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# **Submission**

**to**

## **Clarence Valley Council**

**on**

### **Proposed Harwood Island industrial rezoning (Mark 3)**

### **REZ2012/0003**

[council@clarence.nsw.gov.au](mailto:council@clarence.nsw.gov.au)

**Compiled by John Edwards  
For the Clarence Environment Centre  
Date: 25<sup>th</sup> January 2015**

# SUBMISSION to Clarence Valley Council's 3<sup>rd</sup> attempt to rezone a part of Harwood Island for industrial. 25.1.2015

## Introduction

The Clarence Environment Centre (CEC) has maintained a shop-front in Grafton for over 25 years, and has a proud history of environmental advocacy. The conservation of Australia's natural environment, both terrestrial and and marine, has always been a priority for our members, and we believe the maintenance of healthy ecosystems and biodiversity is of paramount importance.

## Background to date.

In November 2012, Harwood Marine approached Clarence Valley Council with a proposal to establish a marine precinct adjacent to its slipway operation on relatively remote, flood-prone farmland on the lower Clarence River floodplain at Harwood Island, requesting that Council make zoning changes to facilitate the plan.

That application contained the map at right, with the subject land consisting of lots 1, 2 (the narrow easement), 3 and 4 along the river. Note, at that time there is no E2 zoning on the subject site, as previous environmental protection zoning was deleted during the process of trying to align the LEPs of the 5 councils that had been amalgamated to form the current Clarence Valley Council. **We have never received any satisfactory explanation as to why those original zones we 'scrubbed'.**



**Image 1: Original map used in the Development application**

What does not appear on the above map is a sizable strip of crown land that lies between all 4 lots and the river (see later mapping below). That strip was deleted from the map used in the DA, although the crown land does get a mention in the text as being “crucial” to the development proposal, to allow access to the river for all ten proposed subdivisions. Therefore that land needed to be a part of the rezoning, proposal and ownership transferred to the proponent, presumably by purchase. There was also no mention in the original DA that that **crown land was under a native title claim.**

Council's Environment, Economic and Community Committee considered that application on 11<sup>th</sup> December, 2012. The Council Papers did not display wholehearted support for the proposal reporting that it, “ ... is **generally consistent** with a range of strategic policies aimed at enhancing the area's potential to develop a marine based industry sector”, concluding that, “the site **seems to be able to meet most planning issues**, and recommended the following actions:

1. *As the relevant planning authority, initiate the Local Environmental Plan “Gateway” process pursuant to Section 55 of the Environmental Planning and Assessment Act 1979 by endorsing the attached Planning Proposal over Lots 1 - 4 DP1155528, un-notified Crown Reserve and adjoining accreted land, to rezone the land to IN4 Working Waterfront and W3 Working Waterways to enable the development of a marine industry precinct adjoining the existing Harwood slipway.*

