

Clarence Valley LEP 2011 - Boundary Adjustment and Split Zoning Subdivision Provisions

Proposal Title : **Clarence Valley LEP 2011 - Boundary Adjustment and Split Zoning Subdivision Provisions**

Proposal Summary : **The Planning Proposal seeks to amend Clarence Valley LEP 2011 to introduce provisions relating to the following:**
*** enable boundary adjustments between existing lots that do not meet the MLS in relation to that land and which are currently not permissible under the LEP or the Codes SEPP. This would apply to RU1 Primary Production, RU2 Rural Landscape, R5 Large Lot Residential, E2 Environmental Conservation and E3 Environmental Management zoned land; and**
*** enable the subdivision of split zoned lots containing land in an urban zone (residential, business or industrial) as well as land in a rural or environmental zone where the rural or environmental zoned land is below the MLS for the land.**

PP Number : **PP_2016_CLARE_005_00**

Dop File No : **16/11386**

Proposal Details

Date Planning : **24-Aug-2016**

LGA covered : **Clarence Valley**

Proposal Received :

Region : **Northern**

RPA : **Clarence Valley Council**

State Electorate : **CLARENCE**

Section of the Act : **55 - Planning Proposal**

LEP Type : **Spot Rezoning**

Location Details

Street :

Suburb :

City :

Postcode :

Land Parcel : **All relevant zones within the Clarence Valley LGA**

DoP Planning Officer Contact Details

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RPA Contact Details

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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) :		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 :	0
The NSW Government Lobbyists Code of Conduct has been complied with :	Yes		
If No, comment :	The Department of Planning and Environment's Code of Practice in relation to communications and meetings with lobbyists has been complied with to the best of the Region's knowledge.		
Have there been meetings or communications with registered lobbyists? :	Yes		
If Yes, comment :	The Northern Region office has not met any lobbyists in relation to this proposal, nor has the Region been advised of any meeting between other officers within the agency and lobbyists concerning this proposal.		

Supporting notes

Internal Supporting Notes :

External Supporting Notes :

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, which is to amend Clarence Valley LEP 2011 by the insertion of clauses that will:

- * permit boundary adjustment subdivision where one or more allotments involved do not meet the minimum lot size specified for the subdivision of land, subject to the application not leading to the creation of any additional lot or dwelling eligibilities whilst retaining any existing entitlements, and only where the adjustment does not adversely impact on the ability to achieve the objectives of the relevant zones or create landuse conflicts; and
- * permit subdivision of certain lots which have more than one minimum lot size and zoning, to enable the urban component (residential, business and industrial) to be developed, while allowing excision of a residue lot containing the rural or environmental zoned land which has an area less than the MLS shown on the lot size map for that part of the subject land.

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 planning proposal provides draft clauses that the RPA considers will achieve the objectives.**

It is recommended that the Gateway Determination require that the RPA should exhibit a plain English explanation only of the intent of the clauses in the planning proposal, as the draft clauses proposed may be changed by Parliamentary Counsel's Office when the plan is drafted.

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

3.1 Residential Zones

4.1 Acid Sulfate Soils

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

6.1 Approval and Referral Requirements

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 14—Coastal Wetlands

SEPP No 44—Koala Habitat Protection

SEPP No 55—Remediation of Land

SEPP No 71—Coastal Protection

SEPP (Rural Lands) 2008

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

An assessment of the applicable directions and SEPPs is provided within the 'Assessment' section of this planning team report.

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

If No, explain :

See the 'Assessment' section of this planning team report.

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment :

The proposal does not seek to amend any maps under the Clarence Valley LEP 2011.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

The Planning Proposal indicates that community consultation will be undertaken and nominates a 28 day timeframe for this consultation period. This longer timeframe has been proposed despite Council acknowledging the low impact nature of the proposal. Whilst Council believe that a longer community consultation timeframe is required, the

low impact nature of the proposal means a 14 day exhibition period is considered adequate.

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 and accompanying documentation are considered to satisfy the adequacy criteria by:

- 1. Providing appropriate objectives and intended outcomes;**
- 2. Providing a suitable explanation of the provisions proposed by the LEP to achieve the outcomes;**
- 3. Providing an adequate justification for the proposal;**
- 4. Outlining a proposed community consultation program; and**
- 5. Providing a project time line (see further discussion below).**

Council is seeking an authorisation to exercise its plan making delegations. As the Planning Proposal deals only with matters of local significance, it is considered appropriate that an authorisation to exercise its plan making delegations be issued to Council.

Council has provided draft clauses in the Planning Proposal for insertion into CV LEP 2011. It is however best considered that the Planning Proposal be amended to include only a plain English explanation of the intention of the proposed provisions to ensure no confusion during public consultation.

