

## **Section 3.36 Planning Report - Clarence Valley Local Environmental Plan 2011 (Amendment No 37)**

### **Planning proposal details:**

PP\_2017\_CLARE\_001\_00 (Council ref no. REZ2010/0002)

### **Planning proposal summary:**

Subject land -

1. Amend Clarence Valley Local Environmental Plan 2011 Land Zone Map so as to apply a R1 General Residential zone to part of the land.
2. Amend Clarence Valley Local Environmental Plan 2011 Lot Size Map to remove the current 4000m<sup>2</sup> lot size applicable to the whole of the land and apply a 2000m<sup>2</sup> lot size to part of the land.
3. Amend Clarence Valley Local Environmental Plan 2011 Height of Buildings Map so as to apply a building height of 9 metres to part of the land.

### **Date of Gateway determination:**

7 April 2017 & 5 April 2018 (Altered Gateway determination)

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## **1.0 SUMMARY**

The planning proposal seeks to amend the Clarence Valley Local Environmental Plan 2011 (CVLEP 2011) Land zoning map, Lot Size Map and Height of Buildings map as described in planning proposal summary above. This arose from a proponent generated proposal seeking to rezone Part of Lot 37 DP1104240, 40 Fairway Drive, South Grafton from R5 to R1 so as to facilitate the subdivision of the land into urban residential lots. This proposal also sought to vary the Lot Size applicable to the remaining part of Lot 37 zoned R5 from 4000m<sup>2</sup> to 2000m<sup>2</sup>.

Following the public exhibition of the planning proposal from 8 December 2017 to Monday, 8 January 2018 Council on 20 March 2018 resolved to continue to support the Planning Proposal, as exhibited, and exercise its delegated authority pursuant to section 3.36 of the Environmental Planning and Assessment Act 1979 to finalise the amendment to CVLEP 2011.

A copy of the minuted reports from the Council meetings considering this matter is at Attachment 5 of the Delegates checklist for approval of plan (Amendment No 37 to CVLEP 2011).

## **2.0 GATEWAY DETERMINATION**

The Gateway determination dated 7 April 2017 permitted the planning proposal to proceed subject to conditions including:

1. 12 month LEP completion timeframe;
2. Consultation with NSW Environment Protection Authority (EPA) and Office of Environment and Heritage - National Parks and Wildlife Service (OEHPWS);
3. Minimum 14 day public exhibition period;

4. Amendment of the planning proposal prior to community consultation as follows:
- the 'Explanation of Provisions' is to clearly indicate that the land proposed to be zoned R1 will not have a minimum lot size applied to it;
  - maps which show the existing and proposed zones, minimum lot size, and maximum building height are to be included. The maps should clearly indicate that the land proposed to be zoned R1 will not have a minimum lot size applying to it;
  - a time line for completion of the planning proposal is to be included;
  - the discussion on consistency with the Mid North Coast Regional Strategy is to be removed and replaced with discussion on the consistency of the proposal with the North Coast Regional Plan 2036; and
  - the reference to "1(c)" zoned land on page 7 of the planning proposal is to be updated to reflect the Standard Instrument LEP zone used in the Clarence Valley LEP 2011.
5. Prior to community consultation further investigation of the potential for contamination of the site is to be undertaken and included with the documentation for community consultation. These additional investigations are to include either:
- a site auditor statement from a NSW Environmental Protection Authority accredited site auditor confirming that the existing Phase 1 Site Contamination Assessment Report dated 9 June 2016 is adequate; or
  - a revised report including any necessary additional sampling and analysis that is consistent with the requirements of the Contaminated Land Planning Guidelines specified in State Environmental Planning Policy 55 - Remediation of Land and has been prepared to the satisfaction of Council.
6. Prior to the LEP being made any maps that form part of the LEP amendment must meet the specifications in the current Standard Technical Requirements for Spatial Datasets and Maps (Department of Planning and Environment 2015).

An altered Gateway determination was issued on 5 April 2018. This extended the timeframe for the completion of the proposal to 14 October 2018.

All conditions of the Gateway determination have now been complied with. The LEP amendment will need to be completed by 14 October 2018 to comply with the Gateway determination.

### **3.0 COMMUNITY CONSULTATION**

The planning proposal was publicly exhibited from 8 December 2017 to Monday, 8 January 2018. Four (4) written submissions were received during the exhibition period from landowners in the vicinity of the subject land. The report to Council's 20 March 2018 meeting outlines how Council dealt with submissions to the exhibited planning proposal.

The consultation requirements specified in the Gateway determination, as altered have been complied with.

#### **4.0 VIEWS OF PUBLIC AUTHORITIES**

The planning proposal was referred to EPA and OEH - NPWS for comment. NSW EPA have advised that they agree with Council's intended action to require remediation and validation of contaminated soil on the subject land in conjunction with a future Development Application. The proponent has previously requested this approach to resolution of the contaminated land issue and Council officers have agreed. Such a strategy is consistent with Action B.6 of the Precinct Strategy.

OEH - NPWS advises that the Planning Proposal presents no issues for biodiversity, flood risk management or acid sulfate soils. The assessment of Aboriginal cultural heritage values was completed 8-9 years ago leading to NPWS requesting that the proponent obtain written confirmation from relevant Aboriginal knowledge-holders that the conclusions and recommendations for Aboriginal cultural heritage contained in the Planning Proposal remain valid. Such confirmation has now been obtained therefore satisfying the requirements of OEH - NPWS.

A copy of all submissions received is at Attachment 1 to this report. The agency consultation requirements specified in the Gateway determination have been complied with. Given there are no unresolved objections from public authorities, Council is able to finalise the LEP amendment under its delegated plan making authority.

#### **5.0 CONSISTENCY WITH S.9.1 DIRECTIONS AND OTHER STRATEGIC PLANNING DOCUMENTS**

The Council and the planning proposal have considered the relevant section 9.1 Directions, State Environmental Planning Policies (SEPPs), local strategies and regional plans. The planning proposal has been assessed as being consistent with all relevant SEPPs and or local/regional plans. Further it is also consistent and compliant with all relevant section 9.1 Directions.

#### **6.0 PARLIAMENTARY COUNSEL OPINION**

Council's request for a PC opinion was made on 30 May 2018. The PC opinion was received on 5 June 2018.

#### **7.0 OTHER RELEVANT MATTERS**

There are no other relevant or additional matters or issues to consider.

#### **8.0 MAPPING**

Amended LEP mapping in the standard instrument format was uploaded to the NSW Planning Portal on 6 June 2018 along with a map cover sheet. The map/s uploaded were:

- Land Zoning Map - Sheet LZN\_008D
- Lot Size Map - Sheet LSZ\_008
- Height of Buildings Map - Sheet HOB\_008D

Advice has been received from the Department of Planning and Environment that the LEP maps were satisfactory and the LEP can be made.

## **9.0 RECOMMENDATION**

It is recommended that Council's delegate exercise the functions of the Minister for Planning under section 3.36 of the Environmental Planning and Assessment Act 1979 and make Clarence Valley Local Environmental Plan 2011 (Amendment No 37).

Date: 20 June 2018

### ***Report Attachments:***

- 1. Submissions received – public and private*

## **Attention: General Manager – Clarence Valley Council**

**Re: Planning Proposal REZ2010/0002 – Submission**

**Proposed New Subdivision DP1104240, Ken W Robson Holdings P/L.**

Dear Sir/ Madam,

We refer to the above with an objection to the potential for the additional run-off water generated by your approval to proceed with this project, to be professionally and responsibly managed.

As adjacent residents of the proposed new subdivision we have concerns that the additional storm water and grey water generated by the addition of 85 new dwellings, plus the new roadways etc associated with servicing these dwellings, will have an environmental effect on the natural drainage system which runs through our property.

When we purchased our property with the intension to build and live there, we had two options for access. We wanted to take the safer and cheaper option, but Clarence Valley Council insisted we use Rushforth Road as our entrance, forcing us to cross the badly eroded gully at the front of our property, at great risk and expense to my family. We haven't run stock in the gully for over 4 years hoping to stabilize and stop erosion, without success. The gully has highly dispersive acid sulphate soil.

In particular we are very concerned what effect this run-off water may have on our Fisheries and Waterways approved flat-bed crossing which serves as access to our residence. We are concerned about the extra volume of water to drive through as well as the effect it will have on eroding our road.

In spite of the work carried out by us, at our cost, erosion continues to become a larger problem as time goes by. Councils plan to allow 85 new dwelling to be constructed may obviously add dire consequences to our access.

We have had communications with downstream residence of your proposal, and they are all concerned about the effects this subdivision will have on their properties and access. We would like to know what upgrade of downstream reticulation will occur? We seek assurance from Council that the additional run-off water, which will be generated from this new subdivision, has been factored into the engineering design to ensure that neither additional erosion nor adverse effect to our approved flat-bed property access crossing will be forthcoming.

Apart from our insistence of your professional consideration and responsible action to address this matter, we have no other objection to this proposed project proceeding.

Thank you for your consideration.

Yours Sincerely

John and Melissa Nicholl  
[John.Nicholl@shell.com](mailto:John.Nicholl@shell.com)  
Phone: 0427752569

2 Daniels close  
ITEM 14.021/18 - Page 2 of 13  
Sth Grafton  
2460

4. 1. 18

The General Manager,  
Clarence Valley Council,  
Locked Bag 23  
Grafton 2460

Re Planning Proposal - 40 Fairway Drive,  
Sth. Grafton REZ2010/0002

Dear Sir,

I am writing to you about my concerns relating to the above Proposal. My concern is that as the Proposal now stands, Kangaroos will have no access from the new Reserve to grasslands bordering Rushforth Road as there is no exit at the lower end allowing them to do this.

