

## **Planning Proposal**

Amend Clarence Valley Local Environmental Plan 2011

To permit a dwelling house on proposed Lot 2 in the subdivision of  
Lot 102 DP 1221192 Summerland Way, Koolkhan

Amended September  
2020



## Document Control Sheet

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- L. Landscape/Revegetation Plan (as revised)
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## 1. Preliminary

### 1.1 Context

This planning proposal constitutes a document referred to in Section 3.33 of the Environmental Planning and Assessment Act 1979. It has been prepared in accordance with the Department of Planning and Environment's *"A guide to preparing planning proposals"* (August 2016). A gateway determination under Section 3.34 of the Act is requested.

The gateway determination permitting the planning proposal to proceed to public exhibition was issued on 7 January 2020 (see Annexure M).

### 1.2 Introduction

Kahuna No. 1 Pty Ltd, owner of Lot 102 DP 1221192 Summerland Way Koolkhan, originally sought approval to rezone part of the property from E2 Environmental Conservation to E3 Environmental Management under Clarence Valley Local Environmental Plan 2011. This was with a view to permit the E3 portion to be subdivided from a residential lot-sized portion of R1 General Residential land to which it is attached, and for dwelling houses to be applied for on both resulting lots.

After public exhibition the proposal was amended to retain the current E2 zoning of the land and instead amend LEP Schedule 1 Additional permitted uses to permit a dwelling house on proposed Lot 2 in the subdivision of Lot 102 DP 1221192 Summerland Way, Koolkhan. This was in response to submissions made by the Biodiversity and Conservation Division (BCD) of the Environment, Energy and Science Group in the NSW Department of Planning, Industry and Environment. Refer to section 4.10 for further detail.

### 1.3 Property Description

The site is located on the western side of Summerland Way at Koolkhan which forms a northern extension of Junction Hill Village, approximately 6 kms from Grafton.

