



Purpose: To request that the Independent Planning Commission review the Gateway determination, taking into account information provided by the proponent, and provide advice regarding the merit of the review request.

Dept. ref. no	PP_2019_CLARE_001_00	
LGA	Clarence Valley Council	
LEP to be amended	Clarence Valley Local Environmental Plan 2011	
Address/location	112 School Lane, Southgate (Lots 3 and 4 DP 574006); and 134 School Lane, Southgate (Lot 2 DP 574006 and Lot 12 DP 820691)	
Proposal	The proposal seeks to reduce the minimum lot size of the subject land from 40ha to 6ha in the RU1 Primary Production zone to permit the subdivision of land and the erection of two additional dwellings.	
Review request made by	<input type="checkbox"/>	Council
	<input checked="" type="checkbox"/>	A proponent
Reason for review	<input checked="" type="checkbox"/>	A determination has been made that the planning proposal should not proceed.
	<input type="checkbox"/>	A determination has been made that the planning proposal should be resubmitted to the Gateway.
	<input type="checkbox"/>	A determination has been made that has imposed requirements (other than consultation requirements) or makes variations to the proposal that the proponent or Council thinks should be reconsidered.

Background information

Details of the planning proposal	<p>The proposal (Attachment D) seeks to reduce the minimum lot size of the subject land from 40ha to 6ha to permit the subdivision of land and the erection of two additional dwellings. The land is zoned RU1 Primary Production.</p> <p>The subject site has an area of 25.5ha, with all four lots (Lots 2, 3 and 4 DP 574006 and Lot 12 DP 820691) being under the required 40ha minimum lot size for a dwelling. Dwellings are located on Lots 3 and 12 with frontage to School Lane.</p> <p>Critical to the proposal is the 'associated offer' to extinguish two dwelling eligibilities provided for under the Clarence Valley LEP 2011 on flood-prone cane-cropping land approximately 500m to the east of the site by way of a restrictive covenant. This land is held in the same ownership as the subject properties in School Lane. This offer is not part of the formal planning proposal.</p>
Reason for Gateway determination	<p>A Gateway determination (Attachment E) to proceed was not issued because the planning proposal:</p> <ul style="list-style-type: none"> • lacks strategic merit; • is inconsistent with the Clarence Valley Settlement Strategy and the

	<p><i>North Coast Regional Plan 2036;</i></p> <ul style="list-style-type: none"> • is inconsistent with State Environmental Planning Policy (Primary Production and Rural Development) 2019 and section 9.1 Directions 1.5 Rural Lands and 5.10 Implementation of Regional Plans; • is inconsistent with the objectives of the RU1 Primary Production zone and the nature of surrounding development; and • may set an undesirable precedent for similar development in the area and other rural areas in the LGA. <p>The Department's Gateway determination report is at Attachment F.</p>
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Council views

Date Council advised of request	Council was advised of the Gateway determination review request on 31 July 2019.
Date of Council response	27 August 2019
Council response	Council's submission noted the proponent's request and reiterated Council's resolved position that the planning proposal be conditionally supported and the planning officer's recommendation to Council that the planning proposal not be supported (Attachment J).

Details of justification

The proponent sought a review of the decision not to issue a Gateway determination on 22 July 2019 (**Attachment H**). The proponent provided the following reasons and justification (**Attachment I**) in support of its review request, set against each of the stated grounds for refusal of the Gateway determination:

1. The proposal lacks strategic merit

The proposal has strategic merit when considered in conjunction with the associated offer as it:

- removes two dwelling eligibilities from flood-prone land, which meets the strategic objective of several state and local strategic studies to minimise flood risk to life and property; and
- the extinguishment of those eligibilities will protect against the fragmentation of productive agricultural land.

2. The proposal is inconsistent with the Clarence Valley Settlement Strategy and the *North Coast Regional Plan 2036*Clarence Valley Settlement Strategy

The strategy focuses on, and operates at, a higher level than the relocation of two dwelling entitlements in the same location. Its emphasis is on creating a hierarchical settlement pattern. The proposal does not create a settlement despite the statement in the determination that it is creating a 'cluster of rural residential developments'.

