>2</sup> after 23 December 2021 should provide adequate strategic justification, at least in the context of the following:

- (i) Department of Planning Industry and Environment’s *“A guide to preparing planning proposals”* December 2018
- (ii) Ministers section 9.1 Directions
- (iii) North Coast Regional Plan 2036
- (iv) State Environmental Planning Policies (SEPPs)

As adequate strategic justification is not apparent in this matter, a planning proposal is best prepared and lodged by a private proponent or applicant where the proponent can attempt to outline the strategic justification and also where the cost of any additional studies and investigations that may be required by a gateway determination is borne by the proponent/benefiting party or parties. Possible additional studies/investigations that might be required by the Department of Planning, Industry and Environment for a gateway determination could include, but may not be limited to, an Aboriginal cultural heritage assessment and Stage 1 Preliminary Investigation (Land Contamination).

It is also best that a privately lodged planning proposal:

- Outline the objectives or intended outcomes of the proposal (Part 1 of any planning proposal as per the DPIE guidelines);
- Provide the explanation of provisions (Part 2 of any planning proposal as per the DPIE guidelines); this is a more detailed statement of how the objectives or intended outcomes are to be achieved by means of amending an existing LEP.

A planning proposal would need to indicate how the LEP could be amended to achieve the desired or intended outcomes particularly for those lots at the Mountain View Estate that have not as yet been released/created.

### **Alternative solutions**

A feasible solution that avoids the need for a planning proposal is the option of exercising clause 4.6 Exceptions to development standards of the LEP as part of the DA process to request a variation of the lot size development standard in individual circumstances, after December 2021.

This would apply in the case where the LEP is not amended to change the dwelling house lot size in respect of those lots with lot sizes of between 2,000m<sup>2</sup> and 4,000m<sup>2</sup>. It would mean in such circumstances that a DA for a dwelling house for such lots would after 23 December 2021 also be accompanied by a “clause 4.6 objection” to the 4,000m<sup>2</sup> development standard. This would essentially comprise a written request (as part of the DA for a house) for Council to vary the 4,000m<sup>2</sup> development standard including the provision grounds of objection to the development standard.

Council staff have delegation to approve a variation of the development standard of up to 10% of a particular standard; therefore after 23 December 2021 Council development assessment staff will be able to readily approve, under delegation, a DA for a dwelling house on a lot of between 3,600m<sup>2</sup> and 3,999m<sup>2</sup>

in the Mountain View and Cronin Estates. For the lots that are between 2,000m<sup>2</sup> and 3,599m<sup>2</sup> DAs for dwelling houses will need to be referred to the Department of Planning, Industry and Environment (DPIE) for concurrence before Council can grant consent to such DAs.

The applicant has rejected this approach on the basis that it creates uncertainty on the applicable development standard for prospective purchasers of the impacted lots.

### Options

The options available to Council include:

- Option 1 - That the applicant pay for the planning proposal (including Council rezoning application fees).
- Option 2 - That Council waive its rezoning application fees and the applicant prepare the planning proposal at their own cost.
- Option 3 - That Council take no action in respect of a planning proposal to amend the LEP.
- Option 4 - Council prepares the planning proposal and exempts the applicant from rezoning fees.

### COUNCIL IMPLICATIONS

#### Budget/Financial

Below is an estimate of the costs associated with the options identified above.

Option	Cost components	Total cost (minimum)
Option 1	<p>\$5,000 - basic planning proposal (excluding studies/investigations<sup>#</sup> that the gateway may require).</p> <p>\$10,395 - total of Council rezoning fees (initial lodgement fee is \$3,551).</p>	\$15,395 cost to the applicant (Council fees plus estimate for a planning proposal#).
Option 2	\$5,000 - estimated as a bare minimum for a basic planning proposal, excluding studies/investigations <sup>#</sup> that the gateway may require.	\$5,000 is considered the minimum cost to the applicant.
Option 3	Nil	Minor costs would be absorbed through Council operational budgets.
Option 4	<p>\$5,000 - basic planning proposal (excluding studies/investigations<sup>#</sup> that the gateway may require).</p> <p>\$10,395 - total of Council rezoning fees (initial lodgement fee is \$3,551) in lost revenue for Council.</p>	\$15,395 cost to the applicant (Council fees plus estimate for a planning proposal#).
Note: <sup>#</sup> Indicative cost only excluding environmental studies, if required. The scope of the planning proposal would be determined by the Department of Planning, Industry and Environment, through the gateway process.		

#### Asset Management

N/A

#### Policy or Regulation

Environmental Planning and Assessment Act 1979  
 Clarence Valley Local Environmental Plan 2011  
 Copmanhurst Local Environmental Plan 1990

**Consultation**

Council staff and the applicant have exchanged several emails on this matter.

**Legal and Risk Management**

There is a risk that any planning proposal, regardless of whether it is prepared by Council or by a private party, may be refused at the planning gateway.

**Climate Change**

N/A

Prepared by	Terry Dwyer, Strategic Planning Coordinator
Attachment	<ol style="list-style-type: none"><li>1. Email correspondence from A. Fletcher &amp; Associates</li><li>2. Clause 4.2B, CVLEP 2011</li><li>3. Clause 20, Copmanhurst LEP 1990</li></ol>

**Terry Dwyer**

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**From:** A Fletcher @ Associates <afletch@hotmail.net.au>  
**Sent:** Friday, 21 September 2018 5:21 PM  
**To:** Terry Dwyer  
**Cc:** David Morrison; Scott Lenton  
**Subject:** FW: Sunset Clause for Old Copmanhurst Shire Rural Residential Lots at Cronin estate & Mountainview

**Importance:** High

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**@Attachments:** <?xml version="1.0" encoding="utf-8"?>  
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</aftermail>

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Hi Terry et al

Spoke to you about this matter yesterday Terry & to Scott about a month ago.

Has any thought or decision been made about this matter?

Look forward to your earliest response as "time is ticking".

regards

Andrew Fletcher

A.Fletcher & Associates Pty Ltd

Consulting Surveyors

P.O.Box 1213, Grafton. 2460

(02)66423300 Mob.0417 446 977

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**From:** A Fletcher @ Associates [<mailto:afletch@hotmail.net.au>]

**Sent:** Wednesday, 22 November 2017 4:21 PM

**To:** 'Scott Lenton'

**Cc:** 'David Morrison'

**Subject:** Sunset Clause for Old Copmanhurst Shire Rural Residential Lots at Cronin estate & Mountainview

**Importance:** High

Hi Scott/Dave

We've just become aware that the sunset clause may apply to the approved lots in these 2 estates that are less than 4000m2. As you are aware the Copmanhurst LEP permitted both 2000m2 & 4000m2 lots provided the majority of lots were 4000m2. As far as we are aware these are the only 2 estates in Copmanhurst Shire that had this particular zoning. The current minimum lot size shown on the Lot Size map is 4000m2 in both estates.

In the Mountainview Estate there are some 17 lots that are less than 4000m2 &, of these, 11 are less than 3,600m2.

In the Cronin Estate most lots are already built on, however we have a client

who has a current approval to subdivide their property into 2 x 2000m<sup>2</sup> lots (DASUB2011/0036) & has commencement on that subdivision.

Are you guys aware of this situation &, if not, will CVC do something to amend the lot size maps for these two land parcels? If you are aware, are you going to take steps to ensure that the sunset clause won't apply as we're fairly sure the clause wasn't intended to catch these particular, "unique" lots.

Await your earliest advice in relation to this matter.

regards

Andrew Fletcher

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## Clarence Valley Local Environmental Plan 2011

Current version for 15 January 2020 to date (accessed 7 February 2020 at 08:20)

[Part 4](#) ▶ [Clause 4.2B](#)

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### **4.2B Erection of dwelling houses and dual occupancies on land in certain rural, residential and environmental protection zones**