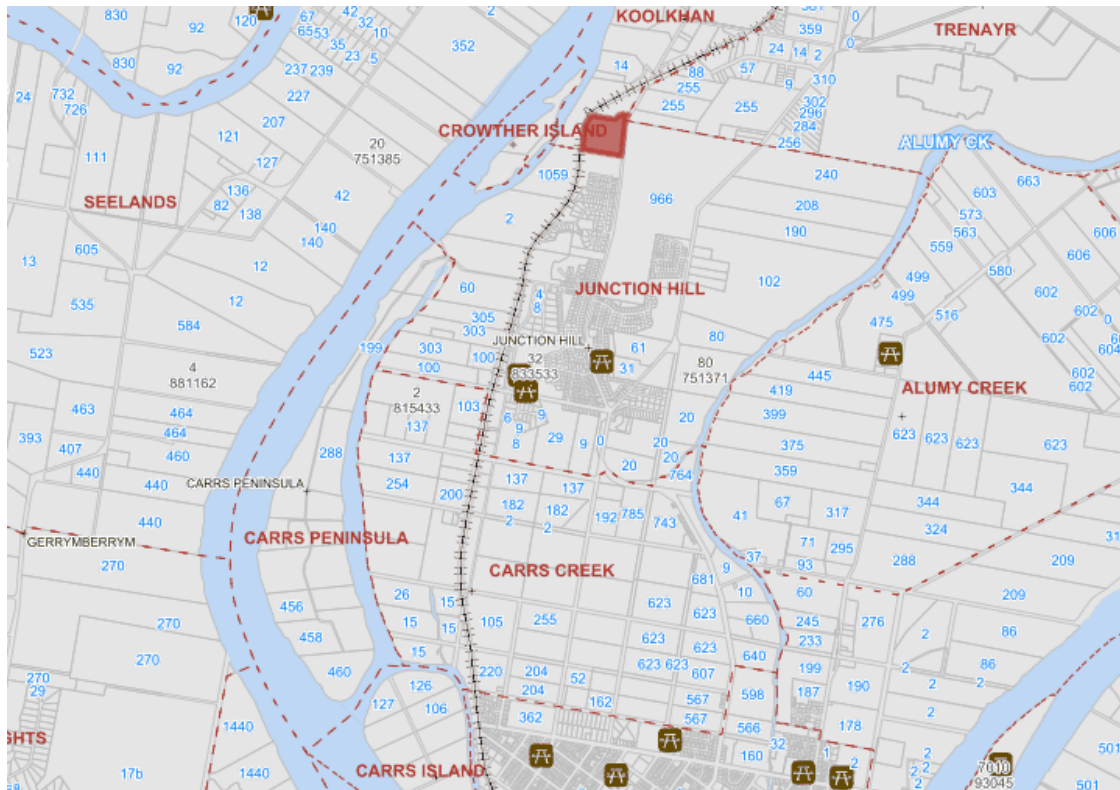


Figure 1 - Locality Map

The land specific to this proposal forms part of a 75m-103m wide strip of E2 Environmental Conservation land adjacent to the North Coast Railway which runs along the site's western boundary.

The E2 strip also extends to the south and north of the subject land (see Figure 2). To the south it is located on Lot 1 DP 1224325 which the Preliminary Biodiversity Assessment (see Annexure E) concludes does contain a small Threatened Environmental Community and so is worthy of a partial E2 zoning covering that vegetation.

To the north the E2 strip extends through Lot 101 DP 1221192, Lot 10 DP 976484 and Lot 1 DP 199583 until it reaches the boundary of the Koolkhan Industrial Estate. No Biodiversity Assessment has been undertaken over this land as part of this proposal but the section immediately to the north on Lot 101 again contains only pasture land.

If the proposal is successful it will physically sever the connectivity of the E2 land, but it is the contention of this proposal that there are no high ecological, scientific, cultural or aesthetic values on the subject E2 land and potentially some or all of the E2 land to the north and so connectivity is not required.



- 1(a) Rural (General)

to:

- 2 (a) (Village); and
- 1(c) Rural (Small Holdings)

The land proposed to be rezoned included Lot 1 DP 812999 of which the subject site formed part.

The rezoning proposal was accompanied by a “master plan” indicating a total of 1004 residential lots among other uses, so the subject land formed only a minor component of the land involved.

Council at its meeting on 11 December, 2007 resolved to support the rezoning as submitted.

Copmanhurst LEP 1990 (Amendment No.13) was gazetted on 17 December, 2010 (see Annexure C). The amendment rezoned the land subject of this Proposal to 1(a) Rural (General) and also classified it “Environmentally Sensitive Land” (Clause 25E (7)). Clause 25 E(7) defined Environmentally Sensitive Land and Clause 25E (5) prohibited development on it except for environmental protection works and recreation areas.

This did not reflect the rezoning proposal endorsed by Council in December 2007.

On 23 December, 2011 Clarence Valley Council LEP 2011 was gazetted and the subject land was zoned E2 Environmental Conservation.

In 2012 a development application for a “Staged Subdivision” with a first stage of 75 new residential lots, 1 commercial lot, 1 open space lot, 1 drainage reserve lot, 1 hobby farm lot, roads and certain residue rural lots was submitted to Council. None of the lots applied for were located on the subject land, but it was included in the Overall Concept Plan which accompanied the application.

The staged subdivision application was accompanied by a number of consultant reports, including Landscape Masterplan & Report (Jackie Amos Landscape Architect December, 2011). The Report addresses the subject Lot 102 DP 1221199 and specifically, the subject land (the E2 portion of that lot) as follows:

- The Master Plan (see Annexure D) indicates that the subject E2 land is to be enhanced with *“proposed tree planting (random groups) to open space”* and *“proposed informal tree plantings to internal road.”* It is also to be provided with a *“proposed 1.5m path linking to residential areas.”*

The Masterplan also indicates a park (referred to in the Report as Park 3), located on what is now part of the R1 land and linked to the E2 land.

The Masterplan also indicates a perimeter road abutting the park and E2 land.