The proposal creates a four-lot arrangement, which is in keeping with the development pattern in the immediate vicinity, all of which occurred with the approval of the former Copmanhurst Shire Council and in accordance with the provisions of its LEP.

The proposal is not inconsistent with the strategy as the strategy is not relevant to the development that will occur as a result of the proposal.

North Coast Regional Plan 2036

The proposal is not inconsistent with the regional plan as it does not create a rural-residential settlement.

The resultant subdivision, which is in effect a reorganisation of four small lots, will reflect the existing development pattern in School Lane without creating a rural-residential settlement and is consistent with other dwellings located along School Lane on lots of 6.67ha, 10.56ha, 8.39ha, 4200m², 10.31ha and 1.92ha.

3. The planning proposal is inconsistent with State Environmental Planning Policy (Primary Production and Rural Development) 2019 and section 9.1 Directions 1.5 Rural Lands and 5.10 Implementation of Regional PlansSEPP (Primary Production and Rural Development) 2019

The aims of the SEPP that are relevant to this proposal are:

a) to facilitate the orderly economic use and development of lands for primary production

The associated offer accompanying the proposal will protect the continuing orderly economic use of the cane farm for primary production. Section 4.9 of the planning proposal (**Attachment D**) addresses the minor impact of the boundary adjustment on the low-intensity grazing land in School Lane.

b) to reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources

There are no uses in the locality that would conflict with two additional dwellings and any future uses that may have the potential for conflict would require the submission of a development application, which would be assessed on several grounds including potential conflict.

In contrast, the construction of dwellings on the two cane properties would have the potential for conflict with surrounding cane activities, particularly if they became 'lifestyle' rather than agricultural properties.

The proposal will have no impact on native vegetation, biodiversity or water resources, noting the offer to legally restrict any structures in the Southgate Lagoon located on the School Lane properties.

e) to encourage sustainable agriculture, including sustainable aquaculture

Retaining Lots 1 and 2 and Lot 61 within the existing cane farm rather than risking their potential separation as non-agricultural properties due to their dwelling entitlements will strengthen the sustainability of the cane operation.

Section 9.1 Direction 1.5 Rural Lands

At the time of submission and assessment of the proposal, Direction 1.5 required the proposal to be assessed against clauses 7 and 8 of SEPP (Rural Lands) 2008. This SEPP was repealed in February 2019 and replaced with SEPP (Primary Production and Rural Development) 2019. An assessment against the new SEPP is provided. The proposal is consistent with section 9.1 Directions as it does not establish a rural-residential settlement.

4. The proposal is inconsistent with the objectives of the RU1 Primary Production zone and the nature of surrounding development

The proposal is consistent with the objectives of the RU1 zone as:

- the proposal and associated offer will prevent the fragmentation of the existing cane farm and the potential loss of approximately 46ha of productive agricultural land. This impact on sustainable agricultural production is significantly greater than that potentially resulting from the minor fragmentation of low-intensity grazing land in School Lane;
- the addition of two dwellings into the existing development pattern in School Lane is unlikely to increase land use conflict;
- the proposal does not create a dispersed rural settlement pattern. In the context of the existing development pattern in School Lane (see Annexure J of **Attachment D**), two additional dwellings are not significant;
- Grafton provides public services and facilities for Southgate, and the level of demand is unchanged whether the two dwellings are on cane land in Southgate Ferry Road or in School Lane; and
- the proposal removes two dwelling entitlements from flood-affected land and relocates them to land with no environmental hazards.

5. The proposal may set an undesirable precedent for similar development in the area and other rural areas in the LGA

This is not addressed in the applicant's review request or justification submission.

6. Additional points in the determination letter to Council

- The justification for the proposal is premised on the transfer of the development potential for two dwellings on flood-prone cane-cropping land, the erection of which is not an inherent right and cannot be assumed.

Development applications for dwellings on Lots 1 and 2 (including consolidation) and Lot 61 are being prepared for submission to Council. These will be accompanied by relevant documentation such as wastewater management plans for each.