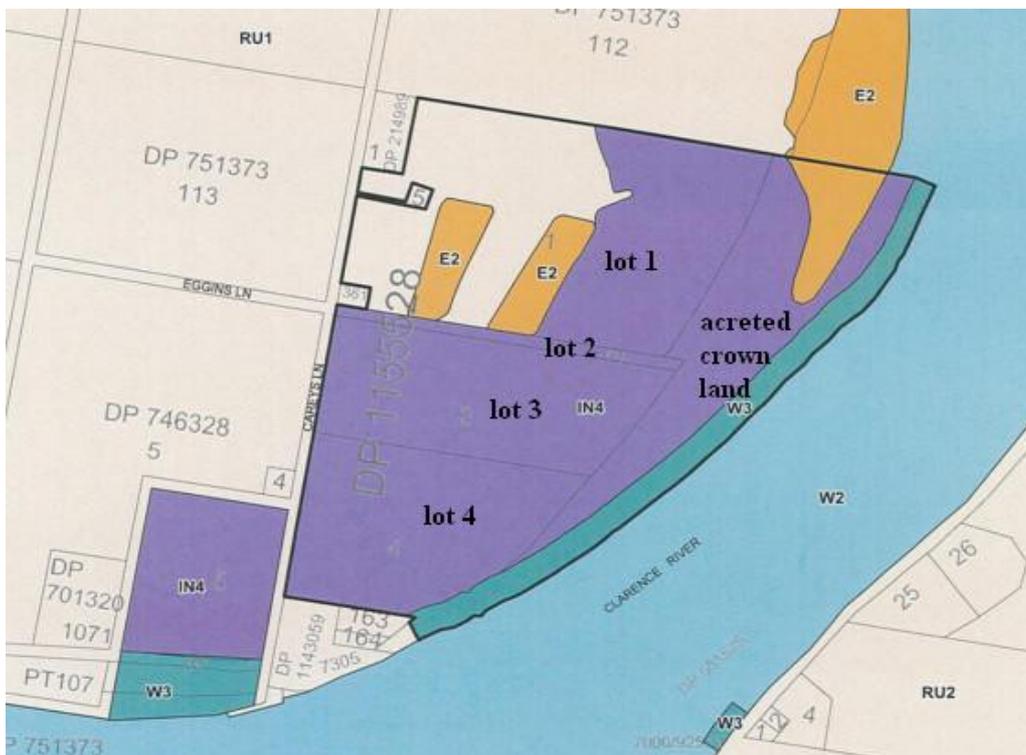
2. *Forward the Planning Proposal to the Department of Planning and Infrastructure requesting a “Gateway” determination, pursuant to Section 56 (1) of the Environmental Planning and Assessment Act.*
3. *Request a road access strategy to be prepared by the proponent for exhibition with the draft Planning Proposal.*
4. *Undertake community consultation regarding the Planning Proposal, subject to the determination of the Gateway Process.*

On the 21<sup>st</sup> December 2012, Clarence Valley Council initiated the Gateway determination with the Planning Department, receiving a response on 27<sup>th</sup> February 2013, advising that “*the planning proposal should proceed subject to the conditions in the gateway determination*”.

**Those conditions included a requirement to, “assess the type, quality and significance of native vegetation and habitat found on the site. Once this additional work has been undertaken, Council may wish to revisit the proposed zoning of land within Lot 1 DP 1155528 which contains areas of native vegetation.”**

The fact that no flora and fauna survey had been undertaken at that point was surprising, but not the least bit as surprising as the subsequent actions by Council, attempting to avoid any scrutiny by way of environmental assessment, or any other assessment of the subject land to determine its suitability for the establishment of an industrial estate.

Council undertook a cynical approach to the Planning Department's requirement to “*assess the type, quality and significance of native vegetation and habitat*”, simply drawing a circle around any areas with trees growing on them, and labelling them with E2 zoning (see map below), completely ignoring connectivity issues, or the fact that the definition of “*native vegetation*” covers more than just trees. Also ignored is the fact that one tree-covered area is actually a tidal estuary, extending northward, where trees have been cleared, but nevertheless should also be protected by E2 zoning.



**Map of council's rezoning proposal, August 2014. The original proposal was to rezone the entire area as IN4 with no E2 zoning.**

There was also an issue with rezoning of the accreted crown land along the river because of the outstanding native title claim, something the Planning Department may have conveyed to Council, and the significant amount of native vegetation occurring on that crown land. Of course none of that was mentioned in the DA, which claimed that land was **“crucial” to the development proposal, to allow access to the river for the ten subdivided properties.**

Certainly the Department of Planning was not satisfied with the cynical circling of land for E2 zoning, and issued a revised Gateway determination in August 2014, requiring:

*“Prior to undertaking further community consultation, the planning proposal is to be amended to include additional detail regarding the application of the proposed IN4 zone over the land between the proposed E2 Environmental Conservation zones on Lot1. This detail shall include:*

