

COUNCIL ASSESSMENT REPORT
NORTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSNTH-137 – [SUB2021/0042]
PROPOSAL	336 lot subdivision (329 residential lots, 1 commercial lot, 4 drainage reserves and 2 public open space areas)
ADDRESS	Lot 104 DP 751388 - James Creek Road, James Creek
APPLICANT	Mpd Investments Pty Ltd
OWNER	Kahuna No 1 Pty Ltd
DA LODGEMENT DATE	4 November 2021
APPLICATION TYPE	Development Application
REGIONALLY SIGNIFICANT CRITERIA	Clause 2, Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> : General development over \$30 million
CIV	\$33,417,870 (excluding GST)
CLAUSE 4.6 REQUESTS	Nil
KEY SEPP/LEP	<ul style="list-style-type: none"> • State Environmental Planning Policy (Resilience and Hazards) 2021; • State Environmental Planning Policy (Planning Systems) 2021; • State Environmental Planning Policy (Biodiversity and Conservation) 2021; • State Environmental Planning Policy (Transport and Infrastructure) 2021; • Clarence Valley Local Environmental Plan 2011.
TOTAL & UNIQUE SUBMISSIONS ISSUES SUBMISSIONS	Round 1 - 48 unique submissions plus 1 petition (171 signatures) Round 2 – 25 unique submissions Round 3 – 27 unique submissions Total unique submissions – 100 (plus 1 petition)
DOCUMENTS SUBMITTED FOR CONSIDERATION	1. Statement of Environmental Effects (Place Design Group, October 2021), including: <ul style="list-style-type: none"> • Enclosure 1 – Subdivision Layout Drawings (Geolink, 8 Oct 2021) • Enclosure 2 – Civil Engineering Drawings (Geolink, 8 Oct 2021) • Enclosure 3 – Gravity Sewer Assessment Report (Willow and Sparrow, 21 Oct 2021) • Enclosure 4 – Traffic Impact Assessment (Geolink, Oct 2021) • Enclosure 5 – Bushfire Hazard Assessment Report (Geolink, 13 Sept 2021) • Enclosure 6 – Biodiversity Assessment Report (Geolink, 13 Sept 2021)

	<ul style="list-style-type: none"> • Enclosure 7 – Development Capital Cost Calculations (Burchills Engineering Solutions (22 Oct 2021) • Enclosure 8 – Concept Dwelling House Plans (REA, 29 Aug, 2021) • Enclosure 9 – Multi Unit House Plan (RAD, 12 Oct 2021) • Enclosure 10 – Contaminated Land Assessment (EAL, 12 Apr 2011) • Enclosure 11 – Contaminated Land Assessment Review (Geolink, Nov 2019) • Enclosure 12 – Stormwater Management Plan (Geolink, 13 Oct 2021) • Enclosure 13 – Statement of Landscape Intent (Place Design Group, 20 Oct 2021) • Enclosure 14 – Geotechnical Report (Regional Geotechnical Solutions (29 Jul 2021) • Enclosure 15 – AHIMS Search Results (21 Oct 2021) <p>2. Round 1 Public Submissions</p> <p>3. Request for Information letter (Clarence Valley Council, 8 Mar 2022)</p> <p>4. Response to Request for Information letter (Place Design Group, 27 May 2022), including:</p> <ul style="list-style-type: none"> • Enclosure 1 – Council's Request for Information Letter • Enclosure 2 – NSW Planning Panel, Record of Briefing • Enclosure 3 – Revised DA Drawing Set (Geolink, 24 May 2022) • Enclosure 4 – Revised Traffic Impact Assessment (Geolink, 18 May 2022) • Enclosure 5 – Copy of CVC Road Infrastructure Developer Contributions Plan • Enclosure 6 – Revised Statement of Landscape Intent (Place Design Group, 27 May 2022) • Enclosure 7 – Revised Stormwater Management Report (Geolink, 20 May 2022) • Enclosure 8 – Bioretention Basins Management Plan (Geolink, 25 May 2022) • Enclosure 9 – • Enclosure 10 – Supporting letter in relation to Stormwater Owner Consent Matters (Conroy Stewart Spagnolo Solicitors, 19 May 2022) • Enclosure 11 – Revised Gravity Sewer Assessment (Willow and Sparrow, 25 May 2022) • Enclosure 12 – Land use Conflict Risk Assessment (LUCRA) (Geolink, 24 May 2022) • Enclosure 13 – LUCRA Peer Review (Hortus Group, 26 May 2022) • Enclosure 14 – Copy of AHIMS Search (21 October 2021) • Enclosure 15 – Letter to Yaegl LALC (A. Fletcher & Associates Pty Ltd, 17 March 2022) • Enclosure 16 – Response from Yaegl LALC (Yaegl LALC, 13 April 2022) • Enclosure 17 – Aboriginal Cultural Heritage Site Assessment (Rob Heron, August 2009) • Enclosure 18 – Response to Submissions (Place Design Group, 27 May 2022) • Enclosure 19 – Copy of NSW Rural Fire Service Letter (RFS, 16 May 2022)
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	<ul style="list-style-type: none"> • Enclosure 20 – Revised Biodiversity Assessment Report (Geolink, 11 May 2022) <ol style="list-style-type: none"> 5. Round 2 Public Submissions 6. Further request for Information letter (Clarence Valley Council, 2 Dec 2022) 7. Response to Request for Information letter (Place Design Group, 18 April 2023), including: <ul style="list-style-type: none"> • Enclosure 2 – Traffic Impact Assessment (Geolink, 24 March 2023) • Enclosure 3 – Updated Design and Engineering Plans (Geolink, 13 April 2023) • Enclosure 4 – Updated Stormwater Management Report (Geolink, 29 March 2023) • Enclosure 5 – Revised Statement of Landscape Intent (Place Design Group, 26 April 2023) • Enclosure 6 – Revised LUCRA report (Geolink, 18 April 2023) 8. Round 3 Public Submissions 9. Response to Request for Information email (Peter Bell of Place Design Group, 2 June 2023), including: <ul style="list-style-type: none"> • Updated Stormwater Management Report (Geolink, 29 May 2023) • Stormwater Discharge Strategy letter (Geolink, 2 June 2023)
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	Nil
RECOMMENDATION	Refusal
DRAFT CONDITIONS TO APPLICANT	No
SCHEDULED MEETING DATE	29 June 2023
PLAN VERSION	13 April 2023 Version B
PREPARED BY	Rachel Heath, Senior Town Planner, acting on behalf of Clarence Valley Council (Consultant)
DATE OF REPORT	20 June 2023

EXECUTIVE SUMMARY

Clarence Valley Council is in receipt of a Development Application (SUB2021/0042) seeking consent for a 336-lot staged residential subdivision and associated infrastructure at the subject site, being Lot 104 DP 751388, James Creek Road, James Creek NSW 2463.

James Creek is a small, rural locality within the Clarence Valley Local Government Area (LGA), approximately 4km west of Maclean and 10km west of Yamba. Grafton is the nearest larger centre, located approximately 45 minutes' drive southwest of the site.

The subject site was rezoned from RU1 Primary Production to a mix of R1 General Residential, R3 Medium Density Residential and B1 Neighbourhood Centre (now E1 Local Centre) in July 2014, following submission of a request for planning proposal which included an indicative concept plan.

The site is approximately 33 hectares, rectangular in shape and situated mid-way along James Creek Road, bounded by James Creek Road to the east, Austons Lane to the south and large rural lots to the north and west. The rural lot to the north is densely vegetated.

Approval is being sought for the subdivision, comprising:

- 329 residential lots, ranging from 434m² to 1,016m², with the exception of a single 3,120m² multi-unit site;
- 1 neighbourhood centre lot of 2,113m²;
- 4 stormwater basin lots; and
- 2 open space/park lots, comprising a 6,444m² Village Green and 2,606m² Pocket Park.