Council does not have a prohibition on the construction of dwellings on flood-prone land subject to compliance with development standards relating to:

- minimum habitable floor levels;
- maximum mound heights;
- maximum flow velocities;

	<ul style="list-style-type: none"> ○ adequate road access; and ○ access to utility services. <p>These are specified in Council's Rural Zones DCP, particularly Part D Floodplain Management Controls.</p> <p>It is expected that both dwellings will meet all requirements for approval. Should the planning proposal proceed, it may be that public exhibition of the proposal should be held only after both consents have been issued.</p> <ul style="list-style-type: none"> • The proposal creates a cluster of rural-residential dwellings in an unplanned location within the rural landscape, primarily based only on transferring dwelling development potential. <p>The proposal has merit and complies with all relevant policies and strategic objectives and does not create a rural-residential cluster. If this position is not accepted and the proposal is viewed as merely a way to create rural-residential settlement, then the submission fails.</p>
<p>Material provided in support of the application/ proposal</p>	<p>The proponent submitted the following in support of its request for a review of the Gateway determination:</p> <ul style="list-style-type: none"> • Gateway determination review application form; • covering letter and a justification for a request for the review of the Gateway determination; and • planning proposal.

<p>Assessment summary</p>	<p>The Department's position is that the Gateway determination should remain unchanged. The Department holds the view that the proposal is inconsistent with the <i>North Coast Regional Plan 2036</i>, Council's Department-approved local strategy, SEPP (Primary Production and Rural Development) 2019, section 9.1 Directions 1.5 Rural Lands and 5.10 Implementation of Regional Plans and the objectives of the RU1 Primary Production zone. If the proposal were to proceed, it may set an undesirable precedent for similar development in the area and other rural areas in the LGA.</p> <p><u>Response to proponent's justification</u></p> <p>1. The proposal lacks strategic merit</p> <p>The proponent's justification submission points to the proposal's merit in extinguishing dwelling eligibilities from flood-prone productive agricultural land (the 'associated offer' cane land), thus:</p> <ul style="list-style-type: none"> • minimising flood risk to life and property; and • protecting valuable cane production land from fragmentation and potential loss from the industry and/or family business. <p>Neither the proposal nor the justification submission has adequately addressed or demonstrated the proposal's merit in terms of the need for the proposal or its consistency with the relevant key strategic planning policies or strategies against which the proposal must be considered.</p> <p>While relevant development standards may permit the lodgement of an application for assessment for a dwelling, it does not provide a right for a dwelling. The presence of development constraints affecting a site is also considered to be an inappropriate strategic premise for moving development 'potential' to other land.</p> <p>No conclusive evidence has been provided demonstrating that the proposal is necessary to ensure the ongoing use of the flood-affected land for cane production. The land may continue to be used for cane production whether or not dwelling eligibilities are attached to it. Even if the proposal were to proceed, this could not prevent portions of the land being sold and separated from the business. The loss of flood-free grazing land under the proposal is considered to be more certain, as the resultant lot sizes and associated permissible development for the subject site would likely preclude its ongoing use for cattle grazing.</p> <p>The proposal lacks strategic merit as it is inconsistent with state, regional and local planning provisions and desired outcomes, as detailed in the sections below and the Department's Gateway determination report for the proposal (Attachment F).</p> <p>2. The proposal is inconsistent with the Clarence Valley Settlement Strategy and the <i>North Coast Regional Plan 2036</i></p> <p><u>Clarence Valley Settlement Strategy</u></p> <p>The Clarence Valley Settlement Strategy is Council's adopted urban and rural land release strategy. The strategy does not identify or plan for the release of rural-residential-style development in Southgate. The proposal is not consistent with the strategy's planning principles or intent as it would result in the fragmentation of rural land, increase the potential for land use conflict and facilitate additional development outside agreed growth areas for rural-residential development.</p> <p>The applicant's justification submission suggests the Department's determination rested largely on its erroneous conclusion that the proposal constituted a rural-residential 'settlement'. However, the determination does not suggest that a settlement will be created by the proposed lots or use the term 'settlement'. It refers to a 'cluster of rural residential dwellings'. Whether this is deemed to be a settlement is irrelevant for the purposes of consistency or otherwise with Council's approved strategy.</p> <p>The strategy sets a settlement hierarchy and provides guidance on where Council wishes to direct future development and where it should not occur. The fact that there</p>
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is no specific area strategy for Southgate cannot lead to the conclusion that Council's strategy does not apply. Rather, it demonstrates Council's adopted strategic position that further development would not be located in Southgate.