- (a) the need to zone this part of the land for an IN4 zone*
- (b) the suitability of this land for an IN4 zone, and*
- (c) the potential impact of industrial activities on the adjoining proposed E2 Environmental Conservation zoned areas.”*

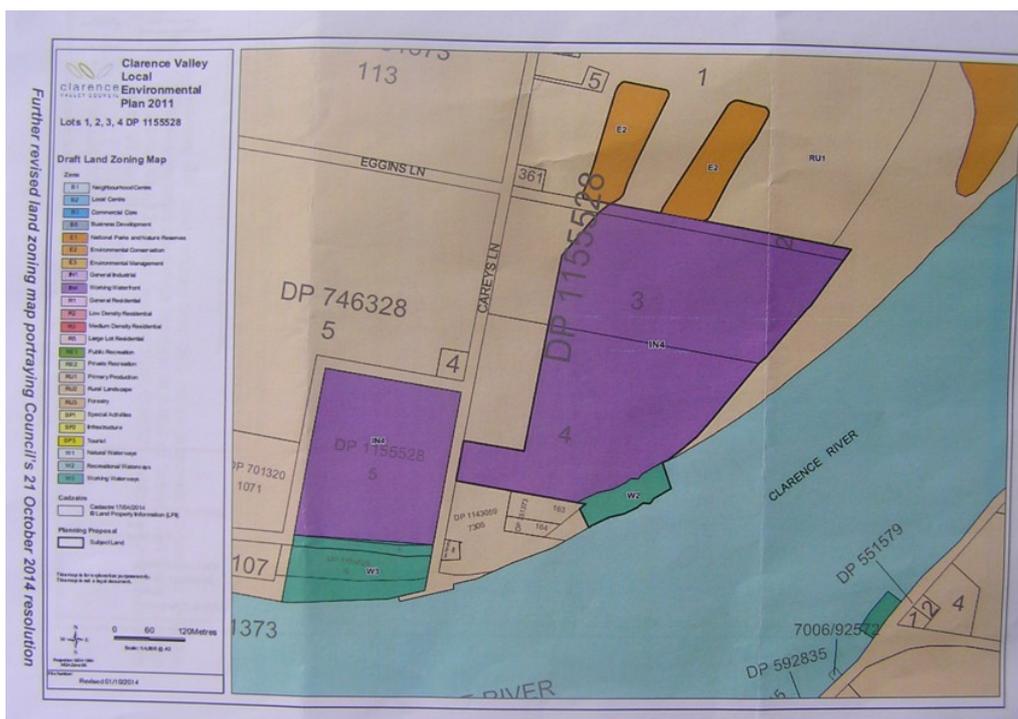
Also:

*“Further consultation is required with the NSW Office of Environment and Heritage under section 56(2)(d) of the Act. The OEH is to be provided with a copy of the altered planning proposal, and supporting material that addresses its concerns relating to further flora and fauna assessment, and is to be given at least 21 days to comment on the altered proposal”.*

### The latest proposal

Council planners continued their cynical approach, this time explaining to the subsequent Council meeting that if the contentious Lot 1 and crown land sections were removed from the rezoning proposal, Council might be let off the hook in relation to undertaking any flora and fauna assessment, stating: *“Should Council support the request to remove the “added” IN4 zone (between the 2 proposed E2 zones) from Lot 1 the need for any further environmental assessment and flora and fauna assessment (and consultation with OEH) is considered unnecessary...”.*

The following map is what the proposal looks like now, just 17ha of the original 39ha.



At least, on this occasion, the crown land section has been clearly shown. However, now it is colour-coded as RU1. **Is this just another attempt to mislead, or the first step to have the crown land rezoned as agricultural?**

Also removed from the original proposed rezoning application, is an approximately 100m wide strip of land along the western edge of Lots 2, 3, and 4, presumably to satisfy concerns raised by the community about the lack of buffer zones between residents and the proposed industrial complexes.