The proposal also includes civil works to establish the physical infrastructure, including:

- Earthworks / retaining walls;
- Sewerage infrastructure;
- Water supply infrastructure;
- Stormwater management infrastructure;
- Site access intersections, internal road network and pedestrian connections; and
- Landscaping.

The principal planning instruments relevant to the proposal include:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021;*
 - *Chapter 2 – Vegetation in Non-Rural Areas;*
 - *Chapter 4 – Koala Habitat Protection 2021;*
- *State Environmental Planning Policy (Planning Systems) 2021;*
- *State Environmental Planning Policy (Resilience and Hazards) 2021;*
 - *Chapter 4 – Remediation of Land;*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021;*
 - *Chapter 2 – Infrastructure;*
- *Clarence Valley Local Environmental Plan 2011;* and
- *Clarence Valley Development Control Plan 2011.*

The development application was referred to Transport for NSW, Essential Energy and the Rural Fire Service for consultation. No objections to the proposal have been raised by these agencies, consequently there are no outstanding issues arising from this consultation.

The proposal was notified in accordance with Clarence Valley Council's Community Participation Plan from 9 November to 14 January 2022. A total of 48 unique submissions plus 1 petition (171 signatures) objecting to the proposal were received. The proposal was re-notified on two separate occasions following amendment of the application in response to

Council's requests for further information; from 12 August to 9 September 2022 resulting in 25 unique submissions of objection; and from 28 April to 15 May 2023, resulting 27 unique submissions of objection. In total, 100 unique submissions of objection and 1 petition were received in relation to the application.

The issues raised in the submissions include urban design, density, land use conflict, local character, lack of public consultation, impact on services, stormwater management, flood evacuation, lack of public transport, vehicular and pedestrian safety and access.

The key issues associated with the proposal included:

1. *Stormwater* - At points of discharge of stormwater or at any concentration of stormwater from one or onto an adjoining properties, either upstream or downstream, Council requires the developer to enter into a Deed of Agreement with the adjoining owner(s) granting permission to the discharge of stormwater drainage and the creation of any necessary easements with the cost of the easement being met by the Developer. A Deed of Agreement with the adjoining owner granting permission for the proposed discharge and necessary easements has not been obtained. Therefore, satisfactory arrangements for the provision of stormwater infrastructure have not been achieved.
2. *Sewer* - The requirement for the subject site to be serviced by pressure sewer has previously been determined by the *Maclean Urban Growth Management Strategy 2011* as referred to in Council's *Pressure Sewer Policy*. The developer has instead proposed the development be serviced by conventional gravity sewer system with pump stations. Consequently, the proposal would generate a design flow of 20.8L/s for a gravity sewer system, as opposed to a design flow of 9.1L/s for a pressure sewer system, bringing forward the timeline for augmentation of the Woodford Island Sewer Treatment Plant (Woodford Island STP) by approximately 33 percent. Insufficient information and assessment of Council's existing system has been provided for Council to accept the proposed gravity sewer network to service the proposal.
3. *Traffic* - The assessment does not provide a specific stage of the development at which the upgrade of Yamba Road / James Creek Road is required. In the most recent response, the applicant suggested that this upgrade could occur as late as stage 2, however insufficient information has been provided to support this. It is also noted that the developer has proposed a footpath connection from the development to Townsend in concept, but has not committed to providing this infrastructure as part of the development.
4. *Land Use Conflict* - One of the priorities for rural land in the Local Strategic Planning Statement is to "*Protect agricultural land and increase opportunities for access to locally produced fresh food and economic growth*". As the agent of change, the proposed subdivision does not incorporate appropriate land use buffers in response to the adjoining rural character and amenity of the locality to ensure a suitable edge/interface is achieved and potential land use conflict is mitigated. Council required a minimum 50m buffer treatment applied to all boundaries adjacent to rural zoned land (the north, east and west). Therefore, satisfactory arrangements for the mitigation of potential land use conflict have not been achieved.

Other issues include the urban structure, density and sensitivity of the proposed lot design to the existing topographical landform and surrounding rural setting.

The proposal involves a largely homogenous urban structure and density, with the primary village park, 'superlot' for medium density housing and neighbourhood commercial lot being located at the James Creek Road entrance. The subdivision design is effectively insular, with

a single access point and development 'facing inwards' as opposed to addressing external adjoining rural landscape.

A 'salt and peppering' of lot sizes occurs throughout the subdivision, which broadly includes larger lots being directed to the interface with adjoining lands. Notwithstanding, the proposal represents a stark change in character and density from its surroundings, which predominately involve lot sizes greater than 2 hectares.

The proposal includes inter-allotment retaining walls of up to 2m, commonly along rear boundaries. Whilst bulk earthworks are often pursued to support a coordinated earthworks approach and cost efficiencies in greenfield subdivisions, greater retention of the site's existing topography is warranted to ensure a more contextual approach and outcome for the site. In-turn, this is anticipated to improve amenity levels for any future community and avoid 3.8m high interface walls between neighbours.

The variation in lot sizes does not appear to directly create or foster character precincts, however the diversity of lots will create varied price points and future built form for any future community. A number of dual occupancy compatible lots are proposed, further assisting housing diversity. These lots are often positioned on corner lots, facilitating dual access. Dual occupancy, as well as the subdivisions numerous irregular, triangle-shaped lots, are not directly supported by any indicative designs/case study analysis to confirm suitable opportunity for high quality outcomes. Whilst not essential at the subdivision stage, integrated designs which consider primary (and secondary) setbacks are generally encouraged to ensure desirable streetscape and private open space outcomes can be achieved.

Considering the limited site constraints within the subject land and desired medium density outcomes for a portion of the site, further opportunities to deliver housing diversity and character are identified than the proposal facilitates. Particularly within immediate proximity of its amenity areas, a refined subdivision proposal which incorporates greater integrated housing outcomes would better facilitate the medium density zone objectives, as well as foster a stronger sense of place and community. Converse to the 'core' of the site, its edges require a larger setback, lower density and genuine address to facilitate a transition into the surrounding rural and large-lot residential context.

The proposal is '*regionally significant development*' pursuant to Section 2.19(1) as it satisfies the criteria in Clause 2.19(1) of Schedule 6 of the Planning Systems State Environmental Planning Policy as the proposal has a capital investment value of more than \$30 million. Accordingly, the Northern Regional Planning Panel is the consent authority for the application. Briefings were held with the Panel on 23 March 2022 and 19 April 2023 where key issues were discussed.

Following consideration of the matters under Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* (the EP&A Act), the provisions of the relevant State Environmental Planning Policies, the *Clarence Valley Local Environmental Plan 2011* and Clarence Valley Residential Zones Development Control Plan 2011, it is recommended that the proposed development is not supported.

The issues of stormwater management, sewer infrastructure, traffic infrastructure and land use conflict are all significant environmental issues that have not been adequately addressed by the Applicant. It is possible that design amendments and the submission of additional information may resolve these issues, however, as these issues remain unresolved at this time, they contribute to the reasons for refusal.

Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(b) of the EP&A Act, Development Application SUB2021/0042 is recommended for refusal subject to the reasons contained at **Attachment A** of this report.

THE SITE AND LOCALITY

1.1 The Locality

The subject site is in the suburb of James Creek, a small, rural locality within the Clarence Valley Local Government Area (LGA), approximately 4km west of Maclean and 10km west of Yamba (refer to **Figure 1**). Grafton is the nearest larger centre, located approximately 45 minutes' drive southwest of the site.

Land uses in James Creek are predominately characterised by agriculture in the north and east, including sugar cane in the low-lying lands and beef/dairy cattle grazing in higher areas, rural residential development in the south and environmental protection, including Yaegl Nature Reserve in the west.

The rural residential development is a relatively recent land use in the context of historic patterns of development and building activity is ongoing as new subdivisions are being constructed. Lot sizes typically range from about half a hectare to 4 hectares, with single dwelling houses.