Whether or not the current lot configuration and other undersized lots in the locality were created lawfully prior to the commencement of the settlement strategy and in accordance with the provisions of the previous Copmanhurst LEP, those provisions are no longer applicable. The settlement strategy applies to the current proposal and the proposal is considered to be inconsistent with this strategy by promoting rural-residential-style development at Southgate.

North Coast Regional Plan 2036

The planning proposal and justification submission do not adequately address or demonstrate the proposal's consistency with the overall aims and intent of the regional plan to deliver well-planned rural-residential housing (Direction 24).

Action 24.1 requires the facilitation of well-planned rural-residential housing areas by identifying new areas in a local growth management strategy or rural-residential land release strategy endorsed by the Department. The outcome of this proposal would be the creation of a cluster of dwellings on small 6ha rural allotments in an agricultural area involving land with potentially high environmental value. While this land would not be zoned for rural-residential purposes, it would function as such. This would be contrary to the desired future regional and local strategic planning direction for the area.

While there are several dwellings on small lots along School Lane, this is largely the result of past planning practices that are no longer considered suitable by Council or the Department. It is also possible that several of those smaller lots are part of a larger holding, as acknowledged in Annexure J of the planning proposal.

The applicant argues that Action 24.1 does not apply as the proposal is not a rural-residential 'settlement'. Whether or not the outcome of the proposal is considered a rural-residential settlement is not relevant in terms of Action 24.1. The intent of the action is to prevent such housing being created in undesirable and/or unplanned rural locations. Council's intention regarding further development in the Southgate area is demonstrated by the RU1 zoning and the 40ha minimum lot size applied throughout the locality, despite the presence of some small historical allotments.

While the applicant argues that the proposal is consistent with Direction 11: *Protect and enhance productive agricultural lands* by protecting important farmland (the cane fields) from fragmentation, no conclusive evidence has been provided demonstrating that the proposal is necessary to ensure the ongoing use of the flood-affected land for cane production.

It is also considered that the proposal has the potential to create land use conflict with agricultural land uses on surrounding properties. It is recognised that the introduction of rural-residential development into an active rural landscape can result in land use conflict due to potentially incompatible land uses and residents with competing social and environmental expectations. These new dwellings and the existing two dwellings will be located on small lots with minimal potential for agricultural use, particularly extensive agriculture as is occurring on the subject land and surrounding land. The resulting smaller lots with dwellings would be more attractive to non-farming residents.

The proponent's concern that the construction of dwellings on the two cane properties would potentially lead to conflict with surrounding cane activities, particularly if they became 'lifestyle' rather than agricultural properties, mirrors the concern the Department has over the introduction of new dwellings on small allotments with reduced agricultural production potential onto the School Lane subject site.

3. The planning proposal is inconsistent with State Environmental Planning Policy (Primary Production and Rural Development) 2019 and section 9.1 Directions 1.5 Rural Lands and 5.10 Implementation of Regional Plans

SEPP (Primary Production and Rural Development) 2019

This SEPP applies to the site through the application of clause 5.16 of the Clarence Valley LEP 2011, as inserted by the SEPP, and the proposal has been assessed against these new provisions.

The proposal is considered to be inconsistent with the rural subdivision principles as listed under clause 5.16 of the LEP (and schedule 4 of the SEPP), particularly:

- the proposal is likely to have a significant impact on land uses that are the preferred and predominant land uses in the vicinity (i.e. primary production);
- the proposal is likely to be incompatible with the surrounding land uses; and
- the proponent has not proposed any measures that would avoid and minimise land use conflicts.

The proposed reconfiguration of the four lots into 6ha allotments, each with a dwelling eligibility, would further fragment rural land and reduce its grazing and flood-free-refuge potential.