- Section 4.2.3 Vegetation & Rehabilitation (p 20)

*“The Masterplan identifies an area of environmentally sensitive land in the western development site. The Structure Plan describes this area as having remnant rainforest vegetation and as per that plan, the area to have weed control and revegetation planting. Revegetation strategies for this area are to be detailed by a flora and fauna consultant during detail design for this area. The landscape masterplan addresses broad proposal for this area as open space.*

*This area represents the part of the site closest to the Clarence River. At this location there are attractive views to the river and the Gibraltar Range in the distance. The northern part of this area is to be open space and it is proposed it has a “natural” character that reflects its outlook and focus on revegetation. A path meanders through the open space and provides a link with the neighbourhood park. Seats could be located along the route to take in the river views. Interpretive signs could be included to describe revegetation strategies and particular plant species. It is proposed street tree planting to the edge of the reserve includes random groups of trees and that species selection is based on revegetation species used in the reserve.”*

- Section 4.2.4 Open Spaces (p28)

*“Park 3 is in the western portion of the site and overlooks the environmentally sensitive land that is to be revegetated. The park will have views to the Clarence River and Gibraltar Range. This park is most likely to be accessed by residents living in the western precinct of the village and is well linked by pathways to its surrounds. Given it is the only park for this precinct, the masterplan proposes Park 3 provides a greater range of facilities for residents. It is suggested that it include a children playground, shade structures, BBQ and picnic facilities, seating and an open play space. The park character will be largely defined by its proximity to the river and the land to revegetate. In keeping with that, the park would have an informal layout with a focus on facilities taking in the river views and providing plenty of shade. Plant species for the park would reflect the rainforest species that are to be adopted for the revegetation areas nearby. The park could incorporate signage to describe the revegetation works underway and could also include historical information about wool routes and the use of the river as a transportation route.”*

The enhancement proposed for the E2 portion and its attachment to the park indicate that the subject land was intended to be open to the public, which could only be achieved if the land was held in public ownership.

On 18 August, 2017 Council issued consent to SUB2016/0020 over Lots 101 & 102 DP 1221192, subsequently modified on 21 December, 2017. This approved 59 lot subdivision, including Proposed Lot 2 which incorporates the subject land (see Annexure B). Following

earlier discussions with Council staff, the subdivision plan incorporated, and was subsequently approved with, the following features:

- the E2 land attached to a 1,311m<sup>2</sup> R1 portion to create Proposed Lot 2
- perimeter road providing public access to the E2 land not provided
- the park relocated away from the E2 land

Condition 6 states:

6. *The developer shall meet the full cost of the dedication of the two public reserves to Council.*

The two public reserves referred to are the park (Lot 58) and the public reserve along Summerland Way (Lot 59). There is no condition requiring the dedication of the E2 land and the approved subdivision layout does not allow public access to this land. The E2 land to both the north and south are also held in private ownership as the subdivision consents on each of these properties also did not require dedication of the E2 land. To the west is the railway line, so as a result there is no public access or ownership of this land.

Accordingly, the vision of public use of the E2 land which underpins the Landscape Masterplan prepared by Jackie Amos in 2011 cannot be achieved.

Condition 4 of the consent states:

*A Landscape Plan, prepared by a person competent in the field, is to be submitted to Council for approval prior to the issue of a Civil Construction Certificate. The plan is to show all proposed streetscape plantings, plantings in the two public reserves and plantings in the E2 zoned land.*

*The plan is to be generally in accordance with the Landscape Masterplan and Report, dated December, 2011, Issue C, prepared by Jackie Amos Landscape Architect, and the landscape elements reflective of the history of Junction Hill as discussed in that report. The plan shall indicate the mature height, location, quantity and species of all plantings and shall provide details of soil conditions, the planting method and maintenance program.*

*Landscaping is to be completed in accordance with the approved Landscape Plan prior to the release of the relevant Subdivision Certificate.*

In an oversight by both the developer and Council staff, this plan was not prepared and submitted with the Civil Construction Certificate which has now been issued.

A Landscape/Revegetation Plan has now been prepared for the E2 zoned land and plantings will be completed prior to the release of the relevant Subdivision Certificate as required.

Condition 4 references the Landscape Masterplan and Report prepared by Jackie Amos, but as discussed above primary focus of creating a public space on the E2 zoned land cannot be achieved as Council did not require it to be dedicated for this purpose.

The Landscape/Revegetation Plan (as revised) adopts and adapts the approach taken on Lot 1 DP 1224325 immediately to the south and approved by Council in conjunction with the residential subdivision of part of that lot. The Plan locates the proposed plantings immediately adjacent the railway line at the southern end of the property where it connects to the remnant vegetation on the adjoining property creating an extended critical mass of special ecological value across both properties.

This will enable the fenced planting area to be protected and properly managed while retaining the historic low level grazing on the balance of the land which is critical to site maintenance particularly as it will be immediately adjoining residential properties.

Revised Landscape/Revegetation plans for the E zoned corridor were submitted on 13 May, 4 September and 9 September 2020, following exhibition and can be found at Annexure L. The revised plan proposes to use 7 species from the Amos plan species list. All 7 of these species are tree species. This plan provides for a total of 435 plants to be planted (375 trees & 60 shrubs). The revised plan is intended to:

1. support the further progression of the planning proposal and compliance with condition 4 of SUB2016/0020 as it relates to the E-zoned land;
2. Address the Biodiversity and Conservation Division (BCD) submission. Refer to Annexure N and section 4.10.

Refer also to section 4.10.

### **1.6 Proposed Subdivision**

A plan showing the proposed subdivision which would result from the proposal is at Annexure B and is described in Part 1 of this proposal.

## Part 1: Objective or Intended Outcome

The objective of this Planning Proposal is to permit a dwelling house on a part of current Lot 102 DP 1221192 Summerland Way, Koolkhan that is zoned E2 Environmental Conservation and which is proposed to be excised from Lot 102 as further outlined in Discussion below.

Refer also to Part 2: Explanation of Provisions below.

### Discussion

The intended outcome of achieving a dwelling house on the part of current Lot 102 DP 1221192 Summerland Way, Koolkhan that is zoned E2 is to be facilitated in part as follows:

1. the further subdivision of Lot 102 DP 1221192 in accordance with the approved subdivision of lot 102 (SUB2016/0020) to create proposed Lot 2 (refer to Annexure B);
2. the further subdivision of proposed Lot 2, using LEP clause 4.1A(3) to create proposed Lot 60 which will be exclusively zoned E2 and proposed lot 2 which will be exclusively zoned R1 (refer also to Annexure B).

The E2 portion has an area of 2.213ha (referring to proposed Lot 60 in 2 above), while the Lot Size Map indicates a minimum lot size of 40ha. Accordingly, the E2 portion cannot be separated by subdivision from the R1 General Residential portion of the property under **Clause 4.1 Minimum subdivision size** of Clarence Valley LEP 2011.

**Clause 4.1A Exceptions to minimum lot size for certain split zone lots** states:

#### **4.1A Exceptions to minimum lot size for certain split zone lots**

*(1) The objectives of this clause are as follows:*

- a) to provide for the subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1, 4.1AA or 4.2C,*
- b) to ensure that the subdivision occurs in a manner that promotes suitable land use and development.*

*(2) This clause applies to each lot (an original lot) that contains:*

- a) land in a residential, business or industrial zone, and*
- b) land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone E2 Environmental Conservation or Zone E3 Environmental Management.*

*(3) Despite clauses 4.1, 4.1AA and 4.2C, development consent may be granted to subdivide an original lot to create other lots (the resulting lots) if:*

- a) one of the resulting lots will contain:*
  - i. land in a residential, business or industrial zone that has an area that is not less than the minimum size shown on the [Lot Size Map](#) in relation to that land, and*
  - ii. all of the land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone E2 Environmental Conservation or Zone E3 Environmental Management that was in the original lot, and*

- b) all other resulting lots will contain land that has an area that is not less than the minimum size shown on the [Lot Size Map](#) in relation to that land.*
- (4) Despite subclause (3), development consent may only be granted to subdivide an original lot to create a lot referred to in subclause (3) (a) (ii) that is less than the minimum size shown on the [Lot Size Map](#) in relation to that land if the consent authority is satisfied that the lot is suitable for the erection of a dwelling house.*

In this instance the **original lot** consists of approximately 6.34ha of R1 General Residential land and 2.213ha of E2 Environmental Conservation land and so complies with the requirements of **Clause 4.1A (2)**.

The approved plan of subdivision creates proposed Lot 2 with an area of 2.34ha consisting of 1,311m<sup>2</sup> of R1 zoned land and 2.213ha of E2 zoned land. When that lot is registered it will become the **original lot** and will also comply with **Clause 4.1A (2)**.

If the planning proposal is finalised and the LEP amended as sought, the future subdivision of proposed Lot 2 would create the following **resulting lots**.

- Proposed Lot 2 zoned R1 General Residential with an area of 1,310.6m<sup>2</sup> including handle.
- Proposed Lot 60 zoned E2 Environmental Conservation with an area of 2.213ha (excluding access handle).

Accordingly, Clause 4.1 A (3) will be complied with.

Clause 4.1A (4) requires that Council be satisfied that proposed Lot 60 is suitable for the erection of a dwelling house. Physically, the potential dwelling site indicated on the proposed subdivision plan (Annexure B) is suitable and would not unduly impact on existing developments in the vicinity. The original intention of the planning proposal was to rezone the E2 zoned land to E3 Environmental Management because the E2 zone does not permit dwelling houses.

The Biodiversity and Conservation Division (BCD) of the Environment, Energy and Science Group in the NSW Department of Planning, Industry and Environment raised objection to the proposal to rezone the E2 zoned land to E3. Refer section 4.10 for further detail.

Therefore in order to satisfy the BCD's objection and concerns an alternative mechanism to permitting a dwelling house on the future Lot 60 was explored. Refer to Part 2: Explanation of Provisions below.

## **Part 2: Explanation of Provisions**

The objective/intended outcome of the Proposal will be achieved by amending the CV LEP 2011 in the following way:

1. Inserting into Schedule 1 Additional Permitted Uses the following:
  7. Use of certain land at Summerland Way, Koolkhan
    - (1) This clause applies to land at Summerland Way, Koolkhan, being part Lot 102 DP 1221192 being identified as “D” on the Additional Permitted Uses Map.
    - (2) Development for the purpose of a dwelling house is permitted with development consent.
2. Amending the [Clarence Valley Local Environmental Plan 2011 Additional Permitted Uses Map](#) to give effect to the above and as indicated in Annexure A.

Note:

The Height of Buildings Map does not specify a height for the E2 zoned land and so no amendment to that Map is required.

The Lot Size Map classifies the E2 zoned portion as “AB4- 40 hectares” and does not require amendment as LEP Clause 4.1A will permit the proposed subdivision should the further amended planning proposal LEP amendment be finalised as sought .

## Part 3: Justification

### 4.1 Is the Planning Proposal a result of any strategic study or report?

No.

There is no strategic study or report upon which the proposal is based, but the “LEP Practice Note PN09-002 Environmental Protection Zones” (Dept of Planning 2009) states in relation to the E2 zone:

*“This zone is for areas with high ecological, scientific, cultural or aesthetic values outside national parks and nature reserves. The zone provides the highest level of protection, management and restoration for such lands whilst allowing uses compatible with those values.*

*It is anticipated that many councils will generally have **limited areas** displaying the characteristics suitable for the application of the E2 zone. Areas where a broader range of uses is required (whilst retaining environmental protection) may be more appropriately zoned E3 Environmental Management.”*

and

*“Prior to applying the relevant zone, the environmental values of the land should be established, preferably on the basis of strategy or from an environmental study developed from robust data sources and analysis. This is particularly important where land is identified as exhibiting high ecological, scientific, cultural or aesthetic values outside national parks and nature reserves. For example, in most cases, Councils proposal to zone land E2 needs to be supported by a strategy or study that demonstrates the high status of these values. Under such a strategy or study, zoning would be to be appropriate and land uses would need to be capable of being sustained.”*

In specifically addressing the E2 zone, the Practice Note includes the following examples of where the E2 zone should be applied.

- *“Lands with very high conservation values such as old growth forests, significant wildlife, wetlands or riparian corridors or land containing endangered ecological communities*
- *high conservation coastal foreshores and land acquired, or proposed for acquisition, under a Coastal Lands Protection Scheme*
- *some land with a registered Biobanking agreement*
- *land under the care, control and management of another catchment authority such as the Department of Water and Energy or a Council for critical town water supply, aquifer or catchment as appropriate*
- *land with significant Aboriginal heritage values, if appropriate*
- *coastal foreshores and land subject to coastal hazards, including climate change effects*

- *land currently zoned for environmental protection where strict controls on development apply, e.g. steeply sloping escarpment lands, land slip areas.”*

The objectives of the E2 zone in Clarence Valley LEP 2011 are:

**1. Objectives of zone**

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*
- *To protect coastal wetlands and littoral rainforests.*
- *To protect land affected by coastal processes and environmentally sensitive coastal land.*
- *To prevent development that would adversely affect, or be adversely affected by, coastal processes.*

**2. Permitted without consent**

*Nil*

**3. Permitted with consent**

*Emergency services facilities; Environmental facilities; Environmental protection works; Flood mitigation works; Roads*

**4. Prohibited**

*Business premises; Hotel or motel accommodation; Industries; Multi dwelling housing; Recreation facilities (major); Residential flat buildings; Restricted premises; Retail premises; Seniors housing; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3.*

Earlier versions of the planning proposal sought to rezone the relevant E2 zoned part of Lot 102 DP 1221192 to E3 Environmental Management and provided extensive justification and discussion on why the current E2 zone was not considered appropriate on part of Lot 102.

The amended planning proposal now intends to retain the E2 zone to satisfy the concerns of the BCD. Accordingly, the previous extensive justification and discussion on why the current E2 zone was not considered appropriate on part of Lot 102 has been removed from the planning proposal.

**4.2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

The planning proposal as further amended is considered by the BCD to be the best means of achieving the objectives or intended outcomes.

The intended outcome of permitting the residential and environmental components of proposed Lot 2 to be separated with each having a dwelling entitlement is achieved through



this proposal. This will create a clear delineation between the residential subdivision with all lots of regular low-density residential size and the rear environmental section which will contain managed vegetation plus the continuation of existing non-commercial scale livestock grazing outside of those managed areas.

## **Relationship to Strategic Planning Framework**

### **4.3 Applicable Regional Plan**

The North Coast Regional Plan 2036 consistency checklist at Annexure H assesses the proposal to be consistent with the 3 actions identified as relevant.

### **4.4 Consistency with Council's Local Strategies and other Local Strategic Plans**

The Clarence 2027 is Council's adopted community strategic plan. It is supported by Council's Delivery Program and Annual Operational Plan applicable at the time.

Other local strategies include:

- South Grafton Heights Precinct Strategy
- Clarence Valley Settlement Strategy
- Lower Clarence Retail Strategy (May 2007)
- Yamba Retail/Commercial Strategy (May 2002)
- Clarence Valley Economic Development Strategic Plan
- Clarence Valley Industrial Lands Strategy
- Clarence Valley Affordable Housing Strategy
- Clarence Valley Council Biodiversity Management Strategy 2010
- Clarence River Way Masterplan 2009
- Clarence Valley Open Spaces Strategic Plan 2012

An assessment of the planning proposal against the Clarence 2027 and associated Delivery and Operational Plans is at Annexure I.

The Clarence Valley Settlement Strategy (1999) specifically addresses the extension of Junction Hill Village which led to the initial rezoning of the subject land and adjoining lands. The proposal will result in one additional dwelling.

Although the Preliminary Biodiversity Assessment concludes the subject land has low biodiversity value, the proposed restoration and on-going management of appropriate vegetation is in keeping with the Biodiversity Management Strategy's support for conservation/revegetation/regeneration on private land.

### **4.5 Consistency with Applicable SEPP's (State Environmental Planning Policies)**

The proposal is consistent with applicable state environmental planning policies (SEPPs).

Refer to the consistency checklist against these policies at Annexure J.

#### **4.6 Consistency with applicable Ministerial Directions (Sec. 9.1)**

The proposal is consistent with applicable Section 9.1 Directions with the exception of **2.1 Environmental Protection Zones** where the inconsistency is considered justified under 6(b) of the Direction on the for the reasons provided in Section 9.1 Directions Consistency Checklist at Annexure K.

#### **Environmental, Social & Economic Impacts**

#### **4.7 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?**

No.

The proposal will help restore and protect an ecological community through the provisions of the associated Landscape/Revegetation Plan. An amended Landscape/Revegetation Plan was submitted following public exhibition. Refer to Annexure L.

The revised Landscape/Revegetation plan proposes to use 7 species from the Amos plan species list. All 7 of these species are tree species. This plan provides for a total of 435 plants to be planted (375 trees & 60 shrubs). The revised plan is intended to:

1. support the further progression of the planning proposal and compliance with condition 4 of SUB2016/0020 as it relates to the E-zoned land; and,
2. address the BCD submissions. Refer to Annexure N and section 4.10.

The revised Landscape/Revegetation plan states that *“works within the contract area are to be maintained on a continual basis for a minimum 3 year period. This period is to commence from the date of practical completion”*.

#### **4.8 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

##### **4.8.1 Noise**

The 2011 staged subdivision application included the Junction Hill Residential Development Road Traffic & Rail Noise Impact Assessment Report (Cardno December 2011 – see Annexure F). The Report assessed the impact of rail noise in accordance with the *“Development Near Rail Corridors & Busy Roads – Interim Guidelines (NSW Dept. of Planning 2008)”* and *“State Environmental Planning Policy (Infrastructure) 2007”* and determined that any future dwellings within 40m – 80m of the North Coast Rail Line would be located with Zone B and would be required to

be constructed in accordance with Road Noise Control Treatment Category 2 (p16). The indicative dwelling site falls within the 40m-80m zone.

The Report recommends that should future stages include lots within the designated buffer, a detailed assessment of rail noise impacts would be required based on the criteria mentioned above (p.32).

Accordingly, dwellings are not precluded from the subject land and any future development application for a dwelling would need to be accompanied by an assessment against the nominated criteria.

#### **4.8.2 Soil Contamination**

A Stage 1 Site Contamination Report (Regional Geotechnical Solutions, 27 November 2019) is attached at Annexure G. Both Clarence Valley council and the Department of Planning Industry & Environment agree that it complies with the contaminated land planning guidelines and as a result the proposal complies with Clause 6 of State Environmental Planning Policy No. 55 – Remediation of Land.

The Assessment concludes there are 4 areas of environmental concern and that further assessment work (Stage 2) involving intrusive investigation and soil sampling should be undertaken to assess for potential contaminants at the identified sites.

It also concludes that broad grid based sampling and analysis across the entire 2.213ha site is not considered necessary based on the current and previous assessments.

Should the rezoning be approved, a development application will need to be submitted to re-subdivide proposed Lot 2 to create Lot 60. The further sampling and analysis recommended in the Assessment can be carried out as part of the development application process and if consent is issued it can be conditioned to require any remediation works identified by those further investigations be undertaken prior to the issue of the Subdivision Certificate.

#### **4.8.3 Other Environmental Issues**

The site is not affected by flood, bushfire hazards and is classified ASS Class 5. Any future dwelling would connect into the reticulated sewer system being provided in the adjoining residential subdivision.

### **4.9 Relevant Social & Economic Effects**

#### **4.9.1 Heritage Conservation**

A series of archaeological assessments were conducted by Everick Heritage Consultants Pty Ltd between May 2007 and May 2009 as part of the initial rezoning process, with a final report in May 2009 involving aboriginal community consultation and extensive targeted ground excavation.

The report identified 2 scar trees located on now Lot 102 DP 1221199, which will be located within the Public Reserve adjacent to Summerland Way (Proposed Lot 59 in the approved subdivision).

The subdivision consent is conditioned to require work to stop and appropriate notification to be made if any artefacts are unearthed during the construction phase and a similar condition could be placed on any consent for a dwelling on the subject land, noting that disturbance from the construction would be minor.

#### **Is there adequate public infrastructure for the planning proposal?**

The services are available on the adjoining residential land and will be connected to the subject land.