Figure 1 – Locality Plan

1.2 The Site

The land subject to this application is known as Lot 104 James Creek Road, James Creek and is legally described as Lot 104 DP 751388 (refers to **Figures 2** and **3**). It is situated mid-way along James Creek Road, bounded by James Creek Road to the east, Austons Lane to the south and large rural lots to the north and west. The rural lot to the north is densely vegetated.

The site is approximately 33 hectares and rectangular in shape. The crest of a small hill is located slightly north-west of the centre point with slopes ranging from approximately 3 to 10%

falling away in all directions and elevations ranging from 21m Australian Height Datum (AHD) to 4m AHD.

Anecdotal information provided by the original owner of the allotment suggest that the site was cleared in the early to mid-1970s and planted in sugar cane. Sugar cane farming was continued on the site until about 2005. More recently, the site has been grassed and grazed by cattle and sheep (refer to **Figure 3**).

There are no permanent water bodies or watercourses located on the site. Stormwater runoff from the site drains to James Creek located approximately 650 metres northwest of the site and Palmers Channel located approximately 1.3km to the east. Both waterways flow to the north, discharging into the Clarence River about 1.7 km north of the subject site (refer to **Figure 2**). A mapped Coastal Wetland associated with James Creek is located approximately 170m west of the site.

The subject site is zoned (refer to **Figure 4**):

- R1 – General Residential;
- R3 – Medium Density Residential; and
- B1 – Neighbourhood Centre.



Figure 2 – Subject Site and Surrounds



Figure 3 – Subject Site

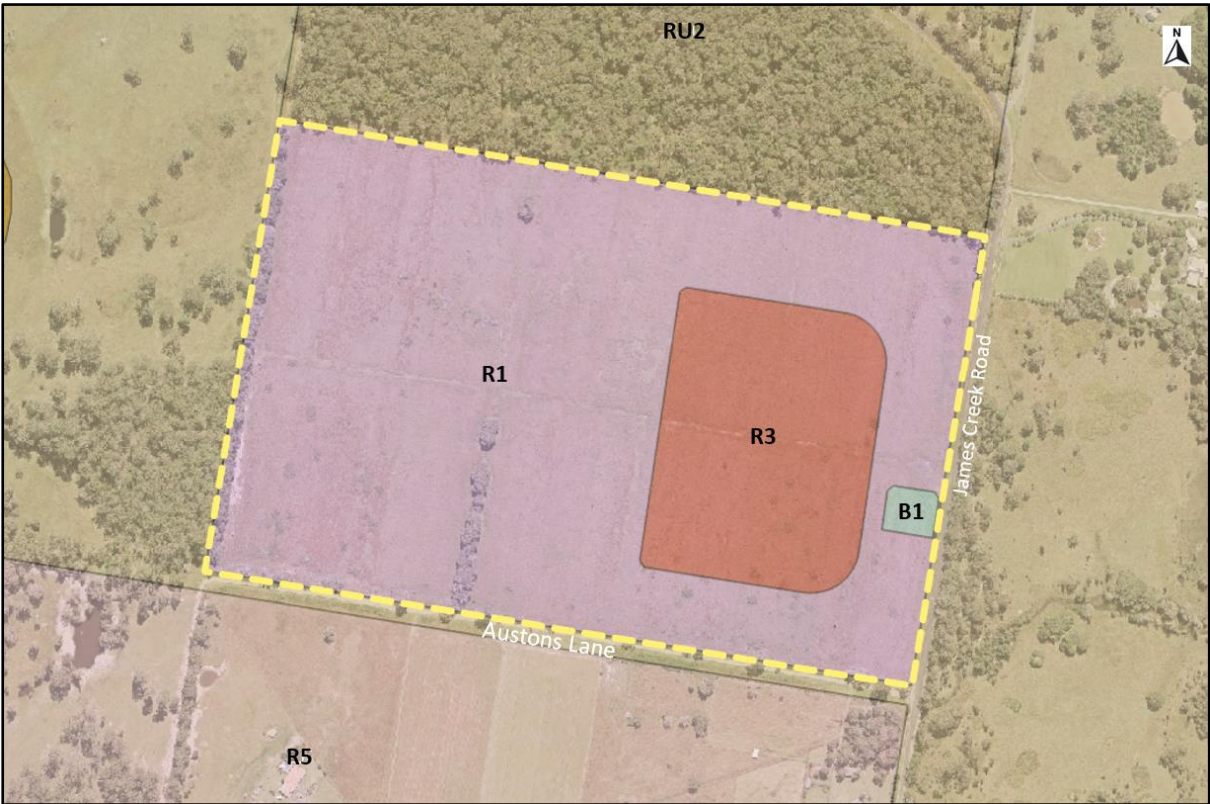


Figure 4 – Land Zoning

1.3 Site History

The subject site was originally zoned 1(a) Rural (Agricultural Protection) Zone under the *Maclean Local Environmental Plan 2001*.

In 2005 the then landowners first approached the former Maclean Shire Council with a request for consideration of the subject site to be rezoned for residential accommodation and supporting infrastructure. The site was later sold in April 2008 and in September of that year Council advised the new owners that any consideration of rezoning the land should follow the government's adoption of the draft Mid North Coast Regional Strategy and the preparation of a subsequent Local Growth Management Strategy.

The Mid North Coast Regional Strategy was later adopted by the State Government in 2009. It identified a number of areas that may be suitable to accommodate future growth subject to a more detailed planning assessment through a local growth management strategy (LGMS). One of these areas was James Creek.

The subject site was then zoned RU1 Primary Production under the standard instrument *Clarence Valley Local Environmental Plan 2011* (the LEP).

Council subsequently prepared the Maclean Urban Catchment Growth Management Strategy which was approved by the then Department of Planning and Infrastructure in November 2011.

The Maclean Urban Catchment Growth Management Strategy identified Maclean as the principle town in the hierarchy supported by, in the first instance, residential satellites at Townsend and Gulmarrad, and subject to a long term increase in demand, possibly also at James Creek. However, the recommendation that James Creek does not proceed to urban development in the short to medium term acknowledged the cost and affordability of providing necessary urban infrastructure, particularly road upgrades, sewerage and water.

The Strategy was prepared in consultation with various state agencies including:

- The Department of Primary Industries - who raised the proximity to regionally significant farmland and need to address potential for land use conflict given the existing and potential agricultural uses in the area.
- The Department of Environment, Climate Change and Water – who raised potential for edge impacts associated with urban use of the land adjacent to Yaegl Nature Reserve

In June 2011, a new planning proposal was submitted by the landowner, seeking to rezone the land a mix of densities, comprising R1 General Residential, R3 Medium Density Residential and B1 Neighbourhood Centre as per the indicative concept plan (refer to **Figure 5**). The planning proposal stated that existing vegetation would be retained with adequate buffers provided between existing rural and rural residential development. Additionally, the developer proposed to forward fund infrastructure costs associated with the development.

In July 2011, Council resolved to endorse the planning proposal and refer it for a Gateway Determination. A Gateway Determination was issued in September 2011 and later revised in November 2011. The planning proposal was amended to address the conditions of the Gateway Determination and subsequently placed on public exhibition between 20 November 2013 to 20 December 2013.

Twenty five (25) written submissions were received including eighteen (18) submissions from private parties, and seven (7) public authority submissions. Most of the private submissions state objection to the proposed development primarily based on:

- incompatibility of this type of urban development with the existing rural and rural residential character of the location
- lack of suitable infrastructure, services and facilities – road, sewerage, drainage, public transport, health services etc
- environmental impacts – flora, fauna, water pollution, odour
- questions over there being sufficient demand for such a development, at this stage

Council officers noted the issues raised were understandable and however considered that direct impacts on the surrounding locality could be managed through the development application process. Furthermore, the rezoning application was considered consistent with the LGMS and its continued support was recommended on that basis.