There is also the potential for increased conflict between the newly created rural-residential allotments and surrounding agricultural practices. The proponent's justification submission argues that there are no uses in the locality that would conflict with two additional dwellings and any future uses that may have the potential for conflict would require the submission of a development application, which would be assessed on several grounds including potential conflict. However, the current proposal has the potential to generate conflict with existing agricultural activities on surrounding lands, including extensive agriculture.

It is considered that neither the planning proposal nor the proponent's justification submission provide sufficient evidence or justification to demonstrate the proposal's consistency with the SEPP. While the proposal could be considered consistent with some of the aims of the SEPP, as discussed in the justification submission, the proposal's inconsistency with other relevant rural subdivision principles remains.

Section 9.1 Directions

It is considered that the proposal is inconsistent with section 9.1 Directions 1.5 Rural Lands and 5.10 Implementation of Regional Plans for the reasons discussed above in relation to its inconsistency with the *North Coast Regional Plan* and the SEPP (Primary Production and Rural Development) 2019 and in the Department's Gateway determination report for the proposal. The inconsistencies with the Directions are not considered to be justified by the proposal or the justification submission.

4. The proposal is inconsistent with the objectives of the RU1 Primary Production zone and the nature of existing surrounding development

The proposal is considered to be inconsistent with the objectives of the RU1 Primary Production zone as it does not prevent dispersed rural settlement or minimise the fragmentation and alienation of resource lands.

The applicant argues that the proposal prevents fragmentation of the associated offer cane lands. As discussed earlier in this report, it has not been demonstrated that the proposal is needed to achieve this outcome. The loss or fragmentation of flood-free grazing land under the proposal is considered to be more certain, as the resultant lot sizes and associated permissible development for the subject site would likely preclude its ongoing use for cattle grazing.

Also discussed earlier, although some lots in the surrounding area are of a similar size to that proposed, this is largely the result of past planning practices that are no longer considered suitable by Council or the Department. Council's intention regarding further development in the Southgate area is demonstrated by the RU1 zoning and

the 40ha minimum lot size applied throughout the locality, despite the presence of these small allotments.

5. The proposal may set an undesirable precedent for similar development in the area and other rural areas in the LGA

This issue is not addressed in the justification submission provided by the applicant. As outlined in the Department's Gateway determination report for the proposal, it is considered that were the proposal to proceed, it would potentially create an undesirable precedent for similar proposals in the locality and across the LGA in other rural-zoned areas. Council staff raised this as a concern in its planning report (**Attachment G**) at the planning proposal stage.

Council's planning report also noted that a seemingly similar proposal involving the relocation of dwelling entitlements from flood-prone agricultural land at Gulmarrad was supported by Council in 2011, but concluded that there were significant differences between that proposal and the current proposal that precluded the latter from being supported, including:

- the location of the land adjacent to land in an existing R5 Large Lot Residential zone;
- the addition of the land to the R5 zone;
- the increase in the minimum lot size for the agricultural land to prevent further subdivision and fragmentation; and
- the retention of one dwelling entitlement on the agricultural land for ongoing farm management.

6. Additional points within the determination letter to Council

The applicant advises that development applications for the erection of dwellings on the flood-prone associated offer lands are being prepared for submission to Council. The opinion of the applicant that development consent may be granted by Council for such dwellings is noted.

However, it cannot be assumed that consent will be granted, and the issue is therefore not a matter that can be considered as part of this review process. While relevant development standards may permit the lodgement of an application for assessment for a dwelling, it does not provide a right for a dwelling. Until a development application is assessed, it can't be determined whether the land would be suitable for development or if a dwelling house would be approved.

Attachments

- D – Planning proposal
- E – Gateway determination
- F – Gateway determination report
- G – Council planning report
- H – Planning proposal review request
- I – Gateway review justification submission
- J – Council response to Gateway review request

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IPC RECOMMENDATION

Reason for review: A determination has been made that the planning proposal should not proceed.

Recommendation:	<input type="checkbox"/>	The planning proposal should not proceed past Gateway.
	<input type="checkbox"/>	<input type="checkbox"/> no amendments are suggested to original determination. <input type="checkbox"/> amendments are suggested to the original determination.
	<input type="checkbox"/>	The planning proposal should proceed past Gateway in accordance with the original Determination.

Any additional comments: