

Gateway determination report

LGA	Clarence Valley
PPA	Clarence Valley Council
NAME	Amendment to the minimum lot size map for land at School Lane, Southgate to permit subdivision and two additional dwellings
NUMBER	PP_2019_CLARE_001_00
LEP TO BE AMENDED	Clarence Valley LEP 2011
ADDRESS	112 and 134 School Lane, Southgate
DESCRIPTION	Lot 12 DP820691 and Lots 2, 3 and 4 DP574006
RECEIVED	17 December 2018
FILE NO.	IRF19/125
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

INTRODUCTION

Description of planning proposal

The planning proposal seeks to amend the minimum lot size map for the Clarence Valley Local Environmental Plan (LEP) 2011 to reduce the minimum lot size of land at 112 and 134 School Lane, Southgate from 40ha to 6ha to permit the subdivision of land and the erection of two additional dwellings.

The proposal includes an associated offer to extinguish two dwelling eligibilities provided for under the LEP on flood-prone cane-cropping land on Southgate Ferry Road by way of a restrictive covenant. However, this offer is not part of the formal planning proposal.

Council staff recommended refusal of the proposal by Council at its ordinary council meeting on 11 December 2018. Council resolved to support the proposal, entirely conditional upon registration of a covenant prohibiting the development of dwellings on the Southgate Ferry Road properties.

Site description

The site proposed for subdivision and additional dwellings comprises four adjoining, undersized, cleared rural lots, which together make up 112 and 134 School Lane, Southgate (Figure 1, next page). Each street address contains a dwelling within the flood-free portion alongside School Lane. The remainder of the land is flood affected and used for cattle grazing (Figure 2, next page). A significant proportion of the lower portions of the site contains a wetland known as Southgate Lagoon. The lagoon is included in the high environmental value map in the North Coast Regional Plan 2036 (Figure 7, page 8).

The land on Southgate Ferry Road subject to the associated offer to extinguish dwelling eligibilities comprises three adjoining entirely flood-prone lots under cropping for sugar cane as part of a larger cane farming enterprise (Figure 3, page 3). Together the lots enjoy a total of two dwelling eligibilities under the LEP. No dwellings exist on the site.

The Southgate Ferry Road site is approximately 500m to the east of the School Lane site, or 2.4km by road.



Figure 1: Subject site.



Figure 2: Portion of site subject to flooding (in blue).



Figure 3: Location of site (left) in relation to the lots subject to 'the associated offer'.

Existing planning controls

The School Lane and Southgate Ferry Road sites are zoned RU1 Primary Production (Figure 4, next page) with a minimum lot size of 40ha (Figure 5, next page). This zoning and minimum lot size are consistent across the entire Southgate locality, including the village. Most lots near the subject sites are undersized.

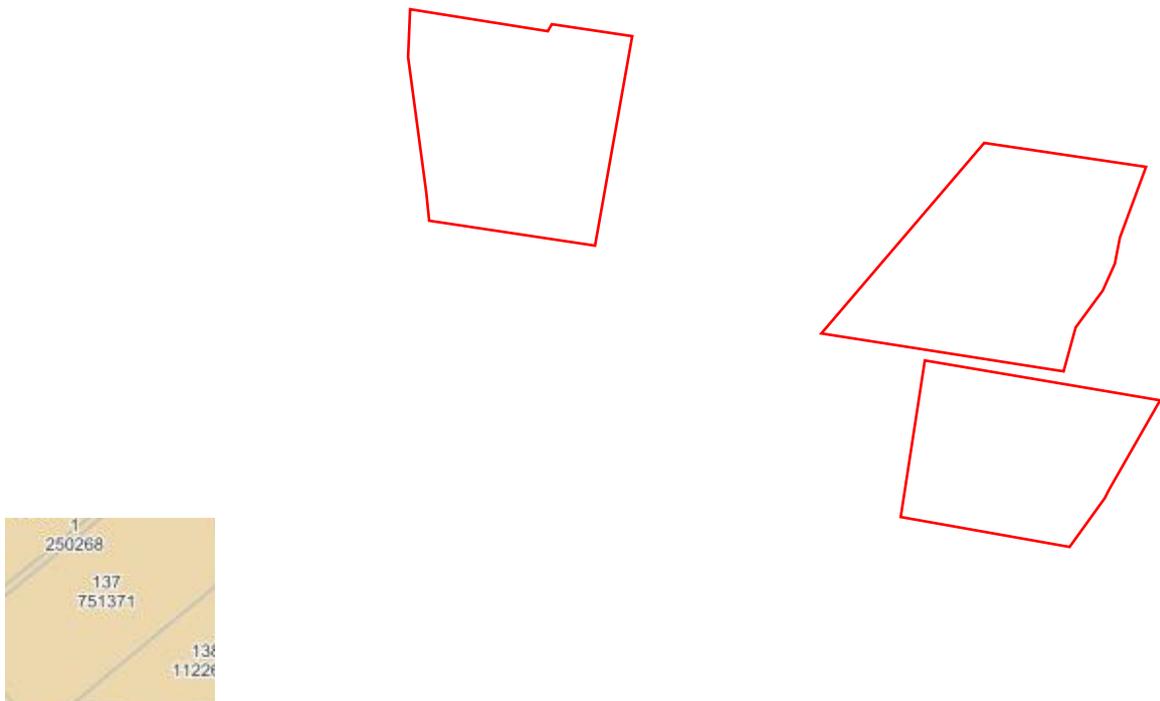


Figure 4: Zoning map for Southgate locality, subject site (outlined in red, left) and 'associated offer' lands.

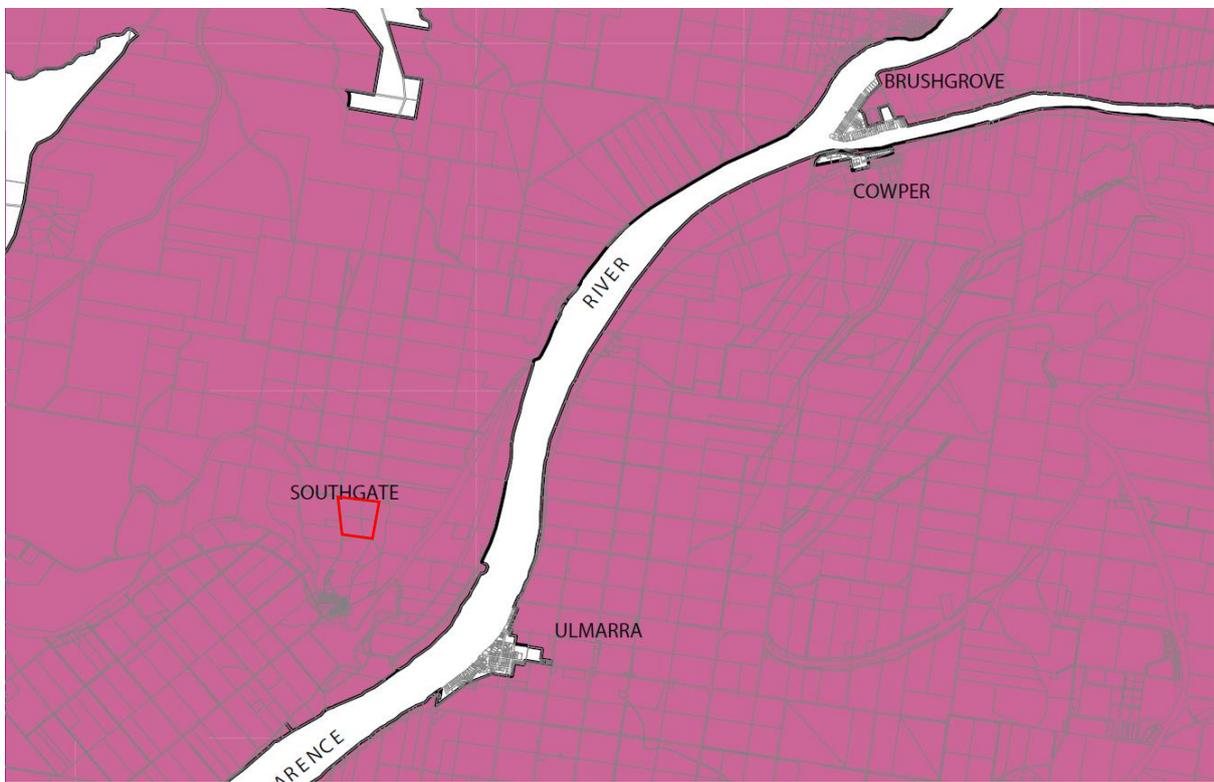


Figure 5: Existing minimum lot size map showing consistency in application of the 40ha minimum lot size (pink) across the Southgate locality and beyond (site outlined in red).