In line with the Council officer’s recommendation, Council resolved in March 2014 to continue to support the Planning Proposal, subject to further resolutions and finalise the amendment to rezone the subject site.

The LEP amendment No.12 was subsequently published on 20 July 2014.

A development application (SUB2020/0038) was lodged on the subject site on 11 November 2020 for a 342-lot subdivision. This application was subsequently withdrawn by the application and did not proceed to determination.



Figure 5 – Indicative Concept Plan (source: Planning Proposal, Harrison Shepherd Pty Ltd April 2011)

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal (as originally lodged)

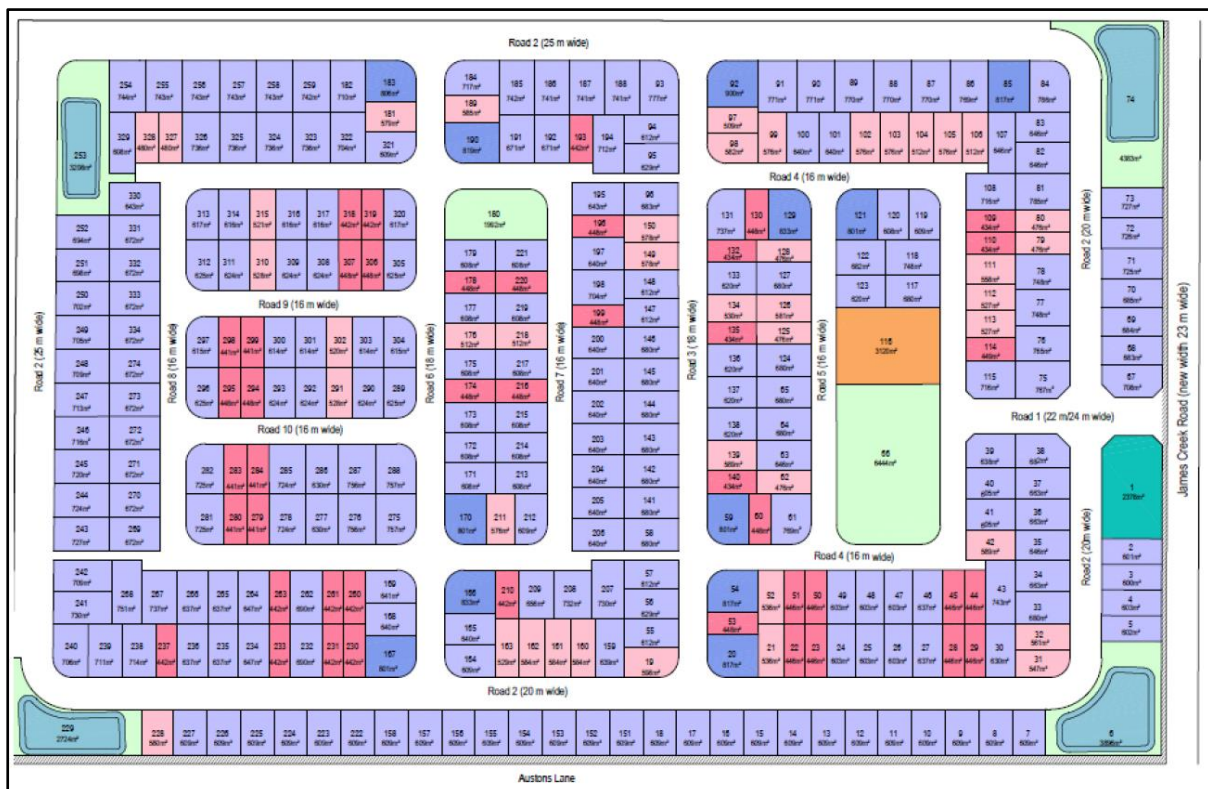
The application, as originally lodged, sought consent for a 334-lot subdivision comprising (refer to **Figure 6**):

- 327 residential lots ranging from 434m² to 833m², with the exception of a single 3,120m² multi-unit site;
- 1 neighbourhood centre lot of 2,378m²;
- 4 drainage/stormwater basin lots; and
- 2 open space/park lots, comprising a 6,444m² Village Green and 1,992m² Pocket Park.

The proposed subdivision achieved an average lot size of 624m². Specifically, the proposed lot size breakdown is included in **Table 1** below.

Table 1 – Proposed Residential Lot Size Breakdown

Lot Size	Number of Lots	Proportion
>450 m ²	44	13%
451-599 m ²	43	13%
600-799 m ²	227	69%
>800 m ²	12	4%
>3,000 m ²	1	1%
Total	327	100












LEGEND		
	<450m ²	44 Lots
	451-599m ²	43 Lots
	600-799m ²	227 Lots
	>800m ² Duplex	12 Lots
	R3 medium density	1 Lot
	Total residential lots	327 Lots
	Basin	4 Lots
	Open Space/park	2 Lots
	B1 Neighbourhood Centre	1 Lot
	Road reserve widening (dedicated to Council)	

Figure 6 – Proposed Subdivision Plan (as originally lodged)

2.2 The Proposal (as Amended)

The application has been progressively amended by the applicant in response to two formal requests for further information issued by Council, public submissions received during public exhibition and ongoing discussions between Council officers and the applicants.

The final proposal now seeks consent for a 336-lot subdivision and associated infrastructure works (refer to **Figure 7**).

Specifically, the proposal comprises subdivision of the subject site to create:

- 329 residential lots, ranging from 434m² to 1,016m², with the exception of a single 3,120m² multi-unit site;
- 1 neighbourhood centre lot of 2,113m²;
- 4 stormwater basin lots; and
- 2 open space/park lots, comprising a 6,444m² Village Green and 2,606m² Pocket Park.

The proposal also includes civil works to establish the physical infrastructure, including:

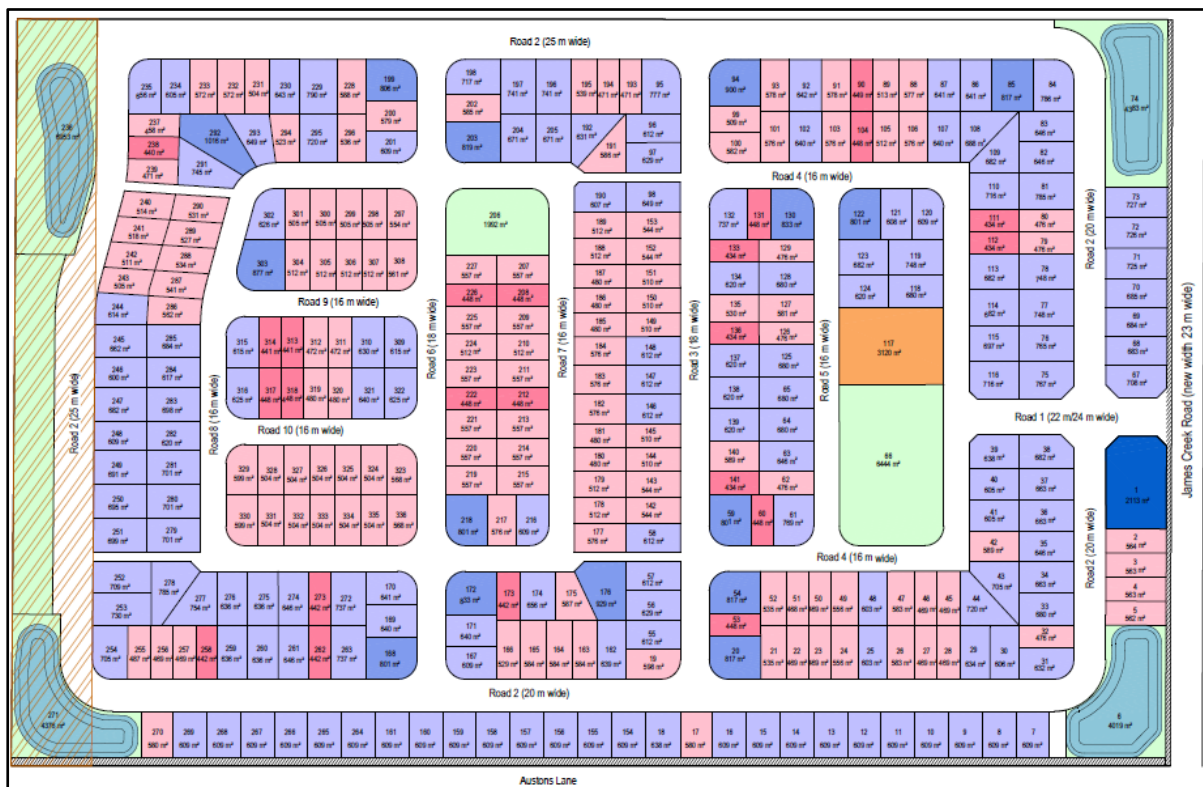
- Earthworks / retaining walls;
- Sewerage infrastructure;
- Water supply infrastructure;
- Stormwater management infrastructure;
- Site access intersections, internal road network and pedestrian connections; and
- Landscaping.

The revised breakdown of the residential lot sizes proposed, is provided in **Table 2**.

Table 2 – Revised Residential Lot Size Breakdown

Lot Size	Number of Lots	Proportion
>450 m ²	23	7%
451-599 m ²	137	42%
600-799 m ²	153	46%
>800 m ²	15	4%
>3,000 m ²	1	1%
Total	329	100

The amendments are primarily confined to the provision of passive open space and an increased residential lot setback along the western boundary interface.



LEGEND	
	<450 m ² 23 Lots
	451-599 m ² 125 Lots
	600-799 m ² 165 Lots
	>800 m ² (duplex) 15 Lots
	R3 medium density 1 Lot
Total residential lots 329 Lots	
	Basin 4 Lots
	Open space/park 2 Lots
	Neighbourhood centre 1 Lot
	50 m buffer to rural land
	Road reserve widening (dedicated to Council)

Figure 7 – Proposed Subdivision Plan

The proposed development (as amended) provides a largely homogenous urban structure and density, with incorporating a primary Village Park, ‘superlot’ for medium density housing and neighbourhood commercial lot towards the James Creek Road entrance.

The neighbourhood commercial lot, with a site area of 2,113m² whilst not wholly located within the land zoned B1, provides an equivalent area.

A ‘salt and peppering’ of lot sizes occurs throughout the subdivision, which broadly includes larger lots being directed to the interface with adjoining lands. The variation in lot sizes will create varied price points and future built form for any future community.

A number of dual occupancy compatible lots are proposed, further assisting housing diversity. These lots are often positioned on corner lots, facilitating dual access.

The majority of lots proposed are of regular shape, likewise incorporate north-south and east-west orientated lots within the optimum solar access range. Mid block connections are incorporated to provide overland flow and active transport connectivity within the subdivision.

The proposal includes inter-allotment retaining walls of up to 2m, commonly along rear boundaries and associated bulk earthworks to support a coordinated earthworks approach and cost efficiencies.

In addition to the two (2) internal parks, four (4) stormwater management areas are proposed. These areas are intended, in addition to their stormwater function, to contain a small recreational component (e.g seating and shade) and form part of the open space circulation.

The subdivision is accessed via a single-entry point to James Creek Road which is designed as a landscaped entrance to the estate comprising width in the road alignment for the establishment of a single-entry road and two exit lanes to James Creek Road. A circular road and internal circulation provide internal connectivity as well as opportunities for a future bus route through the site.

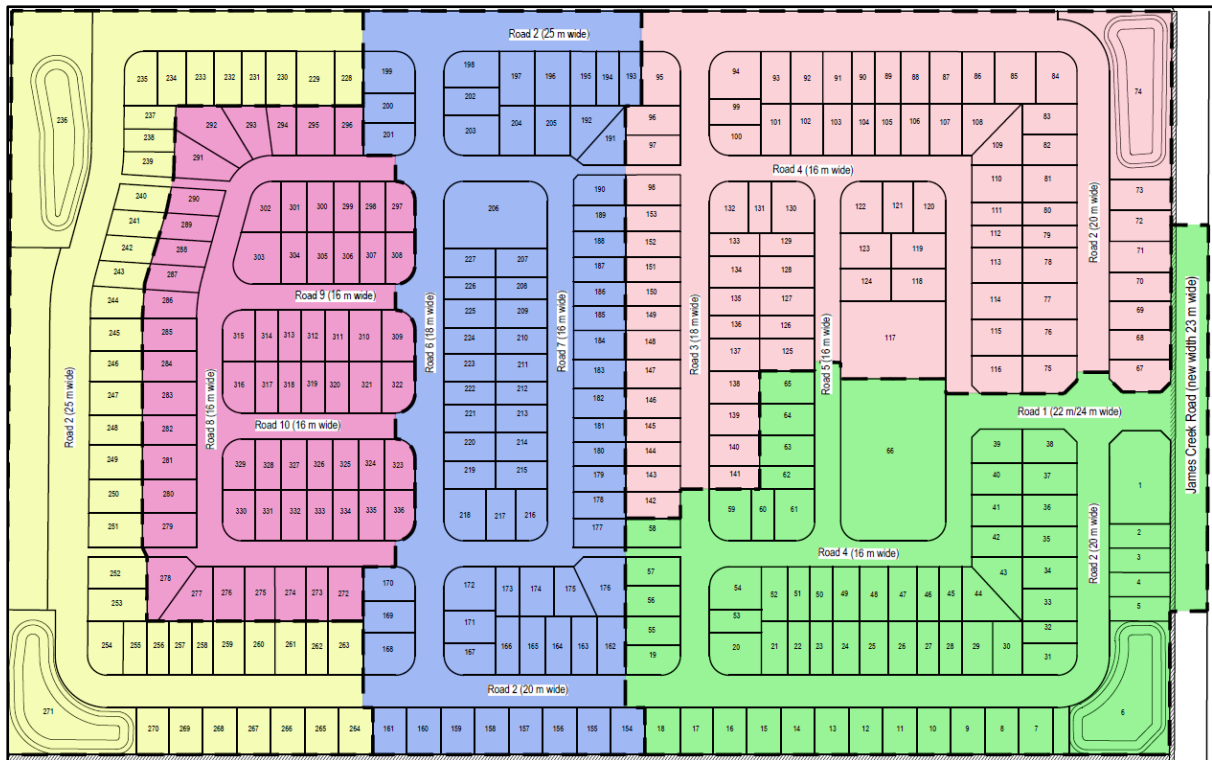
The northern and western boundaries comprise perimeter road areas in response to visual amenity and bushfire separation requirements.

The proposal includes the provision of a new trunk water supply main to provide a suitable water supply to the development site and a gravity sewerage reticulation system to service the site, including sewage pumping stations.

The subdivision is proposed to occur in five stages, as illustrated in **Figure 8**.

The proposed development will require a moderate extent of earthworks to shape the land to achieve the following:

- Road grading in accordance with Council standards;
- Access to lots on both side of each road;
- Stormwater drainage;
- Sewerage reticulation; and
- Lots with slopes less than 5% falling towards the road, requiring a number of retaining walls.



LEGEND

- Stage 1 - 66 lots
- Stage 2 - 85 lots
- Stage 3 - 71 lots
- Stage 4 - 44 lots
- Stage 5 - 70 lots
- Road reserve widening (dedicated to Council)

Note: Lot count includes residential (R1 and R3), commercial (B1), open space and drainage reserves.

Figure 8 – Indicative Staging Plan

2.3 Background

The development application was lodged on **4 November 2021**. A chronology of the development application since lodgement is outlined in **Table 2** including the Panel's involvement (briefings, deferrals etc) with the application.

Table 1: Chronology of the DA

Date	Event
9 November 2021	Exhibition of the application (9 November to 14 January 2022)
9 November 2021	DA referred to external agencies (RFS, Essential Energy and Transport for NSW)
8 March 2022	Request for Information from Council to applicant

15 March 2022	Request for extension to submit additional information received from applicant. Extension granted until 6 May 2022.
23 March 2022	Panel briefing
27 May 2022	Amended application lodged including a revised subdivision layout to facilitate enlargement of the proposed stormwater detention basin in the north-west corner from 3208m ² to 6366m ² and additional supporting information accepted by Council under Clause 37 of the <i>Environmental Planning and Assessment Regulation 2021</i> ('EP&A Regulation') on 27 May 2022.
12 August 2022	Re-exhibition of the application (12 August to 9 September 2022)
2 December 2022	Second Request for Information issued to applicant
22 February 2023	Panel site inspection
18 April 2023	Amended application lodged including a revised subdivision layout to provide a buffer to adjoining rural land west of the subject site, as well as additional supporting information accepted by Council under Clause 37 of the 'EP&A Regulation' on 18 April 2023.
19 April 2023	Panel and Applicant briefing meeting
28 April 2023	Re-exhibition of the application (28 April to 15 May 2023)

3. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
 - (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*

- (iii) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
- (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

It is noted that the proposal is considered to be (which are considered further in this report):

- Requiring concurrence/referral (s4.13) – In accordance with State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP), Chapter 2 (Infrastructure), section 2.122 councils must consult with Transport for NSW before determining development proposals for traffic-generating development on certain land.

It is noted that the proposal is not considered to be (which are considered further in this report):

- Integrated Development (s4.46)
- Designated Development (s4.10)
- Crown DA (s4.33) - written agreement from the Crown to the proposed conditions of consent must be provided

3.1 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

(a) Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021;*
- *State Environmental Planning Policy (Planning Systems) 2021;*
- *State Environmental Planning Policy (Resilience and Hazards) 2021;*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021; and*
- *Clarence Valley Local Environmental Plan 2011.*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

Table 2: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 2: Vegetation in non-rural areas Chapter 4: Koala Habitat Protection 2021	Y
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development • Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6 as it comprises general development that has a capital investment value of more than \$30 million.	Y
SEPP (Resilience & Hazards)	Chapter 4: Remediation of Land • Section 4.6 - Contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory subject to conditions.	Y
State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 2: Infrastructure • Section 2.48(2) Determination of development applications—other development – development carried out within 5m of an exposed overhead electricity power line - the proposal is satisfactory subject to conditions. • Section 2.121(4) - Traffic-generating development	Y
Proposed Instruments	No compliance issues identified.	Y
LEP	<ul style="list-style-type: none"> • Clause 2.3 – Permissibility and zone objectives • Clause 7.1 – Acid Sulfate Soils • Clause 7.2 – Earthworks • Clause 7.8 – Essential Services 	N

Consideration of the relevant SEPPs is outlined below.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 Vegetation in Non-Rural Areas

Chapter 2 of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* ('the Biodiversity and Conservation SEPP') applies to land zoned R1 General Residential, R3 Medium Density Residential and B1 Neighbourhood Centre and as such is applicable to the subject site. The chapter regulates clearing of native vegetation below the Biodiversity Offset Scheme (BOS) threshold where a proponent will require an approval from the Native Vegetation Panel established under the *Local Land Services Amendment Act 2016* and vegetation below the BOS threshold where a proponent will require a permit from Council, if that vegetation is identified in the Council's Development Control Plan (DCP). Of note, a permit is not required, as consent is being sought.

A Biodiversity Assessment was completed to assess potential biodiversity impacts from a proposed residential subdivision. The report was subsequently updated in response to Council's request for additional information regarding Coastal Emus having been sighted near the subject site. This included a 5-part test of significance in relation to the Coastal Emu.

The site has been substantially cleared of all woody vegetation and does not contain any areas of biodiversity value (as per the Biodiversity Values Map and Threshold Tool) and the proposal does not exceed clearing thresholds as per Part 7.2 of the *Biodiversity Conservation Regulation 2017* and does not result in significant impacts assessed by the 5-part test; therefore a Biodiversity Development Assessment Report (BDAR) is not required.

Part E of the Clarence Valley Residential Zones Development Control Plan (DCP) 2011 notes that development consent is required for the actions of ringbarking, cutting down, topping, lopping, removal, injuring or wilfully destroying species of tree(s) or other native vegetation on Residential zoned land. Approval has been sought as part of the application. The proposed development is considered compliant with this Policy.

Chapter 4 Koala Habitat Protection 2021

Chapter 4 of the Biodiversity and Conservation SEPP applies to the subject site. The policy aims to encourage the consideration and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline.

A Biodiversity Assessment Report was prepared by Geolink and submitted with the application. The report included a Koala Assessment Report which found no evidence of a Koala population currently residing in the locality and identified that the site provides poor foraging and refuge habitat based on the lack of trees and relatively poor resources for Koalas. Core Koala habitat was not identified on the subject site and no fragmentation of consolidated areas of potential habitat would occur as a result of the proposal. The assessment concluded that impacts to Koalas and their habitats are negligible. A Plan of Management is not required to support the proposal. The proposal is considered consistent with this Policy.

State Environmental Planning Policy (Planning Systems) 2021 ('Planning Systems SEPP')

Chapter 2: State and Regional Development

The proposal is *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria in Clause 2.19(1) of Schedule 6 of the Planning Systems SEPP as the proposal has a capital investment value of more than \$30 million. Accordingly, the Northern Regional Panel is the consent authority for the application. The proposal is consistent with this Policy.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4: Remediation of Land

The provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021 ('the Resilience and Hazards SEPP')* have been considered in the assessment of the development application. Section 4.6 of Resilience and Hazards SEPP requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out. In order to consider this, a Preliminary Site Investigation ('PSI') has been prepared for the site.

The PSI consisted of a search of historical records, a site walkover, soil sampling and analysis. This research found that the land was not cleared until 1969 when it was cleared in three stages. Clearing was completed by 1973 and by 1975 the entire allotment was planted in

sugar cane. The cane farming continued until 2005. Subsequently the site has been grassed and grazed by cattle and sheep.

The potential sources of contamination were considered to be fertiliser, fungicides, herbicides, pesticides and solvents associated with the agricultural activities.

No indications of obvious contamination were observed during the site inspection. The results from soil testing indicate no soil contamination of the site by any of the broad range of metals and pesticides targeted. No pesticides were present above analytical detection limited in the samples analysed.

The report concluded that a detailed site investigation or site remediation was not required. Based on the findings of the PSI, the site was not considered to represent a significant risk of harm to end users of the proposed rezoning.

The report was reviewed by Geolink in November 2019 who concluded the report still has relevance compared to current guidelines and assuming no contamination has occurred since 2011 the report would be a valid appraisal of the land exhibiting no contaminants of those substances tested.

The proposal is considered to be consistent with Resilience and Hazards SEPP.

State Environmental Planning Policy (Transport and Infrastructure) 2021

The application was referred to Transport for NSW (TfNSW) as the proposed development is defined as traffic-generating development in accordance with clause 2.122 and schedule 3 of *State Environmental Planning Policy (Transport and Infrastructure) 2021* ('the Transport and Infrastructure SEPP').

TfNSW reviewed the information provided and raised no objection to the proposed development. A Road Safety Review undertaken by Abbotsford Solutions on behalf of TfNSW was provided for Council's consideration in determining the development. The Road Safety Review noted the Yamba Road intersection by upgraded to a channelised right-turn (CHR), and this be included as a condition of consent for the development.