#### **4.10 What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?**

The gateway determination issued on 7 January 2020 (see Annexure M) permitting the proposal to proceed to public exhibition requires that consultation be undertaken with:

- Department of Planning, Industry & Environment (Biodiversity & Conservation Division (BCD); and
- Australian Rail Track Corporation.

The proposal was referred to the above public authorities for comment as required.

#### **BCD submission and Council response**

The BCD in its original submission (18 February 2020) and second submission (2 July 2020) stated objection to the exhibited planning proposal. It raised a range of biodiversity issues related to the reduction of environmental protections and planned biodiversity benefits over land. It recommended that the planning proposal be amended as follows:

1. Clearly identify the enforceable mechanism that will be implemented to protect the biodiversity outcomes of the landscape plan; and
2. Retain the current E2 zone over the planning area, thereby also retaining the existing objectives of that zone that are appropriate for the proposed landscaping; and
3. Apply an additional permitted use map over the planning area to permit a dwelling envelope in a location that ensures the existing biodiversity values in the planning area, and those proposed to be established through the landscape plan, will not be impacted through ancillary actions associated with the building envelope including, but not limited to, bushfire asset protection zones and boundary fencing.

The BCD indicated in its third submission (27 August 2020) that it would no longer raise objection to the planning proposal if Council agreed to amend the planning proposal in accordance with its three (3) recommendations. Copies of the BCD submissions are at Annexure N.

Other points made by the BCD include:

- Council is encouraged to consider a larger landscaping area focussed more on the rehabilitation of a vegetation community, with a preference for a low area to perimeter ratio. BCD claims that these changes would provide a better biodiversity outcome and may be suitable for a binding conservation agreement.
- if the landscaping plan is not proposed to be changed, then the alternative approach raised by the proponent to secure the area via a proposed section 88B restriction, may be considered by the council, noting that these restrictions do not provide the ongoing maintenance and long-term security to ensure the landscaped areas are viable into the future.
- It is noted that the proposed landscaping plan only provides for 12 months of maintenance to the landscape areas. It is highly unlikely that such a short maintenance period will provide the assistance required for some of the plantings to survive in the long term. The council should consider requiring a significantly longer maintenance period for the landscape plan to ensure the biodiversity outcomes are achieved.

Revised Landscape/Revegetation plans were submitted on 13 May, 4 September and 9 September 2020. The proponent has offered a 3 year maintenance period and protection by means of a “section 88B” instrument.

The current Landscape/Revegetation plan that Council has deemed acceptable is at Annexure L. This was produced and submitted to respond to some of the issues in the BCD submissions. Refer to the revised justification for the inconsistency with Direction 2.1 in Annexure K as well as other sections of the planning proposal document including sections 1.5, 4.1, 4.6 & 4.7.

#### **Australian Rail Track Corporation submission**

The Australian Rail Track Corporation did not respond.

## **5. PART 4 - MAPPING**

Relevant mapping for this planning proposal is at Annexure A. This includes a current Land Zoning map and a proposed Additional Permitted Uses map to support the Explanation of Provisions (Part 2).

## 6. PART 5 - COMMUNITY CONSULTATION

It is considered that the proposal is a 'low impact' for the purpose of community consultation under Section 5.5.2 of *"A guide to preparing local environmental plans, December 2018"*.

The planning proposal was publicly exhibited from 24 January to 10 February 2020 being the minimum period specified in the Gateway determination (refer to Annexure M).

A public hearing was not considered necessary.

## 7. PART 6 - PROJECT TIMELINE

The anticipated timelines for this Planning Proposal are as follows:

Gateway Determination	7 January 2020
Completion of technical information	27 November 2019
Commencement of public exhibition	24 January 2020.
Conclusion of public exhibition and government agency consultation	10 February 2020
Conclusion of consideration of submissions	May - June 2020
Conclusion of post exhibition consideration	June 2020
Amended planning proposal submitted to DPIE seeking approval and the issue of an altered Gateway determination.	26 June 2020
Council endeavours to resolve BCD objection and concerns raised in 3 BCD submissions.	9 July - 10 September 2020
Further amended planning proposal submitted to DPIE seeking approval and the issue of an altered Gateway determination.	10 September 2020
Anticipated date Council will make plan (if delegated)	November 2020