They now move freely using the thoroughfare beside 2 Daniels close which allows them access to the grasslands bordering Fairway Drive - these grasslands will no longer be available once the Proposal goes ahead. They need to be able to exit the new Reserve from the lower end without having to back track to Fairway Drive.

I hope you can appreciate my concerns as the Roos make a unique contribution to this area and it would be unfortunate if this could no longer continue.

Yours Sincerely,

Marie Brown

66 43 4838

DOC # _____
DOC LOC. _____
G 04 JAN 2018
CLARENCE VALLEY COUNCIL

PO Box 300  
SOUTH GRAFTON NSW 2460  
5th January 2018

The General Manager  
Clarence Valley Council  
Locked Bag 23  
GRAFTON NSW 2460

Dear Sir

Re: Planning Proposal – 40 Fairway Drive, South Grafton (REZ2010/0002)

We refer to your letter dated 5 December 2017 and wish to make the following comments on the proposal.

NB: “Old Concept Map” mentioned below is shown at Annexure C of the Planning Proposal for No 40 Fairway Drive South Grafton.

Rezoning

On Page 1 of the Introduction comment is made “The rezoning would provide for further residentially zoned land adjacent to similarly zoned land fronting Fairway Drive.....”

We reside at 39 Fairway Drive where we have just over an acre lot. The rezoning of land opposite to R1 General Residential with lots shown on the “Old Concept Map”(as described by Terry Dwyer, Planner) being approximate 700-750m<sup>2</sup>. This is not similar or even close to our block size.

A buffer zone of 20 metres is proposed between General Residential Zone and the existing Large Lot Residential zone therefore, we would request a buffer zone also between the Rural Residential Zone and General Residential Zone.

Although there is a road separating the blocks to the west of us and having a 20 metre buffer across the road would not be viable, we would propose that the area adjoining Fairway Drive opposite be zoned as Large Lot Residential with blocks of 2000m<sup>2</sup> in size.

Blocks 92 and 93 (Old Concept Map) proposed at 2000m<sup>2</sup> each and the proposed road 20 wide form a buffer between the Fairway Estate and proposed R1 zone. It seems each zone is separated by large blocks and roadway except opposite our land.

It is also stated in the proposal on Page 16 “there will be no negative effects on adjacent large lot residential development due to the proposed buffers/roads”. This is not the case, as along this section of the road there are 4 only rural residential lots, we are to face towards some 9 residential blocks and the 5<sup>th</sup> rural residential lot with 2 blocks opposite.



We feel that there should be some type of “buffer zone” between the 1 acre blocks and proposed residential blocks. In this area, from Seven Day Adventist Church and Grafton Golf Course along Bent Street including Denton Drive area and down Fairway Drive comprises of 1 acre blocks or larger. Going directly to the small blocks opposite our land will look unsuitable.

#### Storm Water Management

Having a water easement through our property, we are seriously concerned about the management of storm water. The “Old Concept Map” shows 3 proposed water drainage easements on the western side of existing Lot 37. There is no mention of storm water management in the document for the area opposite us. Where is the storm water to be directed? Currently we have quite a lot of water coming through our property – see following photos of water running through our easement after a lunchtime storm on 2<sup>nd</sup> January where we received only 15mls. With many more homes opposite there will be no water soaked into the ground and there is the potential of generating quite a substantial run off being channelled through the water easements.







There is a small holding pond in the Public Reserve. This quite regularly overflows with the water being directed towards the nearby homes along Daniels Close. They too will be affected if the proposed subdivisions storm water is channelled in our direction.

In Fairway Drive we do not have any guttering, is this to be the same for properties adjoining Fairway Drive?

#### Services – Sewerage, Water, Electricity, Telstra

There is no mention of where the above services are being connected from apart from “Extension points for services (sewer, water, power and Telstra) have already been provided to connect the subject land to the full range of services”

Is the substation on the Public Reserve to be used or upgraded again to provide electricity for the proposed subdivision?

We do not want an electricity line taken across our frontage which would mean the removal of our westerly sun shade trees.

### Crime Prevention

Having been subjected to a burglary this is an important factor to us. The document outlines that the Safe by Design principal should be incorporated and that generally discourages the use of cul-de-sacs. There are 4 shown on the "Old Concept Map". We would insist that Council look closely at the Safe by Design principals as it is very upsetting and leaves a marked effect on individuals being subjected to burglary. We have also found that due to our location, ours and other neighbours face having to pay a higher insurance premium.

When we recently viewed the "Old Concept Map" our first thoughts were of a Bushfire Hazard. There are only 3 exits for the entire subdivision if a fire was to break out. With so many families trying to get up to Fairway Drive to escape could potentially be disastrous. We would propose that instead of having all the cul-de-sacs that roads continue to Rushforth Road as their exit. Not only would that assist with residents leaving or getting emergency services to the area, but also crime prevention as per above.

### Wildlife

It is a well-known fact that we have many kangaroos along this stretch of Fairway Drive. There will be a detrimental effect on the kangaroos, not only losing the area they stay in but also having no area linking the gully below Daniels Close and Rushforth Road gully. On the "Old Concept Map" there is not an open space for the kangaroos to travel between each of the gully areas. There is the current Public Reserve and a proposed green area on the new subdivision but it does not go right through to Rushforth Road, thus putting the kangaroos on the road to hop through to the Rushforth Road gully area. We feel that extending the green area right through to Rushforth Road would be a better proposal.

Although under the category of SEPP44 Koala Habitat Protection it is stated there is no potential koala habitat we do have koalas sleeping in our gum trees on many occasions as shown below.



### Traffic Calming Devices

On the original plan for the Four Winds Estate traffic calming devices were suggested. These were not put in place BUT with the increased traffic we feel that this will be essential. Currently we have cars speeding up and down the road which with the increase in population will become more dangerous.

### Other

Last but not least, there are the following points that need consideration

- a. Neighbourhood Park – the area proposed has 1700m<sup>2</sup> of reasonably flat land.  
Would Council be setting up a play area for the children coming to the subdivision? What would the purpose of the remainder of the land, would it just be unkept?
- b. Strain on Health Services – many Doctor Surgeries are no longer taking new patients. With new families moving into the area how would they get medical attention?
- c. Strain on Local Education – How would schools like Gilwinga Primary School and South Grafton High School cope with additional families? Many teachers are now under considerable strain. If our local schools did not upgrade or have access to additional resources this would disadvantage children as well as putting the local education providers under strain.

Although we have seen many changes since moving to 39 Fairway Drive, we find most appealing the quiet, peaceful atmosphere in this existing subdivision. Land-owners selected this area because of the desire for open space, privacy, scenery and because of the quality of homes around. We chose to live here because we are private people and wished to have our own space where we are creating our own garden haven. Having an intensive subdivision opposite is certainly going to make a big impact on us and our surrounding neighbours. Maintaining the rural residential nature of this area is most important. If modifications can be made in the proposed subdivision it would be a better fit with the surrounding neighbourhood. Certainly having 2-3 houses opposite is not an ideal scenario.

Last but not least, we are concerned with the economic loss we will no doubt face in the future if the subdivision ahead as per Annexure C (Old Concept Map). To have such an intensive subdivision opposite is undesirable and we believe that financially we would suffer if deciding to sell our home.

We hope you will consider our concerns regarding the proposed rezoning of 40 Fairway Drive, South Grafton.

Yours sincerely

Paul & Margaret Browning.



**M J & M V Bartlett**

37 Fairway Drive

SOUTH GRAFTON

N.S.W 2460

02 66 434 777

[m.mbartlett@bigpond.com](mailto:m.mbartlett@bigpond.com)

Clarence Valley Council  
Locked Bag 23  
GRAFTON NSW 2460

05 Jan 2018

Subject: 'Planning Proposal REZ2010/0002 Submission'.

Attention: Scott Lenton

With reference to the subject proposal the undersigned wish to object to certain aspects.

Our main concern is the additional traffic that will be directed onto Fairway Drive – which as you will be aware is not a major road. We are now seeing a lot more foot traffic on this road by pedestrians, cyclists and also in the number of young children and recreational walkers with strollers and animals.

Why is traffic not being directed more onto Rushforth Road which will be the ultimate route for virtually all vehicles in the proposed sub-division? This would alleviate the density of vehicular traffic forced onto an already busy Fairway Drive.

Another major concern is the runoff from stormwater – where will all of this additional water be directed?

We appreciate that planning needs change over time – but it is highly disappointing for the residents [ourselves included] who purchased one of the earlier 'large blocks' on the understanding that any future development of the subject land would be of a like nature.

Older retirees such as ourselves expected to retain our relatively 'quiet lifestyle' by purchasing when we did and now feel a little betrayed by what has been happening in the adjacent area in recent times.

We do not expect our concerns to be addressed, as I realise the need for Council to maximise revenue intake with regard the extra income this proposal will generate for it.

However, it would be nice to think that the concerns of residents such as us would be listened to – it would restore some of our faith in human nature. However, I am not holding my breath!!

Yours faithfully

MJ & MV BARTLETT

## Scott Lenton

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**From:** Scott Ensbey <Scott.Ensbey@epa.nsw.gov.au>  
**Sent:** Thursday, 22 February 2018 1:22 PM  
**To:** Scott Lenton  
**Subject:** FW: EPA referral - Planning Proposal REZ2010/0002 - Clarence Valley Council  
**Attachments:** EPAreferral.pdf; Gateway Determination - Robsons REZ2010-0002 - Fairway Dr South Grafton.pdf; CouncilReport&Resolution-March2017.pdf; OUT - EPA letter to Clarence Valley Council re 40 Fairway Drive, South Grafton - 19 February 2018(2).DOC.PDF

**Importance:** High

Hi Scott,

As discussed today, it appears that I have misinterpreted the proposal.

Further to the advice provided on 19 February 2018 (attached), the EPA supports Councils proposal to condition the remediation and validation of contaminated land as part of any future development consent for subdivision or intensification of use.

Regards

## Scott Ensbey

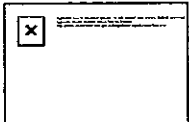
### Operations Officer – North Coast

NSW Environment Protection Authority

(02) 6640 2522 MOB: 0447142916

[scott.ensbey@epa.nsw.gov.au](mailto:scott.ensbey@epa.nsw.gov.au) [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au) [scott.ensbey@epa.nsw.gov.au](mailto:scott.ensbey@epa.nsw.gov.au) @EPA\_NSW

**Report pollution and environmental incidents 131 555 (NSW only) or +61 2 9995 5555**







Our Reference: DOC18/98669  
Contact: Scott Ensbey  
Date: 19 February 2018

General Manager  
Clarence Valley Council  
Locked Bag 23  
GRAFTON NSW 2460

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

Dear Sir,

**Re: Planning Proposal – 40 Fairway Drive, South Grafton (REZ2010/0002)**

I refer to the above planning proposal referred to the Environment Protection Authority (EPA) for comment on 31 January 2018.

The EPA has reviewed the information provided and supports Councils recommendation to require the applicant to engage an EPA accredited site auditor to determine the need of any further sampling/investigation effort and provide final site validation.

If you have any questions relating to this matter, please contact me on 66402522.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'S. Ensbey', written over a light blue horizontal line.

**Scott Ensbey**  
**Regional Operations Officer – North Coast**  
**Environment Protection Authority**



# Office of Environment & Heritage

DOC #	
DOC LOC	
G	28 FEB 2018
CLARENCE VALLEY COUNCIL	

Our Ref: DOC18/54573  
Your Ref: REZ2010/0002

General Manager  
Clarence Valley Council  
Locked Bag 23  
Grafton NSW 2460

Attention: Mr Scott Lenton, Environmental Planning Coordinator

Dear Mr Lindsay

## Re: Planning Proposal – 40 Fairway Drive, South Grafton REZ2010/0002

Thank you for your letter dated 31 January 2018 about the planning proposal for 40 Fairway Drive, South Grafton seeking comments from the Office of Environment and Heritage (OEH). I appreciate the opportunity to provide input.

The OEH has reviewed the documents and considers there are no issues for biodiversity, flood risk management or acid sulfate soils. The following advice is provided on Aboriginal cultural heritage matters.

The OEH acknowledges the planning proposal has concluded there are no significant Aboriginal cultural values within the planning area that would prompt the need for protective zoning mechanisms. However, this is based on a search of the Aboriginal Heritage Information Management System (AHIMS) in 2009 and a letter from the Grafton Ngerrie Local Aboriginal Land Council (LALC) in 2010 following an inspection of the land by the LALC. We further note the planning proposal has considered the potential impacts of any subsequent development works in consultation with Aboriginal knowledge-holders and has provided recommendations for any future unexpected finds.


The AHIMS search in 2009 was restricted to the planning area, which severely limits the usefulness of the search results. AHIMS searches should be undertaken over a much broader area to obtain an understanding of the Aboriginal archaeological signature of the locality. This can then inform the assessment of the planning proposal for Aboriginal cultural heritage by identifying any landscape features of the planning area that may be likely to contain Aboriginal objects, given the context of any known objects in the locality.

In addition, since 2010 updates to the AHIMS database may have occurred and further knowledge of the Aboriginal cultural heritage in the locality may have come to light. Hence, it is important to re-affirm the conclusions made in the planning proposal about Aboriginal cultural heritage.

The OEH recommends that prior to finalising the planning proposal, the Clarence Valley Council should obtain written evidence from the relevant Aboriginal knowledge-holders confirming their current support for the conclusions and recommendations about Aboriginal cultural heritage in the planning proposal, which were made over eight years ago.

If you have any further questions about this issue, Ms Rachel Lonie, Senior Conservation Planning Officer, Regional Operations, OEH, can be contacted on 6650 7130 or at [rachel.lonie@environment.nsw.gov.au](mailto:rachel.lonie@environment.nsw.gov.au).

Yours sincerely

 22 February 2018

**DIMITRI YOUNG**  
**Senior Team Leader Planning, North East Branch**  
**Regional Operations**

Contact officer: RACHEL LONIE  
6650 7130

## **Attachment 5**

<b>ITEM</b>	<b>14.017/17</b>	<b>PLANNING PROPOSAL REZ2010/0002 – PROPOSED AMENDMENT TO CREATE RESIDENTIAL R1 ZONE AND REVISED MINIMUM LOT SIZE FOR LARGE LOT RESIDENTIAL R5 ZONED LAND – 40 FAIRWAY DRIVE, SOUTH GRAFTON</b>
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<b>Meeting</b>	Environment, Planning & Community Committee	14 March 2017
<b>Directorate</b>	Environment, Planning & Community	
<b>Reviewed by</b>	Manager - Strategic & Economic Planning (David Morrison)	
<b>Attachment</b>	Yes	

**SUMMARY**

<i>Applicant</i>	A Fletcher & Associates
<i>Owner</i>	Ken W Robson Holdings Pty Ltd
<i>Address</i>	40 Fairway Drive, South Grafton
<i>Submissions</i>	N/A

Council is requested to consider whether to request a Gateway Determination for a planning proposal seeking to amend land use zoning, minimum lot size and height of buildings maps under the *Clarence Valley Local Environmental Plan 2011*. The proposal is consistent with regional and local strategic plans 'in principle' subject to consideration of some specific issues. The subject land has potential to be contaminated due to past land use and a determination of whether the site assessment completed to date is satisfactory for decision-making purposes is a key issue for Council. Council staff believe the planning proposal has merit and recommend referral to the Gateway as well as further review of the contaminated land aspect and other minor amendments to the proposal documentation before the planning proposal is placed on public exhibition. Council and the applicant have not been able to agree at this time as to whether the site contamination assessment submitted complies with SEPP 55 requirements and relevant guidelines. The best way to resolve this matter is to have an independent review following a Gateway Determination.

**OFFICER RECOMMENDATION**

That Council, as the relevant planning authority:

1. Refer the revised planning proposal (dated 20 January 2017) to the NSW Department of Planning and Environment seeking a Gateway Determination;
2. Advise the applicant that should a Gateway Determination be received, a site audit statement from an EPA accredited site auditor be provided prior to commencement of any public exhibition;
3. Inform the Department that more detailed maps associated with the proposed amendment, being land zoning, lot size and height of buildings maps, a project timeline and a more complete site history in consideration of SEPP 55 will be added to the planning proposal prior to exhibition;
4. Accept any plan making delegations offered as part of a Gateway Determination.



**MOTION**

Williamson/Ellem

That the Officer Recommendation be adopted.

**AMENDMENT TO MOTION**

Baker/Simmons

That Council, as the relevant planning authority:

1. Refer the revised planning proposal (dated 20 January 2017) to the NSW Department of Planning and Environment seeking a Gateway Determination;
2. Advise the applicant that should a Gateway Determination be received that either:
  - a) a site auditor statement from an EPA accredited site auditor be provided;
  - or
  - b) further site sampling and testing be carried out over the site in accordance with the relevant planning guidelines and by agreement with Council officers; prior to commencement of any public exhibition."
3. Inform the Department that more detailed maps associated with the proposed amendment, being land zoning, lot size and height of buildings maps, a project timeline and a more complete site history in consideration of SEPP 55 will be added to the planning proposal prior to exhibition;
4. Accept any plan making delegations offered as part of a Gateway Determination.

Voting recorded as follows:

For: Baker, Clancy, Ellem, Simmons, Williamson

Against: Nil

The Amendment to Motion was put and declared CARRIED. The Amendment became the Committee Recommendation.

**COMMITTEE RECOMMENDATION**

Williamson/Ellem

That Council, as the relevant planning authority:

1. Refer the revised planning proposal (dated 20 January 2017) to the NSW Department of Planning and Environment seeking a Gateway Determination;
2. Advise the applicant that should a Gateway Determination be received that either:
  - a) a site auditor statement from an EPA accredited site auditor be provided;
  - or
  - b) further site sampling and testing be carried out over the site in accordance with the relevant planning guidelines and by agreement with Council officers; prior to commencement of any public exhibition."
3. Inform the Department that more detailed maps associated with the proposed amendment, being land



zoning, lot size and height of buildings maps, a project timeline and a more complete site history in consideration of SEPP 55 will be added to the planning proposal prior to exhibition;

4. Accept any plan making delegations offered as part of a Gateway Determination.

Voting recorded as follows:

For: Baker, Clancy, Ellem, Simmons, Williamson

Against: Nil

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#### **COUNCIL RESOLUTION – 14.017/17**

**Baker/Novak**

**That Council, as the relevant planning authority:**

1. Refer the revised planning proposal (dated 20 January 2017) to the NSW Department of Planning and Environment seeking a Gateway Determination;
2. Advise the applicant that should a Gateway Determination be received that either:
  - a) a site auditor statement from an EPA accredited site auditor be provided;
  - or
  - b) further site sampling and testing be carried out over the site in accordance with the relevant planning guidelines and by agreement with Council officers; prior to commencement of any public exhibition.
3. Inform the Department that more detailed maps associated with the proposed amendment, being land zoning, lot size and height of buildings maps, a project timeline and a more complete site history in consideration of SEPP 55 will be added to the planning proposal prior to exhibition;
4. Accept any plan making delegations offered as part of a Gateway Determination.

Voting recorded as follows:

For: Simmons, Baker, Clancy, Ellem, Novak, Lysaught, Williamson, Toms

Against: Nil

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#### **LINKAGE TO OUR COMMUNITY PLAN**

Theme 5 Our Leadership

Objective 5.1 We will have a strong, accountable and representative Government

Strategy 5.1.4 Provide open, accountable and transparent decision making for the community

#### **BACKGROUND**

Council received this application for rezoning in late-2010. The application was not made in the appropriate planning proposal format as required by the *Environmental Planning and Assessment Act 1979* and relevant Department of Planning and Environment guidelines and the Applicant was requested to consider provisions of the South Grafton Heights Precinct Strategy (SGHPS) and issues relating to buffers between proposed urban residential/rural-residential zones, open space, stormwater management, pedestrian/cycle access and location of zone boundary. The landowner decided to defer further action on this proposal until late-2014 and a fresh planning proposal was submitted to Council in mid-2015. Council staff requested further information and attention to particular matters called up through the SGHPS, such as consideration

of social and community impacts, potential for land contamination and location of the proposed zone boundary. The revised planning proposal was lodged in January 2017.

The SGHPS identified the subject land (refer to location of the site on Figure 1) as being suited to urban residential on the higher, less sloping section and large-lot residential on the steeper, western aspect. The Strategy also highlighted the need for rezoning applications to address certain specific matters such as potential for contaminated land, provision of open space, social and community impacts in relation to the Clarence Valley Social Plan and others.



**Figure 1** – Location of the site of the proposed LEP amendment to land use zoning, lot size and height of buildings maps.

## KEY ISSUES

**Strategic context** – The proposed amendments to create additional urban residential and large-lot residential land is consistent with the Mid North Coast Regional Plan, the Clarence Valley Settlement Strategy and the SGHPS provided details around issues such as potential for land contamination are satisfactorily resolved.

**Compliance with planning proposal guidelines** – The planning proposal has been reviewed against NSW Department of Planning and Environment (DPE) and Council guidelines for preparing planning proposals.

The planning proposal generally contains sufficient explanation of intent for the proposed amendment including alterations to land zoning, lot size and height of buildings maps. The quality and clarity of the maps to show details of the proposed amendments should be upgraded prior to exhibition. Some particular topics relevant to justification of the planning proposal are highlighted later in the 'Key Issues'.

The planning proposal does not currently include a project timeline. The Planning Gateway provides a timeframe for completion of the LEP amendment when it provides support for a planning proposal. The particular planning proposal requires Council and the DPE to be satisfied as to certain matters, such as land contamination, and hence until such time as such matters are addressed to a satisfactory standard certainty of a project timeline cannot be provided. From the time a planning proposal such as this is placed on public exhibition it is reasonable that the matter would be finalised within 6 months. It is submitted that preparation of a project timeline and inclusion into the planning proposal is not practical until after Council receives a Gateway Determination in support of this matter and any pre-public exhibition requirements of the Gateway are satisfied. Once this point has been reached then a project timeline can be incorporated into the planning proposal document.

**Potential Contaminated Land** – The subject land has potential to be contaminated with chemical residues as a result of past land uses. This potential combined with the proposed change in zoning triggers the requirement for Council to not rezone the land (as proposed) unless it has obtained and had ‘regard to a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines’ (clause 6(2) of *State Environmental Planning Policy No 55 – Remediation of Land*). This is the minimum requirement and more detailed information may be required in some cases.

Consistent with SEPP 55 the first aim of this investigation in regard to the planning proposal before Council is to determine whether the land is contaminated. Secondly, if the land is contaminated Council needs to be satisfied the land is suitable for residential and other permitted uses in its contaminated state (or will be suitable after remediation), and thirdly, if the land requires remediation to be suitable for such uses then Council is satisfied that the land will be so remediated before the land is used for that purpose.

Where remediation is necessary Council or the planning authority may need to include certain provisions in the environmental planning instrument or amendment to the *Clarence Valley Local Environmental Plan 2011* (the CVLEP). The assessment of SEPP 55 in Table 1 (page 10) of the planning proposal is silent on the nature of land uses that existed prior to 1976 and are deemed to have potential to have contaminated the subject land. Additional information should be included in the planning proposal prior to any public exhibition to identify the specific nature of past land uses as they relate to potential land contamination.

The Applicant has submitted a Site Contamination Assessment report to satisfy the requirements of SEPP 55. Council officers have assessed the report and conclude that it has not been completed in accordance with the Contaminated Land Planning Guidelines (DUAP/EPA 1998). These Guidelines call up or cross-reference a number of other relevant guidelines and technical resources and are specified in SEPP 55 as the relevant guideline to follow.

Section 145B of the *Environmental Planning and Assessment Act 1979* provides Council with exemption from liability, including in its role with preparing or making an amendment to the CVLEP, ‘*in respect of anything done or omitted to be done in good faith by the authority in duly exercising any planning function of the authority to which this section applies in so far as it relates to contaminated land (including the likelihood of land being contaminated land) or to the nature or extent of contamination of land*’ [s 145B(1)]. Where Council acts substantially in accordance with these Guidelines then the Act states that, unless the contrary is proved, Council (or the planning authority) is taken to have acted on good faith. Hence, adherence to the Guidelines is prudent.

Section 4.1.1 of the Guidelines states that for spot rezonings where a specific development or use is associated with the proposal ‘*it would not be appropriate to proceed with the rezoning unless the land was proven suitable for that development or it could be demonstrated that the land can, and will be, remediated to make the land suitable. This would be particularly important if the land was proposed to be developed for residential, educational, recreational or childcare purposes, as the risk to health is higher under those uses than most other uses. Under these circumstances, the rezoning should be treated like a development application in considering contamination issues. It may even be necessary for a detailed investigation to be carried out at the rezoning stage.*’ In this case the Applicant has submitted a detailed residential subdivision layout incorporating urban residential, large lot residential and recreational/open space uses, hence the risk to health is deemed to warrant a higher threshold of assessment.

The consultants report and subsequent submissions on the contaminated land issue at this site does not adequately determine whether the land is contaminated or not. The Assessment does not satisfy various aspects of relevant NSW Environment Protection Authority Guidelines, including sampling density, sampling pattern and justification for the methodology used. Council staff presented feedback on the Assessment to the Applicant in August 2016. For example, across the 20-hectare site a total of 20 soil samples were taken and ten (10) or 50% of these were subject to soil analysis for various contaminants. The EPA Sampling Design Guidelines suggest that a 5-hectare site would be subject to 55 soil samples/analysis.

This is page 50 of the Minutes of the Ordinary Council Meeting of Clarence Valley Council held on 21 March 2017.

Even if the sampling density suggested in the Guidelines was only applied to the higher risk (where a former airstrip, superphosphate loading/unloading facility and coal truck depot operated – as mentioned in correspondence from Andrew Fletcher, dated 24 December 2001 and 26 February 2002 in relation to a separate rezoning application) portion of the site, being 1.5-2 hectares, the EPA guidelines suggest sampling sites between 25 and 30 in order to detect contamination hot spot/s at 95% confidence. Further, given the potential for contamination on this part of the site, the fact that only five (5) of the tested soil samples come from this part of the site further reduces confidence in the consultants conclusion that the land is not contaminated and suitable for the proposed residential development. The consultant's justification for the sampling pattern and sampling density is not accepted in the circumstances.

The consultant who prepared the contaminated land assessment, Regional Geotechnical Solutions (RGS), wrote to Council in November 2016 to respond to a number of specific concerns in Council's August 2016 feedback and RGS concluded as follows:

*The site has been 'assessed to have a low risk of contamination resulting from past and present land use activities. The testing has not encountered any contamination that exceeds the adopted threshold levels as outlined in NEPM for the intended residential land use. On this basis, no further sampling and testing is considered necessary.'* However, the correspondence from RGS in November 2016 recognises that the issue of asbestos contamination associated with building materials has not been addressed to date.

In response, Council officers reviewed the submission and concluded that the consultant does not appear open to revising their report. Consequently, Council staff wrote to the Applicant and advised that in the circumstances a site audit statement prepared by an EPA accredited site auditor would be required. The Applicant has subsequently written to Council in January 2017 providing a case for no further testing. Key aspects of the Applicant's request are the RGS report and conclusions that 'no further sampling and testing is considered necessary' as well as reference to the level of assessment on the contaminated land issue applied for a separate rezoning on nearby land in 2001/02. In the latter case, Council requested a site history that identified that the area subject to that rezoning was only used for cattle grazing. However, the site history submitted to Council at the time by A Fletcher and Associates identified that the part of the site now subject to the current planning proposal was also used for additional uses that have potential to contaminate land. These uses include a former airstrip, superphosphate loading/unloading facility and small coal truck depot. Hence, the additional level of assessment at the current site that has been requested is warranted in the opinion of Council officers.

Further, the Applicant has requested that *'if Councillors decide that further testing is required we request Councils assurance that it will accept the consultant's findings and not request even more testing.'* Council reserves the right to find a consultants report unacceptable and hence, it is unreasonable for Council to provide such an assurance. Notwithstanding that, if an EPA accredited site auditor is engaged and they conclude that the current methodology, justification and reporting is adequate then Council would have 'good faith' grounds to provide such an assurance. The NSW Government established the site auditor scheme to enable Applicants and/or decision makers to obtain independent and professional advice on land contamination issues, including review of another consultant's work, to provide greater certainty about the information on which the planning authority is basing its decision.

There would appear to be a continuing and clear intent not to comply with Council's requests in regard to the contaminated land issue. This is a choice the Applicant can make. Further, the Applicant has requested that resolution of this issue not delay consideration of the planning proposal by Council and the Planning Gateway. However, despite the fact that the land has been identified in a CVC-adopted Strategy as being suitable in terms of location and landform for higher density residential development, the requirements of SEPP 55 place an obligation on Council not to proceed with making the proposal without adequate confidence on the contaminated land issue.