TfNSW further advised that should Council approve the proposed development and condition road works on Yamba Road, TfNSW concurrence would be required in accordance with Section 138 of the Roads Act as the roadworks required affect a classified Regional road. As such, the works would need to be designed in accordance with the current Austroads Guidelines, relevant Australian Standards and TfNSW supplements to the satisfaction of both TfNSW and Council.

The proposal was also referred to Essential Energy in accordance with Clause 2.48(2) given the proximity of overhead electricity power line along James Creek Road. Essential Energy advised it has "has no comments to make as to potential safety risks arising from the proposed development". Some general comments were provided and have been taken into consideration as part of this assessment report.

The proposal is considered consistent with Transport and Infrastructure SEPP.

Clarence Valley Local Environmental Plan 2011

The relevant local environmental plan applying to the site is the *Clarence Valley Local Environmental Plan 2011* ('the LEP'). The aims of the LEP are as follows:

- (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,
- (a) to encourage and enable the sustainable use, development and management of natural and man-made resources, including agricultural land resources and productive rural lands,
- (b) to limit dispersed rural settlement,
- (c) to provide a mix of housing, including affordable housing, to meet the needs of the community,
- (d) to protect areas of high ecological, scientific, cultural or aesthetic value,
- (e) to provide adequate access and services to development carried out in accordance with this Plan,
- (f) to maintain the character of villages and towns,
- (g) to conserve items and areas of environmental and cultural heritage,
- (h) to provide a hierarchy of business/retail centres,
- (i) to identify land for industrial and business development that provides opportunities for employment,
- (j) to protect key infrastructure and ensure adequate integration of infrastructure and development,
- (k) to maintain or improve the natural conservation and scenic amenity values of the land, including significant habitat areas and wildlife corridors.

Specific clauses are included in the LEP to ensure developments achieve the broader aims outlined above. The proposal is inconsistent with clause 7.8 of the LEP as the proposal has not satisfactorily demonstrated the proposal incorporates adequate services to the development.

Zoning and Permissibility (Part 2)

The site is located within the R1 General Residential, R3 Medium Density Residential and E1 Local Centre Zones pursuant to Clause 2.2 of the LEP, refer to **Figure 9**.

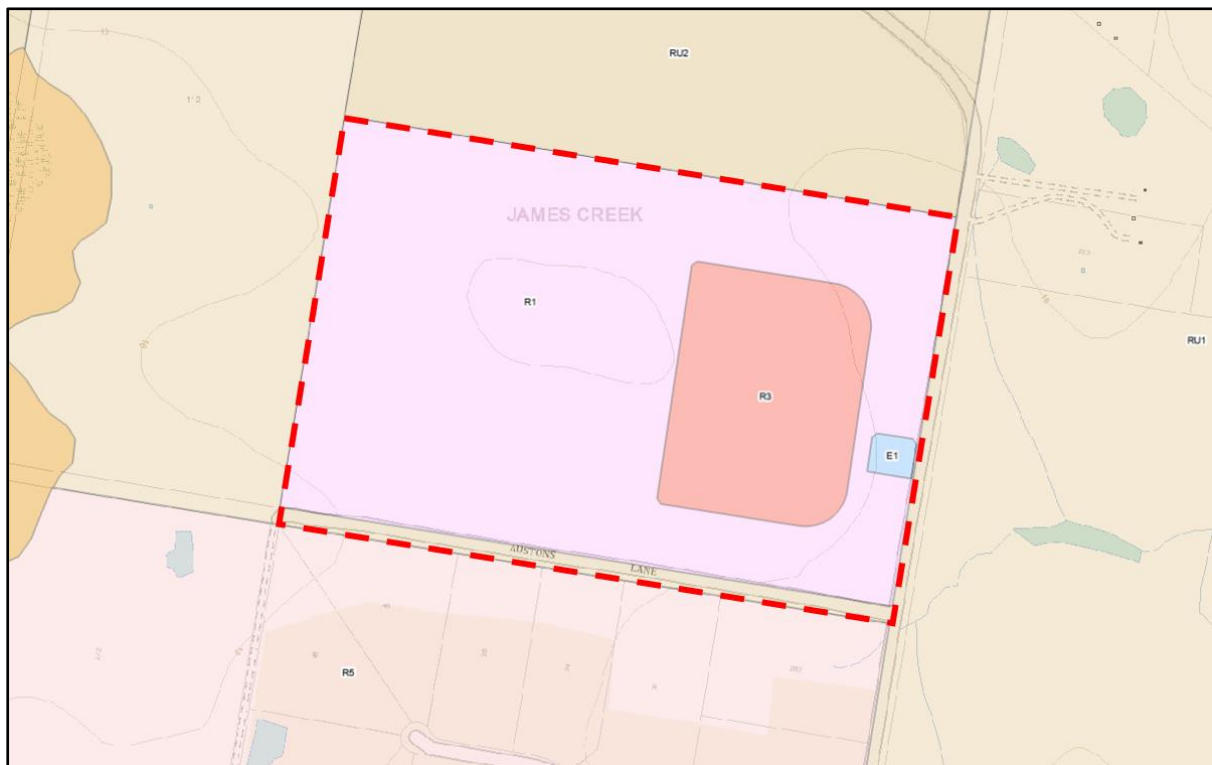


Figure 9 – Land Use Zone map

In accordance with Clause 2.6 of the LEP, land may be subdivided, but only with development consent. The relevant zone objectives pursuant to the Land Use Table in Clause 2.3 are:

R1 General Residential

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

R3 Medium Density Residential

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To enable serviced apartments while maintaining the medium density residential character and amenity of a locality.*

B1 Neighbourhood Centre (now E1 Local Centre)

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
- *To reinforce the neighbourhood centres of Coutts Crossing, Glenreagh, Lawrence and Ulmarra as the locations for commercial premises.*
- *To minimise conflict between land uses within the zone and land uses within adjoining zones.*
- *To enable other land uses that are compatible with and do not detract from the viability of retail, business and community uses within the zone.*

The proposal is considered to be generally consistent with these zone objectives for the following reasons:

- The subdivision assists in the future delivery of residential accommodation and incorporates a variety of housing types and densities which would provide for the housing needs of the community;
- The proposed layout incorporates public (passive) open space to meet the day to day needs of residents;
- The proposed subdivision includes Lot 1, with a site area of 2378m² proposed as a commercial lot in response to the B1 Neighbourhood Centre zone land on the subject site. This lot provides a future opportunity for retail, business and community uses to be established within the subdivision. The lot is anticipated to facilitate approximately 1,000m² gross floor area for commercial development.

Considering the limited site constraints within the subject land and desired medium density outcomes for a portion of the site, further opportunities to deliver housing diversity and character are identified than the proposal facilitates. Particularly within immediate proximity of its amenity areas, a refined subdivision proposal which incorporates greater integrated housing outcomes would better facilitate the medium density zone objectives, as well as foster a stronger sense of place and community. Converse to the 'core' of the site, the site's edges require a larger setback, lower density and genuine address to facilitate a transition into the surrounding rural and large-lot residential context.

General Controls and Development Standards (Part 2, 4, 5 and 6)

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 4** below.