Surrounding area

The Southgate locality is characterised by rural dwellings associated with primary production activities, including low-density grazing land on the higher, less flood-affected land and cane cropping on the more flood-affected alluvial land. Much of the area is flood prone, including the village. The former village of Southgate is centred around the intersection of Lawrence Road and School Lane, approximately 1.2 km to the south of the site. Currently Southgate comprises approximately 20 residences, with the majority of the town having been removed/demolished.

Summary of recommendation

The proposal is not recommended to proceed because it:

- lacks strategic merit;
- is inconsistent with the Clarence Valley Settlement Strategy and the North Coast Regional Plan 2036;
- 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;
- is inconsistent with the objectives of the RU1 Primary Production zone and the nature of existing surrounding development; and
- may set an undesirable precedent for similar development in the area and other rural areas in the LGA.

PROPOSAL

Objectives or intended outcomes

The objective of the proposal is to enable the erection of two additional dwellings on flood-free land on School Lane, Southgate in exchange for the extinguishment of two dwelling eligibilities on separate flood-prone cane land approximately 500m to the east. The objective is clear and does not require amendment before community consultation.

Explanation of provisions

The intended outcome will be achieved by amending the minimum lot size for the School Lane site. The minimum lot size would be reduced from 40ha to 6ha. This would allow consolidation of the four undersized lots and subsequent subdivision into four new lots, each with a dwelling entitlement and frontage to School Lane (Figure 6, next page). A new dwelling would then be permitted on each of the two new lots without an existing dwelling. The proposed LEP amendment is sufficiently clear for community consultation purposes.

The offer to extinguish the two dwelling eligibilities on the Southgate Ferry Road land does not form part of the planning proposal, although it is integral to the intended outcome. The mechanism to be used to extinguish the two eligibilities is unclear, as no agreement has been reached.

The planning proposal proposes the application of a restrictive covenant to the land after the planning proposal authority has resolved to make the LEP to prevent the erection of a dwelling. However, this method is not accepted by Clarence Valley Council staff as a suitable mechanism for several reasons. In particular, Council argues that such a covenant cannot be used to override the provisions of the LEP,

and in any case may not be permanent and provides no guaranteed protection of the land from fragmentation in the future.

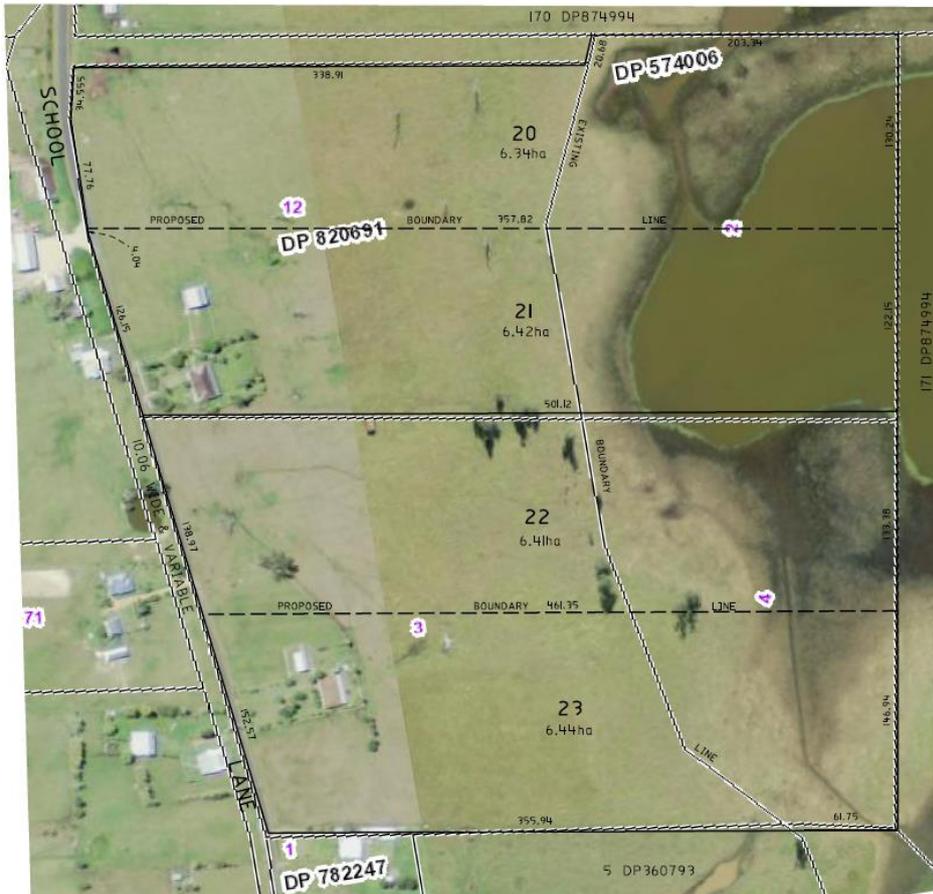


Figure 6: Proposed four-lot subdivision layout for the subject site.