Council's project timeline, whilst indicating a general timeframe of 9 months for completion of the draft LEP, is inadequate in that it has failed to address all the individual steps as outlined in Section 5.2 of 'A Guide to preparing local environmental plans'. It will be necessary for Council to amend the planning proposal prior to exhibition to ensure that the project timeline clearly articulates the principal steps associated with finalising the plan.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation
to Principal LEP :

The Clarence Valley LEP 2011 is a Principal LEP and came into effect in December 2011. The Planning Proposal seeks to amend this planning instrument.

Assessment Criteria

Need for planning
proposal :

The Planning Proposal is not the result of any strategic or economic study.

With the repeal of SEPP 1 and restrictions on the practical application of clause 4.6 of the CV LEP 2011, Council believes that the current LEP imposes significant limitations for subdivision in relation to boundary adjustments and the subdivision of land containing two or more zones (split zones) that create lots below the MLS. Currently there also exists no ability under state legislation or local plans to allow the consideration of proposals for boundary adjustments between existing lots below the MLS. In order to address this issue, Council have proposed amending CV LEP 2011 by the insertion of two additional clauses (detailed below).

- 1. Permit boundary adjustment subdivision where one or more allotments involved do not**

meet the minimum lot size specified for the subdivision of land, subject to the application not leading to the creation of any additional lot or dwelling eligibilities whilst retaining any existing entitlements, and only where the adjustment does not adversely impact on the ability to achieve the objectives of the relevant zones or create landuse conflicts. It is proposed that this clause will apply to the following zones;

- * RU1 Primary Production;
- * RU2 Rural Landscape;
- * R5 Large Lot Residential;
- * E2 Environmental Conservation; and
- * E3 Environmental Management

Council considers that the above clause is necessary to enable boundary adjustments to be permitted where appropriate and subject to development consent being granted. Where such lots have a dwelling entitlement prior to the adjustment, such entitlement should be retained. Council do not believe that any additional dwelling entitlements will be created involving lots below the MLS.

2. Permit the subdivision of certain lots which have more than one minimum lot size and zoning to enable the urban component (residential, business and industrial) to be developed, while allowing excision of a residue lot containing the rural or environmental zoned land which has an area less than the MLS shown on the lot size map for that part of the subject land. It is proposed that this clause will apply to an original lot that contains land in a residential, business or industrial zone, and land in zone RU1 Primary Production, RU2 Rural Landscape, E2 Environmental Conservation and E3 Environmental Management.

Council believes that the addition of this clause is necessary as it has received several enquiries relating to the subdivision of land in urban zones where the lot also includes a component of rural or environmental land that does not meet the specified MLS for the residue lot containing the rural or environmental zone. Several options were considered, however Council's preference is to enable a subdivision of the split zoned lot to allow the rural or environmental land to be excised into a single residue parcel (that will be below the MLS) where it can be demonstrated that the rural or environmental portion of the lot can support a dwelling house and freeing up the urban land so that it can be developed. Council considers it reasonable to enable the creation of an undersized residue lot and to permit a dwelling house to be erected (subject to DA) as:

- * such split zone lots are typically located on the urban fringe and likely to already have or could be serviced and as such present less likelihood of unreasonable demands on infrastructure;
- * the rural lot will remain in one parcel and therefore will not lead to fragmentation of rural land;
- * it would enable optimal development of urban land; and
- * there may already be a dwelling house located on the rural or environmental part of the lot.

Council have also proposed an amendment of existing clause '4.2B Erection of dwelling houses and dual occupancies (attached) on land in certain rural, residential and environmental protection zones' to enable the erection of a dwelling house and dual occupancies on the undersized residue lots created under the new subdivision clause for lots in certain split zones where it has been demonstrated the lot can support a dwelling house.

Kyogle Shire Council have recently amended their LEP to adopt provisions with a similar intent to those listed above.

The proposed amendments to the LEP are the most appropriate means for achieving the intent of the proposal.

Consistency with
strategic planning
framework :

MID NORTH COAST REGIONAL STRATEGY (MNCRS)

The proposed amendment to the Clarence Valley LEP 2011 to include additional subdivision provisions is not inconsistent with the MNCRS. The proposed provisions will facilitate the orderly development of urban zoned land and will not result in an unacceptable increase in the density of development in rural areas. The provisions require the consideration of agricultural outcomes associated with the proposed subdivisions. The provisions will still require development consent for subdivision.

The proposal is considered to be consistent with the strategic themes of the MNCRS.

Local Strategic Plans

The proposed provisions are not inconsistent with the RPA's strategies and structure plan.

SEPPS

The planning proposal identifies the SEPP (Rural Lands) 2008 as being relevant to the planning proposal as it contains principles for subdivision of rural land. The proposed provisions will not be inconsistent with the Rural Subdivision Principles or Rural Planning Principles of the SEPP (Rural Lands) 2008 as the provisions will;

1. not contribute to the unnecessary fragmentation of rural land since subdivision will only be permitted where the land is included in the subdivision of urban zoned land, or in the case of rural boundary adjustments, no additional lots will be created;
2. require consideration of agricultural production potential of land prior to the subdivision being approved;
3. take account of the constraints of the land and ensure that the subdivision is appropriate to the natural and physical characteristics of the land and the existing land use;
4. not create additional opportunities for dwellings in rural zones.

