

6 May 2010

Mr Stuart McPherson
General Manager
Clarence Valley Council
Locked Bag 23
GRAFTON 2460

By e-mail: lep@clarence.nsw.gov.au

Dear Mr McPherson,

Re: Erosion of existing property rights by the draft Clarence Valley Local Environmental Plan 2010

The Urban Taskforce is a non-profit organisation representing Australia's most prominent property developers and equity financiers. We provide a forum for people involved in the development and planning of the urban environment, to engage in constructive dialogue with government and the community.

While we understand that the exhibition period for the draft *Clarence Valley Local Environmental Plan 2010* ("the plan") has expired, a serious matter has been brought to our attention that deserves careful consideration.

We understand that Council proposes the insertion of clause 4.1A titled "Erection of dwelling houses and dual occupancies (attached) in RU1, RU2, RU3, R5 and E3 zones". We understand that Council proposes the insertion of clause 4.2A titled "No strata or community title subdivision in certain rural or environmental protection zones". We are concerned that if included in Council's comprehensive LEP, this will erode existing property rights afforded to property owners pursuant to previous local environmental plans. We urge the Council to re-consider the use of these clauses and we set out our concerns in more detail below.

We acknowledge that Council must prepare a new local plan that complies with the *Standard Instrument (Local Environmental Plans) Order 2006*. We understand that in most cases Council is unable to depart from the standard instrument but is able to add clauses to address specific local issues. In this case, Council has proposed the insertion of clause 4.1A. The effect of this clause is to prevent the erection of a dwelling on a lot that is less than the minimum lot size permitted in the applicable zone. We are concerned that the imposition of new minimum lot sizes under this draft plan are more restrictive than those that existed under the current LEP, and are an erosion of development rights enjoyed by a property owner. That is, Clauses 4.1A (2) (b) and (d) state

(2) Development consent must not be granted to the erection of a dwelling house or dual occupancy (attached) on a lot in a zone to which this clause applies, and on which no dwelling house or dual occupancy (attached) has been erected, unless the land is:

(b) a lot created before this Plan commenced and on which the erection of a dwelling house or dual occupancy (attached) was permissible immediately before that commencement, or

(d) a lot for which subdivision approval was granted before this Plan commenced and on which the erection of a dwelling house or dual occupancy (attached) was permissible immediately before that commencement if the plan of subdivision had been registered before that commencement

If the plan simply included this clause, in principle we would have no reason for concern. This approach acknowledges the existence of rights afforded to property owners under previous plans and/or approvals. Unfortunately Council has sought to "sunset" this provision by inserting clauses 4.1A (3) and (4) which state

(3) Development consent for the erection of a dwelling on vacant land may only be granted under subclauses (2)(b) and (2)(d) within 5 years after the commencement of this Plan.

(4) Land ceases to be an existing holding for the purposes of subclause (2)(e), if an application for development consent referred to in subclause (2) is not made in relation to that land within 5 years after the commencement of this Plan.

To protect existing property rights the Urban Taskforce recommends that clause 4.1A be amended as follows:

- i. insertion of a clause objective. In this regard, Council would be well aware of the benefit and need for a clear objective to such a clause. The objective should properly articulate Council's purpose for the insertion of such a clause; and
- ii. the deletion of clauses 4.1A (3) and (4).

These comments are offered to encourage constructive dialogue between government and the development industry and we ask that you accept these comments as our contribution to the policy development process. We are always able to provide a development industry perspective on planning policy and we would welcome the opportunity to meet and discuss these issues in more detail.

Yours sincerely

Urban Taskforce Australia

A handwritten signature in black ink, reading "Aaron Gadiel". The signature is written in a cursive, flowing style with a long horizontal stroke extending from the bottom of the name.

Aaron Gadiel
Chief Executive Officer