Mapping

The proposal includes amending the minimum lot size map to reduce the minimum lot size for the School Lane site from 40ha to 6ha. Maps are included that show the current and proposed controls. They are adequate for community consultation.

NEED FOR THE PLANNING PROPOSAL

There is no identified strategic merit or need for the planning proposal. The intent of the proposal is to transfer dwelling eligibilities from flood-affected land to flood-free grazing land within the same ownership. This premise assumes the erection of dwellings on the flood-affected land would occur. 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.

The land where the dwelling eligibilities are proposed to be forfeited is flood prone to a depth of 1.4 to 1.7 metres in a 1 in 100 year flood event. There is no safe access or egress, and it is expected that an objection from the SES would be forthcoming should dwellings be proposed on the land. It is also noted that the dwelling eligibility of the associated land is subject to a 'sunset clause', which recognises those

eligibilities only until December 2021. Beyond this there is no entitlement to development of the land for a dwelling.

The proponent also argues that the economic return from the sale of parts of this land for riverfront lifestyle purposes is greater than its ongoing use as a cane farm. As such, the planning proposal is required to secure the ongoing use of all 19 flood-prone allotments currently owned and farmed by the applicant's family for sugar cane production.

Regardless of the arguments for or against the transfer of dwelling eligibilities and the potential practical outcomes, the fact remains that 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 mere presence of development constraints affecting a site is also considered to be an inappropriate strategic premise for moving development 'potential' to other land. It is noted that 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 proposal is also considered to be inconsistent with State, regional and local planning provisions and desired outcomes (as detailed within the Strategic Assessment section below).

There is no other way of achieving the intended outcomes. While clause 4.1B of the Clarence Valley LEP 2011 permits boundary adjustments on rural lands provided no new dwelling entitlements are created, the land parcels involved must be adjoining lots. The parcels in this proposal are not adjoining.

STRATEGIC ASSESSMENT

State

The planning proposal is not considered to be inconsistent with the state strategic planning framework, including the state priorities.

Regional

The proposal is subject to the provisions of the North Coast Regional Plan 2036. The subject site partially contains land with potentially high environmental value (wetland) as mapped under the regional plan (Figure 7, next page). The low-lying cane land subject to the 'associated offer' is mapped as important farmland under the plan, but the subject site is not (Figure 8, page 9).

The proposal is inconsistent with 'Direction 24: Deliver well-planned rural residential housing areas'. Action 24.1 requires the facilitation of the delivery 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 surrounded by agricultural land and land with potentially high environmental value. While this land would not be zoned rural residential, it would function as such. This is out of character with the nature of surrounding land uses and contrary to the existing and desired future regional and local strategic planning direction for the area.

The subject land, while not being mapped as important farmland, is part of a broader farm and provides a potential refuge for surrounding grazing operations as it is above the flood level. The imposition of unplanned rural residential development amid lands predominantly used for agricultural production also introduces potential land-use

conflict which could adversely restrict agricultural land practices and production on the adjoining lands. Rural residential development can also lead to increased servicing pressures in the locality, due to increased service use and differing expectations as to servicing standards in rural areas.

