

SUBMISSION ACCOMPANYING GATEWAY DETERMINATION REVIEW
APPLICATION OF PLANNING PROPOSAL PP_2019_CLARE_001_00
TO AMEND CLARENCE VALLEY COUNCIL ENVIRONMENTAL PLAN 2011

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1. Introduction

Briefly, this Planning Proposal seeks to amend the minimum lot size on No. 134 School Lane, Southgate (Lot 12 DP 820691 & Lot 2 DP 574006) & No. 112 School Lane, Southgate (Lots ¾ DP 574006) from 40ha to 6ha.

This will allow the owners of these two properties to apply for boundary adjustments on both properties to create an additional dwelling entitlement on each, so in effect there will be 4 contiguous dwelling entitlements (2 existing dwellings, 2 future entitlements) each on lots greater than 6ha. The 4 dwellings will be located on flood free sites.

At this level the Proposal has no strategic merit.

But critical to the Proposal is what we have referred to as the “associated offer” to legally extinguish 2 dwelling entitlements on lots held in the same ownership as the properties in School Lane and located on flood prone cane fields.

It is the contention of the Proposal that this does have strategic merit based on:-

- the removal of the 2 entitlements from flood prone land meets the strategic objective of a number of state and local strategic studies to minimise flood risk to life and property; and
- the extinguishment of those entitlements will protect against the lots upon which they are located being separated from the large cane farm of which they form part, thus meeting the strategic objective of protecting against the fragmentation of productive agricultural land.

The workings and benefits of this arrangement are detailed in the attached Planning Proposal and this submission seeks to address the specific grounds for refusal without repeating at great length those details.

The Gateway determination grounds for refusal are addressed below. Analysis of these grounds gives rise to the impression the Departments concern is that the Proposal creates a rural residential settlement and is, in fact, a defacto rezoning to R5. This arises due to the size of the 4 existing lots in School Lane (7.3ha, 5.6ha, 8.1ha & 4.4ha) which results in the 4 rearranged lots of 6.3ha-6.44ha. If the 4 existing lots were in the range of say, 20ha each and so created rearranged lots of the same size, the issue of rural residential development would not arise and the Proposal including the associated offer would be assessed on its merits without concern it was creating a “settlement”.

The argument that the Proposal does not create a rural residential cluster underlies most of the responses below, though reference to it is kept to a minimum otherwise it becomes tedious and repetitious. It is our position that the Proposal has merit and complies with all relevant policies and strategic objectives if this argument is accepted. If not accepted and the Proposal is viewed as merely a way to create rural residential settlement, then our submission fails.

2. Grounds for Refusal

The Gateway determination dated 4th June 2019 and received by Clarence Valley Council on 12th June, 2019 sets out 5 grounds for refusal, being

2.1 Lacks Strategic Merit

It is agreed that the Proposal by itself has no strategic merit but when considered in conjunction with the associated offer, it achieves the strategic outcome of minimising the risk to life and property from flooding which is an objective of a number of state and Council policy documents as detailed in Section 4.1 of the Proposal.

The Proposal and the associated offer also protect productive agricultural land (the cane farm) from potentially significant fragmentation and loss of production compared to the potentially minor loss of low-intensity agricultural activity in School Lane. The protection of agricultural land is a strategic goal of a variety of strategic policies, including:-

- North Coast Regional Plan 2036: Direction 11 – Protect and enhance productive agricultural land
- Section 9.1 Directions 1.2 Rural Zones & 1.5 Rural Lands
- SEPP (Primary Production & Rural Lands) 2019

2.2 Is Inconsistent with the Clarence Valley Settlement Strategy and the North Coast Regional Plan 2036

The Clarence Valley Settlement Strategy was adopted by the then 5 Councils located in the valley. It provides a strategic framework for guiding the provision of an additional 8000 dwellings in the valley between 1999 and 2016. To achieve this it adopts a settlement hierarchy with 8 classifications ranging from **1. Sub-Regional Centre: Grafton and South Grafton** to **8. Dispersed residential settlements** which includes 10 locations in the valley. At 5 is **Small river villages** which lists 20 locations but does not include Southgate. It also includes 27 Specific Area Strategies, none of which include Southgate.

The Strategy focuses on, and operates at, a higher level than the relocation of 2 dwelling entitlements within 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 claim that the Proposal is inconsistent with the Strategy, presumably because the Strategy makes no mention of establishing a rural residential settlement at Southgate, can be countered by the argument that the establishment of such a settlement is neither the intent or the outcome of the Proposal.

The Proposal created a 4 lot arrangement which is in keeping with the development pattern in the immediate vicinity, all of which occurred with the approval of Copmanhurst Council and in accordance with the provisions of its LEP.

It is our contention that the Proposal is not inconsistent with CVSS as that Strategy is not relevant to the development which will occur as a result of the Proposal.

The claiming of inconsistency with the North Coast Regional Plan 2036 appears to be based on the belief that the Proposal is creating a rural residential settlement. Rural residential development is addressed twice in the plan at:-

Direction 11: Protect and enhance productive agricultural land

Action 11.1: Enable the growth of the agricultural sector by directing urban and rural residential development away from important farmland and identifying locations to support existing and small-lot primary production such as horticulture in Coffs Harbour.

Direction 24: Deliver well-planned rural residential housing areas

Action 24.1: Facilitate the delivery of well-planned rural residential housing areas by:-

- identifying new rural residential areas in local growth management strategy or rural residential land release strategy endorsed by the Department of Planning and Environment; and
- ensure that such proposals are consistent with the Settlement Planning Guidelines: Mid and Far North Coast Regional Strategies (2007) or land release criteria (once finalised).