- (1) The objectives of this clause are as follows—
  - (a) to minimise unplanned rural residential development,
  - (b) to enable the replacement of lawfully erected dwelling houses and dual occupancies in rural, residential and environmental protection zones,
  - (c) to control rural residential density affected by historical subdivision patterns in Zone R5 Large Lot Residential.
- (2) This clause applies to land in the following zones—
  - (a) Zone RU1 Primary Production,
  - (b) Zone RU2 Rural Landscape,
  - (c) Zone RU3 Forestry,
  - (d) Zone R5 Large Lot Residential,
  - (e) Zone E3 Environmental Management.
- (3) Development consent must not be granted for the erection of a dwelling house or dual occupancy on land to which this clause applies, and on which no dwelling house or dual occupancy has been erected, unless the land is—
  - (a) a lot that is at least the minimum lot size specified for that land by the [Lot Size Map](#), or
  - (b) a lot created before this Plan commenced and on which the erection of a dwelling house or dual occupancy was permissible immediately before that commencement, or
  - (c) a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling house or dual occupancy would have been permissible if the plan of subdivision had been registered before that commencement, or
  - (d) an existing holding, or
  - (e) a lot created under clause 4.1A(4), or
  - (f) a lot created following a boundary adjustment, but only if a dwelling house or dual occupancy could be erected on the lot immediately before that boundary adjustment under paragraph (a), (b), (c), (d) or (e).

**Note.** A dwelling cannot be erected on a lot created under clause 9 of [State Environmental Planning Policy \(Rural Lands\) 2008](#) or clause 4.2.



- (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.
- (5) Despite subclause (3), development consent may be granted for the erection of a dwelling house or dual occupancy on land to which this clause applies if—
- (a) there is a lawfully erected dwelling house or dual occupancy on the land and the dwelling house or dual occupancy to be erected is intended only to replace the existing dwelling house or dual occupancy, or
  - (b) the land would have been a lot or a holding referred to in subclause (3) had it not been affected by—
    - (i) a minor realignment of its boundaries that did not create an additional lot, or
    - (ii) a subdivision creating or widening a public road or public reserve or for another public purpose.
- (6) In this clause—

***existing holding*** means land that—

- (a) was a holding on the relevant date, and
- (b) is a holding at the time the application for development consent referred to in subclause (3) is lodged,

whether or not there has been a change in the ownership of the holding since the relevant date, and includes any other land adjoining that land acquired by the owner since the relevant date.

***holding*** means all adjoining land, even if separated by a road or railway, held by the same person or persons.

***relevant date*** means—

- (a) in the case of land to which the *Copmanhurst Local Environmental Plan 1990* applied immediately before the commencement of this Plan—4 June 1971, or
- (b) in the case of land to which the *Ulmarra Local Environmental Plan 1992* applied immediately before the commencement of this Plan—5 September 1969, or
- (c) in the case of land to which the *Richmond River Local Environmental Plan 1992* applied immediately before the commencement of this Plan—18 February 1970.

**Note.** The owner in whose ownership all the land is at the time the application is lodged need not be the same person as the owner in whose ownership all the land was on the stated date.

## Attachment 3

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## Copmanhurst Local Environmental Plan 1990

**Repealed** version for 17 December 2010 to 22 December 2011 (accessed 7 February 2020 at 08:22)

Part 3 > Division 3 > Clause 20

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### 20 Subdivision and dwelling-houses in Zone No 1 (c)

- (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 2 000 square metres, and
  - (b) a majority of the allotments to be created will have an area of not less than 4 000 square metres, and
  - (c) each allotment will have frontage to a Class A Road, and
  - (d) the total number of lots created under this clause and clause 18 (2) in any 12 month period does not exceed the number specified in writing by the Director.
- (2) The council shall not consent to the creation of an allotment referred to in subclause (1) unless it will be connected to a reticulated water supply system and the council is satisfied that the allotment is capable of accommodating adequate facilities for the disposal of sewage and domestic waste.
- (3) The council shall not consent to the erection of a dwelling-house on an allotment of land within Zone No 1 (c) unless the allotment:
  - (a) was lawfully created or approved by the Council before, and is one on which a dwelling-house could lawfully have been erected immediately prior to, 30 March 1990, or
  - (b) is an existing parcel of land and is consolidated into one allotment, or
  - (c) was created pursuant to subclauses (1) and (2).
- (4) The council shall not consent to the erection of a dwelling-house on land within Zone No 1 (c) unless the allotment has frontage to a Class A road.