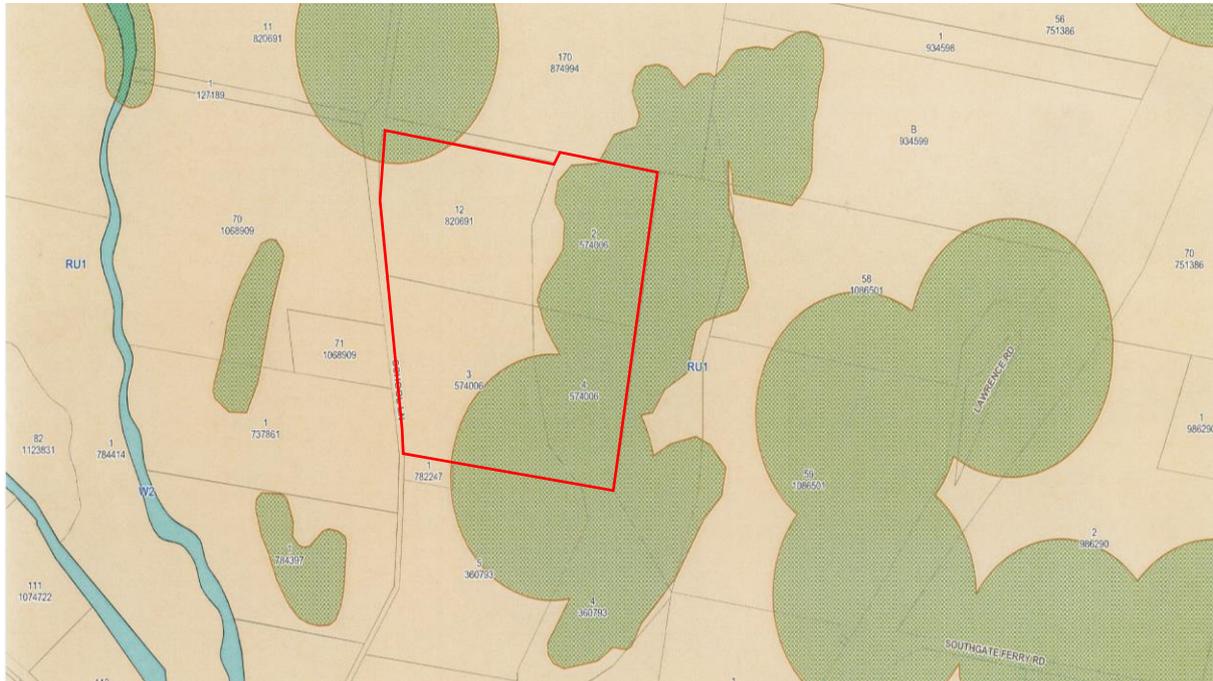


Figure 7: Potentially high environmental value land on the subject site.



Figure 8: Location of mapped important farmland in relation to the subject site and 'associated offer' land.

Local

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 locally implemented planning principles as it would result in the fragmentation of rural land and additional development outside agreed growth areas for rural residential 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 proposal, were it to proceed, would potentially create an undesirable precedent for similar proposals in the locality and across the LGA in other rural-zoned areas. Council staff have raised this as a matter of concern in the report to Council.

Section 9.1 Ministerial Directions

The planning proposal is considered to be consistent with all applicable section 9.1 Directions except the following:

Direction 1.5 Rural Lands

The proposal is inconsistent with this Direction because the proposal as it does not minimise the potential for land fragmentation and land use conflict in rural areas.

Additionally, it does not satisfy the heads of consideration listed under clauses 4 and 5 of the Direction and is not consistent with the rural subdivision principles listed in clause 5.16 of the Clarence Valley LEP 2011 (as reflected in State Environmental Planning Policy (Primary Production and Rural Development) 2019). This is discussed in more detail below.

Direction 4.1 Acid Sulfate Soils

The proposal is inconsistent with this Direction because it proposes an intensification of land uses on land identified as containing class 3 and class 5 acid sulfate soils without having undertaken an acid sulfate soils study to assess the appropriateness of the land-use change. This inconsistency is considered to be of minor significance as the Clarence Valley LEP 2011 contains suitable provisions to ensure this matter can be appropriately considered and addressed at the development application stage. The inconsistency is considered justified.

Direction 5.10 Implementation of Regional Plans

The proposal is inconsistent with this Direction because it is inconsistent with Action 24.1 of the North Coast Regional Plan 2036, as discussed in the assessment of the proposal against the regional plan above. The inconsistency is not considered to be justified.

State environmental planning policies (SEPPs)

The planning proposal is considered to be consistent with all relevant SEPPs except for SEPP (Primary Production and Rural Development) 2019.

SEPP (Primary Production and Rural Development) 2019

At the time the planning proposal was lodged with the Department SEPP (Rural Lands) 2008 applied. On 28 February 2019 a new planning framework for primary production and rural development commenced. This framework repeals provisions from five SEPPs, including the SEPP (Rural Lands) 2008 and is based on proposals exhibited as part of the Primary Production and Rural Development Explanation of Intended Effect (EIE), between 23 October 2017 and 15 January 2018.