The designation of the Proposal’s outcome as a rural residential settlement is considered incorrect and so the 2 Actions are not relevant. As detailed in Annexure J

to the Proposal, there are dwellings located along School Lane on lots of 6.67ha, 10.56ha, 8.39ha, 4200m², 10.31ha and 1.92ha.

The resultant subdivision, in effect a re-organisation of 4 existing small lots, will reflect the existing development pattern in School Lane without creating a rural residential settlement.

3. Is inconsistent with State Environmental Planning Policy (Primary Production and Rural Development) 2019 and Several Section 9.1 Directions including Direction 1.5 Rural Lands.

It should be noted that this Policy came into effect in February, 2019, after the Proposal was reported to Council and forwarded to the Department.

The aims of the Policy are:-

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

Comment: The owners of all the affected land operates a cane farm of approximately 133ha over 19 properties, including Lots 1 & 2 DP 986290 and Lot 61 DP 1133619 which benefit from the dwelling entitlements to be extinguished. The former has an area of 27.34ha and the latter 18.93ha. Section 4.6 of the Proposal details the risk of these 2 properties being taken out of cane production if they are sold based on the value of their entitlements.

The associated offer accompanying the Proposal will protect continuing orderly economic use of those lots and the cane farm for primary production.

Section 4.9 also addressed 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,

Comment: Section 4.9 of the Proposal also addresses the potential for land use conflict resulting from the boundary adjustments. There are no existing uses in the locality which would conflict with 2 additional dwellings and any future uses which may have the potential for conflict would require the submission of a development application which would be assessed on a number of grounds including potential conflict.

In contrast the construction of dwellings on the 2 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 at Section 4.7 of the Proposal to legally restrict any structures in the Southgate Lagoon located on the School Lane properties and identified as an area of high environmental value.

- c) *to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,*

No State significant agricultural land is identified on or near the holding

- d) *to simplify the regulatory process for smaller-scale low risk artificial waterbodies, and routine maintenance of artificial water supply or drainage, in irrigation areas and districts, and for routine and emergency work in irrigation areas and districts,*

N/A

- e) *to encourage sustainable agriculture, including sustainable aquaculture,*

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

- f) *to require consideration of the effects of all proposed development in the State on oyster aquaculture,*

N/A

- g) *to identify aquaculture that is to be treated as designated development using a well-defined and concise development assessment regime based on environmental risks associated with site and operational facilities.*

N/A.

Section 9.1 Direction 1.5 Rural Lands (addressed at Annexures F and H of the Proposal)

At the time of submission and assessment of the Proposal, Direction 1.5 required the Proposal to be assessed against Clauses 7 & 8 of SEPP (Rural Lands) 2008. This Policy was repealed in February 2019 and replaced with SEPP (Primary Production & Rural Development) 2019. An assessment against that SEPP is above. The reference to

inconsistency with several Directions other than 1.5 does not include details of which Directions those others may be, with only 1.2 Rural Lands being likely. This Direction is also addressed in Annexure H.

Again, the assessment that the Proposal is inconsistent with Section 9.1 Directions appears to be based on a belief that it establishes a rural residential cluster, i.e. a defacto rezoning to R5. As highlighted elsewhere in this submission, this is not the case.

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

The objectives of the RU1 zone are:

- *to encourage sustainable primary industry production by maintaining and enhancing the natural resource base*

Comment: The Proposal and associated offer will prevent fragmentation of the existing cane farm and 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.

- *to encourage diversity in primary industry enterprise and systems appropriate for the area*

Comment: Not directly applicable as the Proposal aims to protect an existing primary industry enterprise being a cane farm

- *to minimise the fragmentation and alienation of resource lands*

Comment: Far more significant fragmentation is likely to occur if Lots 1 & 2 and Lot 61 are sold with their value based on dwelling entitlement rather than agricultural production return.

- *to minimise conflict between land uses within the zone and land uses within the adjoining zones*

Comment: The addition of 2 dwellings into the existing development pattern in School Lane is unlikely to give rise to any increase in land use conflict, as addressed in Section 4.9 of the Proposal.

- *to prevent dispersed rural settlement*

Comment: The Proposal does not create a dispersed rural settlement pattern. In the context of the existing development pattern in School Lane (see Annexure J). 2 additional dwellings are not significant.

- *to ensure that development does not unreasonably increase the demand for public services or public facilities*

Grafton provides public services and facilities for Southgate and the level of demand is unchanged whether the 2 dwellings are on cane land in Southgate Ferry Road or in School Lane.

- *to ensure development is not adversely impacted by environmental hazards*

The Proposal removes 2 dwelling entitlements from flood affected land and relocates them to land with no environmental hazards

The re-arrangement of boundaries between the 4 lots in School Lane resulting in 2 additional dwellings is not inconsistent with the existing development pattern in School Lane as detailed in Section 4.9 and Annexure J of the Proposal.

Finally, the determination points out that:-

- the justification for the Proposal is premised on the approval of dwellings on Lots 1 & 2 and Lot 61 which cannot be assumed; and
- the Proposal creates a cluster of rural residential dwellings in an unplanned location

The latter of these points is addressed in the Introduction to this submission, and the rebuttal of this description of the outcome of the Proposal underlies many of the responses contained in this submission.

In respect of the former point, development applications for dwellings on Lots 1 & 2 (including consolidation) and Lot 61 are currently being prepared for submission to Council. These will be accompanied by relevant documentation such as wastewater management plans for each.

Clarence Valley 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
- adequate road access
- access to utility services

These are specified in Councils Rural Zones DCP, particularly Part D Floodplain Management Controls.

Based on our experience and existing survey of the subject lots, both dwellings will meet all requirements and approval is anticipated though this cannot be assumed. In these circumstances, it may be that public exhibition of the Proposal (should the review so recommend) should be held only after both consents have been issued.