The proposal is otherwise consistent with other SEPPs.

Standard Instrument LEP

The principles behind the proposed additional provisions are not inconsistent with the mandatory clauses of the Standard Instrument LEP.

S117 Directions.

Whilst Council have listed a range of applicable S117 Directions, only the following warrant further discussion:

2.2 Coastal Protection

This direction applies as it is possible that some land within the specific applicable zones may be located within the Coastal zone. It is considered however that any inconsistency is of minor significance as any application for subdivision under the proposed clauses will require a development application and so will be assessed in accordance with the NSW Coastal Policy and Coastal Design Guidelines at that stage.

4.1 Acid Sulfate Soils

This direction applies as land involved in the planning proposal may potentially contain acid sulfate soils (ASS). The proposed LEP amendments will not significantly increase development potential. The provisions under the LEP are considered suitable for ensuring ASS impacts are appropriately considered at DA stage. The inconsistency with this Direction is justified as of minor significance.

4.3 Flood Prone Land

This direction is relevant as land involved in the planning proposal may potentially be located on flood prone land. The inconsistency with this direction is considered to be of minor significance as the Clarence Valley LEP already contains flood prone land management provisions that can adequately deal with this issue at the development application stage.

4.4 Planning for Bushfire Protection

This direction is relevant to the proposal as the proposed boundary adjustment and split zoned lot subdivision provisions will apply to a range of zones that may potentially contain land that has been mapped as bush fire prone. The Direction requires the RPA to consult with the Commissioner of the NSW Rural Fire Service after a gateway determination has been issued. Until this consultation has occurred the consistency of the proposal with the direction remains unresolved.

The planning proposal is otherwise consistent with S117 directions.

Environmental social
economic impacts :

The planning proposal will not have any direct adverse impact on critical habitat or threatened species, populations or ecological communities, or their habitats. Similarly the planning proposal will not have any direct adverse effect on the natural, built or socio-economic environment.

The planning proposal has the potential to have indirect effects on the natural and socioeconomic environments when subdivision of the land occurs however these impacts will vary considerably depending on the characteristics of the subject land and any indirect impact is most appropriately addressed by the development assessment process.

The planning proposal has given consideration to social and economic impacts of the proposed amendment. The social and economic impacts will be largely positive as the introduction of the subdivision provisions will improve flexibility and clarity for subdivision in certain circumstances and therefore will facilitate the efficient and orderly development of land.

Assessment Process

Proposal type : **Routine** Community Consultation **14 Days**
Period :

Timeframe to make **9 months** Delegation : **RPA**
LEP :

Public Authority **NSW Rural Fire Service**
Consultation - 56(2)(d)
:

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) :

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

Is the provision and funding of state infrastructure relevant to this plan?

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
2016-08-24_CVC cover letter .pdf	Proposal Covering Letter	Yes
2016-08-24 Planning Proposal.pdf	Proposal	Yes

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
 - 3.1 Residential Zones
 - 4.1 Acid Sulfate Soils
 - 4.3 Flood Prone Land
 - 4.4 Planning for Bushfire Protection
 - 5.1 Implementation of Regional Strategies
 - 6.1 Approval and Referral Requirements

Additional Information : It is recommended that:

- 1. The Planning Proposal be supported;
- 2. The Planning Proposal be exhibited for 14 days;
- 3. The Planning Proposal be completed within 9 months;
- 4. The Planning Proposal is to be updated prior to exhibition to amend:
 - Part 2 'Explanation of Provisions' to include only a plain English explanation of the intent of the proposed clauses; and
 - Part 3 'Project Timeline' to address all the additional steps to be completed by Council due to an authorisation to exercise delegation being issued.
- 5. That the Secretary (or her delegate) agree that the inconsistencies with section 117 Direction 2.2 Coastal Protection, 4.1 Acid Sulfate Soils and 4.3 Flood Prone Land is of minor significance;
- 6. That the Secretary (or her delegate) note the current inconsistency with section 117 Direction 4.4 Planning for Bushfire Protection;
- 7. That the RPA consult with the Commissioner of the NSW Rural Fire Service in accordance with the requirements of S117 Direction 4.4 Planning for Bushfire Protection; and
- 8. A written authorisation to exercise delegation be issued to Clarence Valley Council in this instance.

Supporting Reasons : The Planning Proposal will insert provision into Clarence Valley LEP 2011 that will create greater flexibility with respect to the subdivision of rural, environmental and urban zoned land. It is anticipated that such provisions will help to facilitate the efficient and orderly subdivision of land whilst having no detrimental impact on the future value and use of rural and environmental zoned land. As a result, the proposed provisions are supported and are not considered to be inconsistent with the intent of the Standard LEP.

Signature:



Printed Name:

Craig Diss

Date:

7/9/16