SEPP (Primary Production and Rural Development) 2019 now applies to the site through the application of cl. 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 cl.5.16 (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.

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 small allotments.

The proposed reconfiguration of the four lots making up the subject site into 6ha allotments, each with a dwelling entitlement, would further fragment rural land and reduce its grazing and flood-free-refuge potential. There is also a potential for increased conflict between the newly created rural residential allotments and surrounding agricultural practices.

SITE-SPECIFIC ASSESSMENT

Social

It is recognised that the introduction of rural residential development into an actively rural landscape can result in land use conflict through the introduction of potentially incompatible land uses and residents with competing social and environmental expectations into the existing rural area. If this proposal were supported, a land use conflict risk assessment would be recommended.

An AHIMS (Aboriginal Heritage Information Management System) search was undertaken for the site and found no recorded Aboriginal sites or declared Aboriginal places on or near the subject site.

Environmental

The proposal will likely result in minimal environmental impacts, although some additional pressure on the Southgate Lagoon would be expected from the addition of the two new dwellings and associated wastewater management systems. The proposal is generally inconsistent with the pattern of development in the surrounding area. Although some smaller lots exist in the surrounding area, these are the result of past planning practices and do not reflect the desired current or future size of land parcels to facilitate ongoing primary production use. If the proposal were to proceed it may set a precedent for the further reduction of land sizes on similar nearby land and lead to increased fragmentation of rural land.

Economic

The proposal argues that a positive economic impact will be realised by transferring land eligibilities from highly productive and flood-prone cane land that supports a viable cane industry to low-value and less productive grazing land. It is further argued that the planning proposal is required to secure the future ongoing use of the cane land for sugar cane production, as the economic return for landowners would be greater if the land were sold to buyers looking for a riverfront lifestyle property (assuming approval was granted for a dwelling before the December 2021 deadline, as discussed earlier). The proposal argues that the loss of the subject cane land in part or total to other interests would jeopardise the future of the family's collective cane operation, which relies on the use of 19 separate properties for cultivation.

Consolidation of the cane production lots to prevent fragmentation by selling individual portions would create a lot of approximately 46ha, creating a dwelling entitlement. Council officers argue this would be a better way of eliminating the risk of fragmentation as, without consolidating the land, there is no guarantee the land will not be fragmented in the future as the parcels could still be sold individually.

There is no evidence to conclude that the land under cane cultivation would be lost to cane production if dwellings were to be erected on the land. The loss of flood-free grazing land under the proposal is considered to be more certain, however, as the resultant lot sizes and associated permissible development for the subject site would likely preclude its ongoing use for cattle grazing.

Current servicing and infrastructure arrangements are adequate to meet the requirements of the additional dwellings, while sufficient flood-free land is available for associated wastewater management systems.

CONSULTATION

Community

A 14-day public exhibition period is proposed. Were the proposal to proceed, this is considered appropriate.

Agencies

No agency consultation is proposed in the planning proposal. Were the proposal to proceed, it would be considered appropriate to consult Agriculture NSW (Department of Primary Industries) given the implications of the proposal for future agricultural use of the land.

However, as it is recommended that the proposal does not proceed, exhibition or consultation with agencies would not be required.

TIME FRAME

Council proposes a six-month time frame for completing the LEP, which may be considered appropriate if the proposal were to proceed without delay.

However, given the fact the mechanism for extinguishment of the dwelling eligibilities on the cane land has not been determined, and an assessment of land use conflicts would be required, a nine-month time frame may be more appropriate should the proposal proceed.

LOCAL PLAN-MAKING AUTHORITY

Council has requested to be the local plan-making authority. This is considered appropriate should the proposal proceed.

CONCLUSION

The planning proposal is not supported to proceed because it:

- lacks strategic merit;
- is inconsistent with the Clarence Valley Settlement Strategy and the North Coast Regional Plan 2036;
- 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;
- is inconsistent with the objectives of the RU1 Primary Production zone and the nature of existing surrounding development; and
- may set an undesirable precedent for similar development in the area and other rural areas in the LGA.

RECOMMENDATION

It is recommended that the delegate of the Minister determine that the planning proposal should not proceed because:

- lacks strategic merit;
- is inconsistent with the Clarence Valley Settlement Strategy and the North Coast Regional Plan 2036;
- 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;
- is inconsistent with the objectives of the RU1 Primary Production zone and the nature of existing surrounding development; and
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10/5/19

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