When it was pointed out to Council that a 100m buffer did not meet the mandated separation between industrial and residential areas, the response was that the buffer issue would be resolved during subsequent development applications. In other words, even less than the now 17ha can be used for industrial purposes, possibly as little as 12ha.

Remarkably, the Planning Department, has accepted this latest proposal, not only dropping the requirement to undertake Flora and fauna assessments, but also the requirement for further discussions with the Office of Environment and Heritage, along with, it seems, the requirement to assess:

- (b) the suitability of this land for an IN4 zone, and*
- (c) the potential impact of industrial activities on the adjoining proposed E2 Environmental Conservation zoned areas."*

### **Time for a reality check**

We ask that decision-makers take a serious look at the following images.

These are aerial photograph of the site, one during flood. The red line shows the extent (approximately) of the original 36.8ha proposal, and the yellow line shows this latest. The usable portion of that reduced area will be further diminished by up to 5ha to provide a legal buffer, and as is clearly shown in the image, the site has 3 very large toxic waste holding ponds associated with the Harwood Slipways, measuring 2.5ha. Therefore, the reality is that the usable land for industrial purposes, under the latest proposal, is about 10ha, and makes a mockery of the original development proposal which remains unchanged.



**What is the real agenda here?** It seems clear that Council, and the developer, are desperate to insert the thin edge of the wedge to get some part of the subject land rezoned as industrial, which will facilitate further expansion down the track.

## **In conclusion.**

We still have an unchanged development application before Council, for a marine precinct containing up to 10 subdivisions, including raised building pads to accommodate that many marine associated businesses such as boat repair and slipway operations.

Council has still not undertaken any studies or assessments to determine the site's suitability as an industrial complex:

- a) There has been no investigation of the values of flora, and fauna habitat, on and around the site, or the potential impacts an industrial complex might have on those values.
- b) No risk assessment has been undertaken in relation to the acid sulphate soils known to occur on site, despite knowing any industrial area requires underground infrastructure like storm-water drainage, sewerage works, water and telecommunications networks.
- c) No flood risk assessment has been undertaken to assess the implications to neighbouring properties, or those across the river on Palmers Island, of blocking flood-waters with large raised pads, or the potential for toxic substances to be washed across those properties much of which is prime agricultural land.
- d) **The recent total collapse of the slipway at the existing works complex, a direct result of river bank erosion, unstable soils, and a water table just a metre below the surface, should have sent a clear message to Council that there are soil stability issues with the site, yet no investigation into soil structure has been undertaken.**
- e) The proponent's consultant acknowledged in their DA that sea level rise associated with climate change had not been taken into account, yet Council has still bowed to the request to rezone the site without any consideration of the fact that the entire site is predicted to be under water by century's end.
- f) No consideration has been given to the long-term viability of the local sugar industry, about to be hard hit by the Pacific Highway upgrade, through the further loss of cane-growing land to the marine engineering industry.
- g) Residents who have lived with the impacts of the existing slipway operation, having suffered decades of noise, smell, air and water pollution events, and illegal disposal of toxic substances (the EPA's records speak for themselves), coupled with the potential loss of social amenities, such as the Yacht Club, believe their concerns have not been listened to.

It should also be noted that in order to deal with particulate pollutants mixed with flood mud, the existing slipway has had to construct the 3 holding ponds covering a massive 2.5 hectares. All the other enterprises will face the same problem, so where and how, given the acid sulphate problems that are known to exist, will these additional holding areas be constructed?

In summary, Harwood Island was not identified by the Mid North Coast Regional Strategy as a future industrial site, the land is mapped for protection as regionally significant farmland. There has been no environmental or social impact assessments, the area is highly flood-prone, with acid sulphate soils, and a water table just metres below the surface, suggesting the site is totally unsuitable for development as an industrial zone. Therefore we urge the NSW Planning Department to reject the gateway application.

We thank the Minister for this opportunity to comment.

Yours sincerely

John Edwards (Honorary Secretary)