The planning proposal process provides further opportunity/s to check in on this issue prior to any decision to make the plan. Hence, given that the land has been identified 'in principle' as having potential for urban

residential development, subject to addressing issues such as potential contamination, it is considered that this proposal can be referred to the Planning Gateway to seek a determination subject to the planning proposal not being placed on public exhibition until such time as Council receives an acceptable contamination assessment or the current assessment is found to be acceptable following review by an accredited site auditor.

Section 3.6.1 of the Contaminated Land Planning Guidelines states that *'As a general principle, a site audit is only necessary when the planning authority:*

- believes on reasonable grounds that the information provided by the proponent is incorrect or incomplete*
- wishes to verify the information provided by the proponent adheres to appropriate standards, procedures and guidelines*
- does not have the internal resources to conduct its own technical review.'*

Council staff and the Applicant cannot agree on these points. Hence, the logical step to allow the proposal to move forward is to seek an independent review – ie a site auditor.

The relevant Guidelines (Section 3.6.1) add that *'If a planning authority considers that it needs a site audit in order to make its planning decision, the cost should be borne by the proponent and not the planning authority.'*

Council's Contaminated Land Policy is consistent with the legislation and guiding documents referred to in the above discussion.

**Public open space and crime prevention** – The proposal indicates that the future subdivision will contain a 1.762 hectare public reserve. The South Grafton Heights Precinct Strategy recognises the need to provide adequate open space for public use, environmental management and amenity in association with new residential development. The concept of providing a contiguous, single space, with linkage to an existing open space corridor in an adjacent residential subdivision that is capable of providing for multiple uses is supported. Other buffer areas between existing rural-residential land and proposed higher density residential development is proposed to be maintained in private ownership in an attempt to reduce the burden for Council to maintain disconnected and lower value open space.

Local Planning Direction 6.2 – Reserving Land for Public Purposes requires that a public authority, in this case Council, agree to the creation of a public reserve where the authority is designated under section 27 of the *Environmental Planning and Assessment Act 1979* as the authority required to acquire the land. However, whilst the future subdivision layout shows provision for the public reserve it is not proposed to include that part of the subject land in an open space or recreation land use zone under the planning proposal. Hence, acquisition is not relevant to the proposed public reserve at this stage. After any future subdivision is completed the land use zoning of the public reserve would be amended through a housekeeping LEP to recognise the recreation or open space purpose.

The layout of the proposed public reserve area was subject to consultation with Safer By Design experts in the NSW Police Service in 2015 and removal of a number of allotments fronting adjoining streets to remove surveillance blind spots was suggested in order to improve casual and passive surveillance from adjacent streets. The indicative subdivision layout provided in the 2017 revised planning proposal has removed those allotments and increased direct road frontage of the public reserve. NSW Police have recently reviewed the proposal and find the changes to be an improvement. The need to consider the location and design of any future infrastructure on the reserve, as well as the type of fencing for properties adjoining the reserve, to deter anti-social behaviour and vandalism is noted. Such details will be considered at later stages of any development.

**Stormwater Management** – Planning for stormwater management in large developments of the type envisaged in the planning proposal has significant implications on detailed design and layout. This planning proposal incorporates a proposal to include part of the subject land in the R1 General Residential zone and maintain the balance of the site in R5 Large Lot Residential zoning albeit with a reduced lot size compared to existing. To improve confidence that the proposed R1-R5 zone boundary was optimally positioned Council officers have suggested to the Applicant that more detailed consideration of stormwater management would be advantageous to reduce the risk of future alterations to the zone boundary position being required to provide optimal subdivision layout. Such alterations would if required cost the Applicant and their client time in finalising development of the land. The Applicant has advised that they believe an adequate level of assessment has been undertaken and have requested the planning proposal be considered by Council. In the circumstances, given that the Applicant has had some regard to stormwater management in preparing the subdivision layout no further information will be insisted upon at this stage. Additional detail will be required at any future development application stage.

**New Road Intersection with Rushforth Road** – The former Grafton City Council and Local Traffic Committee considered the potential for rezoning of the subject land in 1995 and presented no objection in principle on the basis that the future subdivision provide for bus stopping points within the subdivision and turning movements at any new intersection with Rushforth Rd.

The future subdivision layout plan included with the planning proposal shows a bus stopping bay on the western side of Fairway Drive directly adjacent to the proposed public reserve. Further, the future intersection of Fairway Drive and Rushforth Rd has been selected to maximise sight distances and provide adequate safety for turning vehicles. Council's Development Engineers consider the future detailed design of the new intersection may require modification to existing road conditions to ensure satisfactory sight distances in both directions are achieved. This is considered to be readily achievable and can be determined at a future development application stage.

## OPTIONS

1. Support for the planning proposal would typically result in Council resolving to refer this matter to the NSW Department of Planning and Environment Gateway for a determination. The Planning Gateway, as this part of the planning proposal process is known, is a checking mechanism to ensure that a proposal is consistent with adopted planning strategies or otherwise has merit and that any significant issues have been appropriately identified and considered. This report has highlighted the key issues related to the planning proposal. Consideration of key issues creates sub-options for Council that include the following:
  - (a) Indicate to the Planning Gateway that Council recommends the Applicant supplement the Site Contamination Assessment, dated 9 June 2016 (Report Ref: RGS30861.1 – AB), undertaken by Regional Geotechnical Solutions (RGS), and supplementary correspondence from RGS dated 15 November 2016 (Ref RGS30966.1 – AC), with an independent review or audit undertaken by an EPA accredited site auditor, prior to public exhibition of the planning proposal. Where such an audit finds that the assessment is acceptable then public exhibition proceed. Alternatively, Council recommends that public exhibition be delayed until the Site Contamination Assessment is completed in accordance with relevant recommendations of the audit. In addition, an updated site history, proposed mapping amendments and a project timeline be included in a revised planning proposal prior to any public exhibition; or
  - (b) That Council refer the planning proposal to the Planning Gateway with no specific reference to the potential land contamination issue and Site Contamination Assessment. This is not recommended as Council staff conclude that the current Assessment is inadequate in the circumstances; or
  - (c) That Council refer the planning proposal to the Planning Gateway with either sub-option (a) or (b) and highlight another issue/s that Council wishes the Gateway to specifically consider. Choosing



this option would require Council to expressly state what issue/s needs specific consideration by the Gateway.

2. That Council not choose to support the planning proposal and advise the Applicant that it rejects the proposal. Such a decision should be supported by reasons that Council determines are appropriate in the circumstances.

In this case, Council staff recommend that Options 1 and 1 (a) are taken consistent with the discussion in 'Key Issues' earlier.

## COUNCIL IMPLICATIONS

### Budget/Financial

The applicable fees for consideration of the planning proposal have been submitted with the original 2010 application. Assessment and processing of the planning proposal will occur utilising recurrent and capital advertising budgets as applicable.

### Asset Management

N/A

### Policy or Regulation

*Environmental Planning and Assessment Act 1979*

*State Environmental Planning Policy No 55 – Remediation of Land*

*Clarence Valley Local Environmental Plan 2011*

Contaminated Land Planning Guidelines (DUAP & EPA 1998)

South Grafton Heights Precinct Strategy (2011)

CVC Contaminated Land Policy (August 2015)

### Consultation

CVC technical staff have been consulted on a range of matters since this proposal was first submitted to Council. These issues include potential contaminated land, stormwater management, road layout and intersection design, crime prevention and open space design, social and community effects. The NSW Police have been consulted for input on design of the public reserve from a 'Safer By Design' or crime prevention perspective.

No formal public or agency consultation on the planning proposal as a whole is applicable at this stage. Support for the planning proposal by the Planning Gateway would involve direction to Council with regard to public and agency consultation requirements.

<i>Internal Section or Staff Member</i>	<i>Comment</i>
Social & Cultural Services (and NSW Police)	<p><b>Community and Social Impact Assessment</b> – The revised planning proposal has improved consideration of social impacts and implications for community facilities following consultation with Council's Social &amp; Cultural Services staff. No objection to the proposed amendments are made. Notwithstanding that, the Social &amp; Cultural Services team would like to be involved in discussions prior to a future development application being prepared. These discussions would include street layout and design, public accessibility and how local stakeholders should be consulted to ameliorate social impacts in this precinct.</p> <p><b>Public Reserve</b> – CVC staff have referred this matter to the NSW Police (Safer By Design team) for consideration of crime reduction and public safety issues primarily associated with public spaces in the future residential subdivision. The revised future subdivision layout, particularly the public reserve, is deemed to be acceptable (refer to 'Key Issues' for more detailed comment).</p>

Environment, Development & Regulatory Services	<b>Contaminated Land Assessment</b> – Council staff are not satisfied that the Site Contamination Assessment report (June 2016) and additional correspondence (November 2016) from the geotechnical consultant, Regional Geotechnical Solutions, adequately assesses the land contamination potential in relation to this land and development. Council has advised the Applicant that a site auditor should be engaged to provide a Site Audit Statement. The Applicant has since written to Council stating that such a requirement is not necessary in their opinion. Assurances that the Applicant has sought can only be given by Council if an EPA accredited site auditor is engaged to independently review the assessment completed to date.
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### Legal and Risk Management

The proponent has the right to request a review if the Council do not support the planning proposal or don't consider the proposal within a reasonable period. Further, a decision of the Planning Gateway may be reviewed at the request of either the Applicant or Council in circumstances when the Gateway does not support the proposal, requires resubmission or seeks to alter the planning proposal. No review can be sought if the planning proposal is supported without amendment by the Planning Gateway.

Council has legal obligations under *State Environmental Planning Policy No. 55 – Remediation of Land* with regard to assessment of potential land contamination issues at rezoning or planning proposal stage. Council has exemption from liability under the *Environmental Planning and Assessment Act 1979*, including in its role with preparing or making an amendment to the CVLEP, where it acts in 'good faith' in exercising any planning function in relation to contaminated land matters of the authority. These aspects are discussed in more detail in 'Key Issues' earlier.

Prepared by	Scott Lenton, Environmental Planning Coordinator
Attachment	<ol style="list-style-type: none"> <li>1. Planning Proposal (to be tabled)</li> <li>2. Applicant's letter (dated 20/1/17) regarding land contamination issue.</li> <li>3. Plan of proposed rezoning</li> </ol>

<b>ITEM</b>	<b>14.021/18</b>	<b>PLANNING PROPOSAL (REZ2010/0002) – AMENDMENT TO ZONING, LOT SIZE AND HEIGHT OF BUILDING MAPS UNDER CLARENCE VALLEY LEP 2011</b>
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<b>Meeting</b>	Environment, Planning & Community Committee	13 March 2018
<b>Directorate</b>	Environment, Planning & Community	
<b>Reviewed by</b>	Manager - Environment, Development & Strategic Planning (David Morrison)	
<b>Attachment</b>	Yes	

**SUMMARY**

<i>Proponent</i>	A Fletcher and Associates Pty Ltd
<i>Owner</i>	Ken W Robson Holdings Pty Ltd
<i>Subject Land</i>	Lot 37 DP1104240, 40 Fairway Drive, South Grafton
<i>Proposal</i>	Amend Land Zoning Map, Lot Size Map and Height of Buildings Map under CVLEP 2011
<i>Submissions</i>	Four (4) public submissions and two(2) agency submissions

This report considers the outcomes of the exhibition of a Planning Proposal to amend planning provisions with regard to land at 40 Fairway Drive, South Grafton by zoning part of the subject land R1 General Residential, amending lot size and height of buildings criteria with the aim of enabling a mix of urban density residential and smaller large lot residential subdivision and development of the land.

The Planning Proposal was publicly exhibited from 8 December 2017 to Monday, 8 January 2018. Council is requested to again consider the Planning Proposal in light of public submissions and feedback from relevant NSW agencies and to decide whether to continue to proceed with the Planning Proposal. A copy of the exhibited Planning Proposal is at Attachment 1 (to be tabled).

The report discusses the issues raised in consultation with public authorities and seeks a Council resolution to finalise the Planning Proposal. It recommends that Council continue to support the Planning Proposal as exhibited subject to provision of contemporary confirmation from relevant Aboriginal knowledge-holders of conclusions in the Planning Proposal that are now some 8 years old.

**OFFICER RECOMMENDATION**

That:

1. Council request the Planning Gateway to approve a 6-month extension to the timeframe specified for finalisation of the Planning Proposal in the Gateway Determination, dated 7 April 2017, in order to provide sufficient time for the proponent to satisfy the request from the NSW Office of Environment and Heritage for relevant Aboriginal knowledge-holders to confirm their current support for the conclusions and recommendations about Aboriginal cultural heritage in the Planning Proposal.
2. Subject to the proponent providing written advice from relevant Aboriginal knowledge-holders confirming their current support for the conclusions and recommendations about Aboriginal cultural heritage in the Planning Proposal, Council continue to:
  - (a) Support the Planning Proposal, as exhibited; and
  - (b) Exercise its delegated authority pursuant to section 59 of the Environmental Planning and Assessment Act 1979 to finalise the amendment to Clarence Valley LEP 2011, to rezone Lot 37 DP1104240, 40 Fairway Drive, South Grafton from R5 – Large Lot Residential to part R1 General Residential and part R5 – Large Lot Residential, to amend minimum lot sizes and height of buildings criteria, to permit a mix of large lot and low density residential subdivision and development of the land.
3. The proponent be advised that a future development application for the subdivision of the land will require remediation and validation of contaminated soil to relevant standards, detailed assessment of

stormwater management that aims to ensure post-development run off volumes and water quality is not any worse than the pre-development state, provision of buffers between large lot residential and low density residential development, suitable provision of public open space, demonstrate how the findings of a report prepared by a suitably qualified wildlife consultant on the management of the local kangaroo population has been incorporated into the proposed subdivision design and demonstrate how the contemporary advice of the relevant Aboriginal knowledge-holders has influenced the proposed subdivision design.

## COMMITTEE RECOMMENDATION

Ellem/Williamson

That:

1. Council request the Planning Gateway to approve a 6-month extension to the timeframe specified for finalisation of the Planning Proposal in the Gateway Determination, dated 7 April 2017, in order to provide sufficient time for the proponent to satisfy the request from the NSW Office of Environment and Heritage for relevant Aboriginal knowledge-holders to confirm their current support for the conclusions and recommendations about Aboriginal cultural heritage in the Planning Proposal.
2. Subject to the proponent providing written advice from relevant Aboriginal knowledge-holders confirming their current support for the conclusions and recommendations about Aboriginal cultural heritage in the Planning Proposal, Council continue to:
  - (a) Support the Planning Proposal, as exhibited; and
  - (b) Exercise its delegated authority pursuant to section 59 of the Environmental Planning and Assessment Act 1979 to finalise the amendment to Clarence Valley LEP 2011, to rezone Lot 37 DP1104240, 40 Fairway Drive, South Grafton from R5 – Large Lot Residential to part R1 General Residential and part R5 – Large Lot Residential, to amend minimum lot sizes and height of buildings criteria, to permit a mix of large lot and low density residential subdivision and development of the land.
3. The proponent be advised that a future development application for the subdivision of the land will require remediation and validation of contaminated soil to relevant standards, detailed assessment of stormwater management that aims to ensure post-development run off volumes and water quality is not any worse than the pre-development state, provision of buffers between large lot residential and low density residential development, suitable provision of public open space, demonstrate how the findings of a report prepared by a suitably qualified wildlife consultant on the management of the local kangaroo and koala populations has been incorporated into the proposed subdivision design and demonstrate how the contemporary advice of the relevant Aboriginal knowledge-holders has influenced the proposed subdivision design.

Voting recorded as follows:

For: Baker, Clancy, Ellem, Simmons, Williamson

Against: Nil

## MOTION

Toms/Novak

That:

1. Council request the Planning Gateway to approve a 6-month extension to the timeframe specified for finalisation of the Planning Proposal in the Gateway Determination, dated 7 April 2017, in order to provide sufficient time for the proponent to satisfy the request from the NSW Office of Environment and Heritage for relevant Aboriginal knowledge-holders to confirm their current support for the conclusions and recommendations about Aboriginal cultural heritage in the Planning Proposal.

2. The proponent be advised that a future development application for the subdivision of the land will require remediation and validation of contaminated soil to relevant standards, detailed assessment of stormwater management that aims to ensure post-development run off volumes and water quality is not any worse than the pre-development state, provision of buffers between large lot residential and low density residential development, suitable provision of public open space, demonstrate how the findings of a report prepared by a suitably qualified wildlife consultant on the management of the local kangaroo and koala populations has been incorporated into the proposed subdivision design and demonstrate how the contemporary advice of the relevant Aboriginal knowledge-holders has influenced the proposed subdivision design.

#### AMENDMENT TO MOTION (1)

Williamson/Kingsley

That:

1. Council request the Planning Gateway to approve a 6-month extension to the timeframe specified for finalisation of the Planning Proposal in the Gateway Determination, dated 7 April 2017, in order to provide sufficient time for the proponent to satisfy the request from the NSW Office of Environment and Heritage for relevant Aboriginal knowledge-holders to confirm their current support for the conclusions and recommendations about Aboriginal cultural heritage in the Planning Proposal.
2. Subject to the proponent providing written advice from relevant Aboriginal knowledge-holders confirming their current support for the conclusions and recommendations about Aboriginal cultural heritage in the Planning Proposal, Council continue to:
  - (a) Support the Planning Proposal, as exhibited; and
  - (b) Exercise its delegated authority pursuant to section 59 of the Environmental Planning and Assessment Act 1979 to finalise the amendment to Clarence Valley LEP 2011, to rezone Lot 37 DP1104240, 40 Fairway Drive, South Grafton from R5 – Large Lot Residential to part R1 General Residential and part R5 – Large Lot Residential, to amend minimum lot sizes and height of buildings criteria, to permit a mix of large lot and low density residential subdivision and development of the land.
3. The proponent be advised that a future development application for the subdivision of the land will require remediation and validation of contaminated soil to relevant standards, detailed assessment of stormwater management that aims to ensure post-development run off volumes and water quality is not any worse than the pre-development state, provision of buffers between large lot residential and low density residential development, suitable provision of public open space, demonstrate how the findings of a report prepared by a suitably qualified wildlife consultant on the management of the local kangaroo and koala populations has been incorporated into the proposed subdivision design and demonstrate how the contemporary advice of the relevant Aboriginal knowledge-holders has influenced the proposed subdivision design.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Williamson, Lysaught

Against: Toms, Novak

The Amendment to Motion was put and declared CARRIED. The Amendment became the Motion.

## AMENDMENT TO MOTION (2)

Baker/Lysaught

That:

1. Council request the Planning Gateway to approve a 6-month extension to the timeframe specified for finalisation of the Planning Proposal in the Gateway Determination, dated 7 April 2017, in order to provide sufficient time for the proponent to satisfy the request from the NSW Office of Environment and Heritage for relevant Aboriginal knowledge-holders to confirm their current support for the conclusions and recommendations about Aboriginal cultural heritage in the Planning Proposal.
2. Subject to the proponent showing evidence of their request for provision in a reasonable time of 60 days of written advice from relevant Aboriginal knowledge-holders confirming their current support for the conclusions and recommendations about Aboriginal cultural heritage in the Planning Proposal, Council continue to:
  - (a) Support the Planning Proposal, as exhibited; and
  - (b) Exercise its delegated authority pursuant to section 59 of the Environmental Planning and Assessment Act 1979 to finalise the amendment to Clarence Valley LEP 2011, to rezone Lot 37 DP1104240, 40 Fairway Drive, South Grafton from R5 – Large Lot Residential to part R1 General Residential and part R5 – Large Lot Residential, to amend minimum lot sizes and height of buildings criteria, to permit a mix of large lot and low density residential subdivision and development of the land.
3. The proponent be advised that a future development application for the subdivision of the land will require remediation and validation of contaminated soil to relevant standards, detailed assessment of stormwater management that aims to ensure post-development run off volumes and water quality is not any worse than the pre-development state, provision of buffers between large lot residential and low density residential development, suitable provision of public open space, demonstrate how the findings of a report prepared by a suitably qualified wildlife consultant on the management of the local kangaroo and koala populations has been incorporated into the proposed subdivision design and demonstrate how the contemporary advice of the relevant Aboriginal knowledge-holders has influenced the proposed subdivision design.

Voting recorded as follows:

For: Simmons, Kingsley, Baker, Ellem, Williamson, Lysaught, Toms, Novak

Against: Nil

The Amendment to Motion was put and declared CARRIED. The Amendment became the Motion.



**COUNCIL RESOLUTION – 14.021/18****Toms/Novak****That:**

1. Council request the Planning Gateway to approve a 6-month extension to the timeframe specified for finalisation of the Planning Proposal in the Gateway Determination, dated 7 April 2017, in order to provide sufficient time for the proponent to satisfy the request from the NSW Office of Environment and Heritage for relevant Aboriginal knowledge-holders to confirm their current support for the conclusions and recommendations about Aboriginal cultural heritage in the Planning Proposal.
2. Subject to the proponent showing evidence of their request for provision in a reasonable time of 60 days of written advice from relevant Aboriginal knowledge-holders confirming their current support for the conclusions and recommendations about Aboriginal cultural heritage in the Planning Proposal, Council continue to:
  - (a) Support the Planning Proposal, as exhibited; and
  - (b) Exercise its delegated authority pursuant to section 59 of the Environmental Planning and Assessment Act 1979 to finalise the amendment to Clarence Valley LEP 2011, to rezone Lot 37 DP1104240, 40 Fairway Drive, South Grafton from R5 – Large Lot Residential to part R1 General Residential and part R5 – Large Lot Residential, to amend minimum lot sizes and height of buildings criteria, to permit a mix of large lot and low density residential subdivision and development of the land.
3. The proponent be advised that a future development application for the subdivision of the land will require remediation and validation of contaminated soil to relevant standards, detailed assessment of stormwater management that aims to ensure post-development run off volumes and water quality is not any worse than the pre-development state, provision of buffers between large lot residential and low density residential development, suitable provision of public open space, demonstrate how the findings of a report prepared by a suitably qualified wildlife consultant on the management of the local kangaroo and koala populations has been incorporated into the proposed subdivision design and demonstrate how the contemporary advice of the relevant Aboriginal knowledge-holders has influenced the proposed subdivision design.

**Voting recorded as follows:****For: Simmons, Kingsley, Baker, Ellem, Novak, Williamson, Lysaught, Toms****Against: Nil****LINKAGE TO OUR COMMUNITY PLAN**

Theme 5 Leadership

Objective 5.1 We will have a strong, accountable and representative Government

Strategy 5.1.4 Ensure transparent and accountable decision making for our community

**BACKGROUND**

The local strategic background to the current Planning Proposal is born out of the Clarence Valley Settlement Strategy (1999) and the South Grafton Heights Precinct Strategy (2007). The latter Strategy was amended by Council in April 2011, however there was no change to the Strategy in the way it related to the subject land. The Clarence Valley Settlement Strategy (CVSS) was prepared with a planning horizon of 2016 and despite the fact that 2016 has come and gone the CVSS is still deemed to be relevant as much of the growth in population and development that was forecast to occur within the Clarence Valley has not

occurred. From a planning perspective, the principles and specific planning elements contained in the CVSS remain relevant and consistent with the North Coast Regional Plan (2017).

The South Grafton Heights Precinct Strategy concluded that the existing urban area of South Grafton as well as the South Grafton Heights Precinct contained sufficient land to cater for residential and rural-residential development without being limited by significant infrastructure, service, physical or topographical constraints for the period up until 2032 or so. The preferred development scenario for the Precinct (see Figure 1) identified estimates of development yield as well as key elements of the Precinct in an attempt to ensure future development respected elements of economy, ecology, society and culture, human habitat and governance that were the sustainability elements in the Council-adopted Clarence Valley Sustainability Initiative. The preferred scenario suggested that the subject land on Fairway Drive would yield in the order of 108 lots in addition to the provision of multiple-use open space corridors and buffers between urban residential and rural-residential development (see Figure 1). Plans contained in the current Proposal suggest a yield of 111 lots (85 urban residential and 26 larger lots) as well as a public reserve.

Council's consideration of this Planning Proposal has extended over a number of years with the application first being lodged in late-2010 before being revised in January 2017. The level of detail supplied with the proposal in terms of a future subdivision layout (see Annexure C in Attachment 1) and the intention to divide the site into urban density and larger lot residential precincts provides an opportunity and a desire to consider key design issues that would typically be dealt with at subdivision DA stage in order to clarify both Council's requirements and ensure reasonable developer expectations early on. With this in mind a number of design considerations consistent with the Precinct Strategy were brought to the proponent's attention early in the application process. These included stormwater management, open space and buffers and enabling easier pedestrian and cyclist access with a view to ensuring a future subdivision layout to optimise the location of the division between higher and lower density allotments. The applicant has discussed these aspects with Council staff and has advised that they are prepared to have the Proposal considered without dealing with these matters in more detail until any future DA is lodged. This provides a risk that upon more detailed assessment of relevant matters pre-DA that the layout of the future subdivision may be constrained by amendments to LEP maps such as the land zoning or lot size maps that arise from this Planning Proposal (if endorsed). This may lead to a sub-optimal yield for the both the land and the developer.

The revised 2017 Planning Proposal was considered by Council at its meeting on 21 March 2017 (Item 14.017/17) and Council resolved to request a Gateway Determination, advise the Applicant that additional contaminated land assessment was required prior to public exhibition, advise the Gateway that additional details would be added to the Planning Proposal prior to exhibition if supported by the Gateway, and to accept any plan-making delegations that may be issued by the Gateway. This Council report considered a range of relevant issues including strategic context, compliance with Planning Proposal Guidelines, potential for contaminated land, public open space and crime prevention, stormwater management and new road intersection with Rushforth Road.

A positive Gateway Determination was issued on 7 April 2017 and a 12-month timeframe from the week following the Determination was provided for the amending LEP to be finalised. The Gateway Determination also specified minimum timeframes for public exhibition and consultation with NSW Environment Protection Authority and NSW Office of Environment and Heritage – National Parks and Wildlife Service.

## KEY ISSUES

**Issues presented in public submissions** – Four (4) written submissions were received during the exhibition period from landowners in the vicinity of the subject land (refer to Attachments 2 to 5). As plans lodged with the Planning Proposal contain an indicative future subdivision layout, including location of new streets and drainage corridors, this has prompted greater consideration of a range of detailed design aspects in

public submissions. These matters would typically be resolved at the Development Application stage. The key issues presented in submissions are discussed under relevant sub-headings below.

Stormwater Management – The aim of good stormwater management in subdivision developments is to manage stormwater such that the post-development runoff volumes and water quality is no worse than the pre-development scenario. This can typically be achieved through a range of measures during planning, construction and maintenance of the future subdivision and associated development. Typically this issue is not dealt with in detail at the planning proposal stage as it is known that the desired objective of good stormwater management can be achieved and the question is more a matter of how this outcome will be achieved for the particular development. For that reason detailed assessment is usually best performed in preparing plans for the Development Application.

In the case of this Planning Proposal there is a new zone boundary proposed to separate the urban residential and larger lot residential areas and hence, the proponent was advised that further assessment would be useful to assist in ensuring the location of the proposed zone boundary was optimised. The proponent opted not to perform detailed assessment at this planning proposal stage.

Nearby residents have observed the impacts of stormwater flows through the area and have reasonable grounds to be concerned as to how that may change in response to any future development of the subject land. Action C.6 of the South Grafton Heights Precinct Strategy enables stormwater assessment to be completed at subdivision stage when the land the subject of development is already zoned residential. The subject land is already zoned R5 Large Lot Residential. The proponent is aware of the requirements to properly consider stormwater management and erosion and sediment control matters in finalising the subdivision layout and preparation of any Development Application documentation. Action C.5 reinforces the need for new urban residential and large lot residential development to be water efficient and satisfy integrated water cycle management requirements. There is potential that the draft subdivision layout and servicing arrangements will require changes to the concept included in the Planning Proposal in response to the need for stormwater management measures that meet the objectives of Council's Development Control Plan provisions in these respects.

Wildlife Management – The area in the vicinity of the subject land is frequented by a number of kangaroos that some local residents enjoy to see sharing lands within this Precinct. As the Precinct has developed with residential subdivisions the ability for the kangaroo population to freely move through the Precinct has been restricted. The strategic structure of the Precinct, as confirmed in the Precinct Strategy, promotes the concept of inter-connecting open spaces that provide for multiple opportunities including wildlife corridors, passive and active open space, green spaces and drainage paths. The plans included with the Planning Proposal have incorporated a large area of open space fronting Fairway Drive at the northern end of the site. Some submissions have raised concern that the kangaroos attempting to travel through the future subdivision will become blocked or resort to travelling along the public streets.

Kangaroos have been known to cause significant injury to humans that at times can be provoked simply by the animal being startled or feeling threatened in a confined space. The design of the development needs to adequately consider the potential conflict between human inhabitants and kangaroos. As with stormwater management the issue can be managed and the issue is more about how it is managed. Consideration of this issue is best dealt with at the future DA stage with recommendations from a qualified wildlife consultant being incorporated into the subdivision design by the developer.

Traffic Management – The subject land currently has a potential yield of approximately 40 large lot residential allotments under the R5 Large Lot Residential zoning. Ordinarily, a residential development of that size in a regional area would yield about 300 traffic movements per day (7.4/dwelling). Hence, with a yield of 111 lots (as shown on the concept plans) it is reasonable to expect an additional 525 daily traffic movements. There is potential for the total traffic generation to be reduced by maximising the number of allotments that are within 400 metres of a bus stop/bus route consistent with Actions A.5 and B.16 of the

Precinct Strategy. This can be achieved for most of the subject land provided the road and pedestrian network is designed to cater for this criteria.

Provision of a future intersection of Fairway Drive with Rushforth Road was endorsed by the former Grafton City Council many years ago. This new access opportunity will enable sharing of the traffic load between the existing Tallowood Street/Rushforth Road intersection and the new Fairway Drive intersection.

In considering traffic impacts and traffic management requirements it is important to recognise that any subdivision of the subject land is likely to be completed in stages and further, construction of dwellings is likely to occur over a lengthy period, making the changes to traffic more subtle and gradual. Notwithstanding that, the construction of the future road network and traffic management needs to consider the total impacts and ensure works are appropriately staged according to the relevant design standards and traffic safety. Such aspects will be subject to detailed design and consideration at future DA stage.

Buffers – Requirements for adequate separation, or buffers, between large lot residential and urban density residential development has been a significant issue for Council to consider in this Precinct, most recently with respect to the residential proposal for part of the Grafton and District Golf Course in Bent Street opposite large lot residential development. The Precinct Strategy (Action B.7) supports the concept of buffers between development of different density to reduce conflict and improve local amenity. The concept plan submitted with the Planning Proposal attempts to provide such buffers by utilising larger lot sizes rather than providing open space buffers. The Precinct Strategy suggests such buffers should be about 35 metres wide.

One submission suggests that the land along the Fairway Drive side of the future development, as indicated by the concept plan, should be subject to a 2,000m<sup>2</sup> lot size to reduce the impact on large lot residential land opposite in Fairway Drive. The suggested option is somewhat similar to the approach taken for the golf course development mentioned earlier. The Fairway Drive road reserve provides for 20 metres of separation between the frontages of the land either side of Fairway Drive. An existing 20-metre wide open space buffer north of the land owned by the persons making the submission separates their land from the adjacent urban residential development. Hence, a 20-metre wide buffer has been accepted in the past. One option to formally widen the 'Fairway Drive' buffer to achieve the 35 metre target is to add land to the western side of the Fairway Drive road reserve. Such additional width could be used to more comfortably provide for services, off-road pedestrian access, open space and landscaping to provide both a physical and visual buffer. The existing road verge width along the western side of Fairway Drive road carriageway could cater for some pedestrian access and landscaping, however if services such as electricity, water mains, etc also used that space then opportunities for introducing new plantings to enhance a visual buffer would be significantly more constrained. Notwithstanding that, sensitive subdivision design and consideration of the location of essential services could result in better 'buffering' outcomes without widening the Fairway Drive corridor.

The proponent of any future subdivision should be required to consider and factor in to the development design the various components called up by the Precinct Strategy in an effort to provide for the best possible outcomes for existing residents whilst catering for the Valley's growth in a sensitive manner.

Crime prevention – NSW Police were consulted early in the Planning Proposal process to provide comment specifically on the proposed public reserve design, layout and related crime prevention principles. In response to feedback from NSW Police changes to the reserve and concept subdivision layout were suggested and agreed to by the proponent. The suggestion in the submission that new development will add to crime in the Precinct is difficult to justify. Certainly the potential for crime needs to be considered in designing and furnishing or landscaping public spaces, such as the public reserve, however these are detailed issues for a future DA to consider.

Services and location – One submission presents a concern that provision of new services to cater for the subdivision may result in a loss of private trees on their land that provide shade from western sun. Sensitive and considerate design of the future subdivision, including service locations, at DA stage can overcome these potential conflicts.

Open space/park – The design, location and furnishing of the proposed public reserve is subject to comment or query in two submissions. As indicated in ‘Crime prevention’ earlier there has been some consideration of the public reserve design early in the planning proposal phase in an effort to open up the reserve to street frontages consistent with Precinct Strategy Action B.13 to enable improved opportunities for passive surveillance by residents and motorists and to improve access to and from the reserve. The final layout, furnishing and landscaping are matters that will receive some attention at DA stage and even further attention through ongoing future management by Council.

The Precinct Strategy identifies the need for public open space, used for multiple complimentary purposes, including neighbourhood parks as a key component of the Precinct structure. Actions B.12, B.17, C.10 and C.11 from the Precinct Strategy are relevant. There has been a move in recent years by Council to restrict acquisition of new open spaces, however well-planned and positioned public open space provides a valuable asset to local communities, provides common places for people to informally meet and recreate, as well as providing opportunities for adding visual interest, relief and diversity to urban neighbourhoods. The adopted Precinct Strategy relies heavily on a connected open space network to provide a quality environment for people to live and for residential development in the Precinct to be more sustainable.

Adequate medical and educational services – The additional development earmarked for the subject land has been planned for in Council strategic plans for many years. Adjustment in the level of public and private services occurs in part in response to changes in population. Additional population is likely to result in the provision of more services such as medical services and educational places whether provided by the public or private sector.

Economic impact (property devaluation) – There is some concern that the future development that would be enabled by the proposed amendment to the Clarence Valley LEP would devalue nearby established residential development. Such claims are very difficult to substantiate and are typically not given a lot of weight for that reason. Conversely, it could be suggested that a reduction in supply of zoned large lot residential land due to the proposed R1 General Residential zoning for part of the subject land could increase the value of the R5 Large Lot Residential land through market forces related to supply and demand.

**Issues presented in Agency submissions** – Council was required by the Planning Gateway to liaise with both NSW Environment Protection Authority (EPA) and Office of Environment and Heritage – National Parks and Wildlife Service (NPWS). That consultation has been completed and both agencies have provided feedback (refer to Attachments 6 and 7).

NSW EPA have advised that they agree with Council’s intended action to require remediation and validation of contaminated soil on the subject land in conjunction with a future Development Application (refer to Attachment 6). The proponent has previously requested this approach to resolution of the contaminated land issue and Council officers have agreed. Such a strategy is consistent with Action B.6 of the Precinct Strategy.

NPWS advises that the Planning Proposal presents no issues for biodiversity, flood risk management or acid sulfate soils. The assessment of Aboriginal cultural heritage values was completed 8-9 years ago and hence, NPWS has requested that the proponent should obtain written confirmation from relevant Aboriginal knowledge-holders that the conclusions and recommendations for Aboriginal cultural heritage contained in the Planning Proposal remain valid (refer to Attachment 7). Consideration of Aboriginal cultural heritage values is consistent with Action A.10 in the Precinct Strategy and the NPWS request is considered reasonable in the circumstances. This confirmation should be obtained before the Planning Proposal is

finalised. Should such confirmation not be obtained then the matter would need to be reviewed by Council and NPWS before proceeding.

An added implication of adhering to the NPWS request is the need to seek extension to the timeframe for processing the Planning Proposal as issued by the Planning Gateway in their Determination on 7 April 2017. Verbal advice from staff at the Department of Planning and Environment is to seek a 6-month extension to limit the likelihood of needing a further extension due to a potential delay in the proponent obtaining the required confirmation. The Council recommendation includes a request for the Gateway to extend the timeframe for finalising the Planning Proposal for a further 6 months.

## OPTIONS

1. Adopt the Officer's Recommendation and progressing the Planning Proposal once written confirmation of acceptance of Aboriginal cultural heritage matters is obtained. This is considered prudent in the circumstances. The proposal is generally consistent with the Council's adopted planning strategies. Details relevant to a range of issues can be better resolved at DA stage once more details are known.
2. Endorsing the Planning Proposal and not seeking to uphold the NPWS request. This is likely to cause the proposal to be further delayed by the NSW Department of Planning and Environment in an attempt to have the NPWS request upheld.
3. Not proceeding with the Planning Proposal. This would be inconsistent with the adopted planning strategies for the Clarence Valley and more specifically the South Grafton Heights Precinct.

## COUNCIL IMPLICATIONS

### Budget/Financial

The Planning Proposal has included payment of an application fee in accordance with Council's Fees and Charges at the time the application was lodged. Processing of the Proposal has been undertaken using recurrent staff budgets.

### Asset Management

N/A

### Policy or Regulation

*Environmental Planning and Assessment Act 1979* and related policies and guidelines

North Coast Regional Plan 2036

A guide to preparing planning proposals (*Department of Planning and Environment, 2016*)

### Consultation

The Planning Proposal was required by the Gateway Determination to be publicly exhibited for a minimum of 14 days and referred to relevant NSW agencies for at least 21 days to comment on the Proposal. These periods of time have been provided for the community and relevant agencies to make comment. In fact, the public exhibition period provided was a full month to cater for the Christmas/New Year period and give reasonable time for persons to make submissions during this busy period.

Consultation with staff of Council's Community & Cultural Services and Development Services teams has been completed. As indicated in the report liaison with NSW Police, EPA and NPWS has been completed in relation to specific issues.



**Legal and Risk Management**

There are no appeal rights for third parties, such as members of the public, on planning proposals. The proponent may seek a review of the outcome of the Planning Proposal if they are not satisfied.

Prepared by	Scott Lenton, Environmental Planning Coordinator
Attachment	Attachment 1 – Planning Proposal (to be tabled) Attachments 2 to 5 – Submissions for public/nearby landowners Attachments 6 to 7 – Submissions from EPA and NPWS