Table 3: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Acid sulphate soils (CI 7.1)	On land classified as Class 5 ASS where works are within 50m of adjacent Class 1, 2, 3 or 4 land that is below 5 metres AHD and by which the watertable is likely to be lowered below 1 metre AHD on adjacent Class 1, 2, 3 or 4 land, an ASS Management Plan is to be prepared.	The subject site is identified as Class 5 Acid Sulphate Soils, however, no works are proposed within 500m of adjacent Class 1, 2, 3 or 4 land by which the watertable is likely to be lowered below 1m AHD of the adjacent land. Nevertheless, the Contaminated Land Report prepared by Geolink, recommended an Acid Sulfate Soil Management Plan is developed prior to the commencement of works on site.	Yes
Earthworks (CI 7.2)	Development consent is required for earthworks on the site.	The proposed development will require earthworks to shape the land in order to achieve the required road grading, access to lots, stormwater drainage, sewerage reticulation and slopes. The proposed earthworks, retaining and sediment and erosion control measures are detailed in the application.	No
Essential Services (CI 7.8)	Development consent is not to be granted unless the consent authority is satisfied that all of the essential services are available.	Stormwater – A Legal Point of Discharge and Easements is required for discharge of stormwater on downstream private property. This has not been obtained. Sewer - A conventional gravity sewer system with pump stations is proposed to service the proposed development. Insufficient information and assessment of Council's existing system has been	No

		provided for Council to accept the proposed gravity sewer network to service the proposal.	
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The proposal is considered to be generally inconsistent with the LEP.

(b) Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are several proposed instruments which have been the subject of public consultation under the EP&A Act, and are relevant to the proposal, including the following:

- *Draft Remediation of Land State Environmental Planning Policy*

This proposed instrument is considered below:

Draft Remediation of Land SEPP

The draft Remediation of Land SEPP is intended to provide a State-wide planning framework for the remediation of land. It is also intended to require planning authorities to consider the potential for land to be contamination when determining development applications and rezoning land. A Preliminary Site Investigation ('PSI') has been prepared for the site and was submitted as part of the application. The PSI consisted of a search of historical records, a site walkover, soil sampling and analysis. The report concluded that a detailed investigation or site remediation was not required.

The proposal is generally consistent with this proposed instrument.

(c) Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

- *Clarence Valley Council Development Control Plan 2011 ('the DCP')*

The relevant key controls are discussed below.

Part C – General Development Controls for Residential Zones

C3 – Site Assessment Requirements

Clause C3 requires consideration of the existing site conditions and an assessment of the impact of the proposed development on the surrounding area, including but not limited to consideration of privacy, views, solar access, built form and character of the adjacent development.

The proposal involves a largely homogenous urban structure and density, with the primary village park, 'superlot' for medium density housing and neighbourhood commercial lot being located at the James Creek Road entrance. The subdivision design is effectively insular, with a single access point and development 'facing inwards' as opposed to addressing external adjoining rural landscape.

A 'salt and peppering' of lot sizes occurs throughout the subdivision, which broadly includes larger lots being directed to the interface with adjoining

lands. Notwithstanding, the proposal represents a stark change in character and density from its surroundings, which predominately involve lot sizes greater than 2 hectares.

The majority of lots proposed are of regular shape, and offer north-south and east-west orientation within the optimum solar access range. Broadly, many of the east-west orientated lots possess wider frontages and shallower depths in comparison to north-south facing lots, as is considered best practice.

Whilst not insurmountable, no case study analysis has been submitted displaying the suitability of the lots provided, such as overshadowing impacts of 2-storey designs on east-west orientated lots, or further earthworks required to accommodate future dwellings.

Mid block connections are incorporated to provide overland flow and active transport connectivity within the subdivision. The proposal is not supported by detail confirming the proposed treatment (landscaping and the like) and suitability of these connections for all abilities access and against Crime Prevention Through Environmental Design principles etc.

Considering the limited site constraints within the subject land and desired medium density outcomes for a portion of the site, further opportunities to deliver housing diversity and character are identified than the proposal facilitates. Particularly within immediate proximity of its amenity areas, a refined subdivision proposal which incorporates greater integrated housing outcomes would better facilitate the medium density zone objectives, as well as foster a stronger sense of place and community.

Converse to the 'core' of the site, its edges require a larger setback, lower density and genuine address to facilitate a transition into the surrounding rural and large-lot residential context.

It is therefore considered that the proposal is inconsistent with Clause C3 of the DCP.

C5 – Building Design Requirements

Clause C5.2 limits cut and fill to a maximum height of 1.2m. It is noted that the amended design and engineering plans submitted on 18 April 2023 includes inter-allotment retaining walls of up to 2m, commonly along rear boundaries. Whilst bulk earthworks are often pursued to support a coordinated earthworks approach and cost efficiencies in greenfield subdivisions, greater retention of the site's existing topography is warranted to ensure a more contextual approach and outcome for the site. In-turn, this is anticipated to improve amenity levels for any future community and avoid 3.8m high interface walls between neighbours.

It is therefore considered that the proposal is inconsistent with Clause C5.2 of the DCP.

C8 – Different types of residential development

The proposed residential subdivision is situated within the R1 and R3 zones and varied lot sizes that provide opportunities for various types of residential development including, single dwelling houses, attached dwellings, dual occupancies, multi dwelling housing, residential flat buildings, secondary dwellings, in the future.

The variation in lot sizes does not appear to directly create or foster character precincts, however the diversity of lots will create varied price points and future built form for any future community.

As outlined above, further opportunities to deliver housing diversity are identified than the proposal facilitates, for example on the block ends within the R3 Medium Density Zoned land. Relocation of the central Village Park could also facilitate better utilisation of the R3 Medium Density Zoned land to provide higher density centrally within the site, in contrast with lower density along the edges. A refined subdivision proposal which incorporates greater integrated housing outcomes would better facilitate the medium density zone objectives.

It is therefore considered that general compliance with C8 of the DCPs is achieved.

C9 – Minimum site area for dwelling houses

All lots within the proposed subdivision exceed 400m² and are capable of accommodating building envelopes as required by C9. It is therefore considered that compliance with C9 of the DCPs is achieved.

C10 – Minimum site area for dual occupancies and semi-detached dwellings in R1, R2 and R3 zones

A number of dual occupancy compatible lots are proposed, further assisting housing diversity. These lots are often positioned on corner lots, facilitating dual access. Dual occupancy, as well as the subdivisions numerous irregular, triangle-shaped lots, are not directly supported by any indicative designs/case study analysis to confirm suitable opportunity for high quality outcomes. Whilst not essential at the subdivision stage, integrated designs which consider primary (and secondary) setbacks are generally encouraged to ensure desirable streetscape and private open space outcomes can be achieved.

All lots proposed for dual occupancies have a minimum site area of 800m² as per the requirements of C10 of the DCPs. It is therefore considered that compliance with C10 of the DCPs is achieved.

C19 – Landscaped Area Requirements in R1, R2 and R3 zones

It is considered that 45% of landscaping can be achieved on the proposed lots within the R1 zoned land, with an area less than 450m². It is therefore considered that compliance with C19 of the DCPs is achieved.

C24 – Provision of Essential Services

Clause 24.3 requires that subdivision and development must be connected to a reticulated sewerage system. For development requiring reticulated sewerage in areas identified as reticulated sewerage catchments where sewerage is not available, refer to Council's Development Approvals in Future Sewer Areas Policy.

Council's Pressure Sewer Policy 2008 notes areas where Council has resolved that pressure sewerage will provide the centralised reticulation. This currently includes James Creek.

A conventional gravity sewer system with pump stations is proposed to service the proposed development. Insufficient information and assessment of Council's existing

system has been provided for Council to accept the proposed gravity sewer network to service the proposal.

It is therefore considered that the proposal is inconsistent with Clause 24.3 of the DCP.

Clause 24.6 requires that the development must comply with the requirements of Part H Sustainable Water Controls and Part I Erosion and Sediment Controls and the latest Northern Rivers Design Manuals.

An amended Stormwater Management Plan (SWMP) (V7) has been submitted to address these items. Outstanding concerns remain and are summarised below:

- The DRAINS model has not been expanded to assess the downstream impacts on the James Creek and Austons Lane road reserves and downstream stormwater infrastructure. Without this information it cannot be determined if safe velocity and depths can be achieved over James Creek Road in major storm events.
- MUSIC model treatment train shows losses within the system – this requires clarification and could have impacts on the water balance calculations.
- Pre-developed catchment baseflow parameters for Nitrogen, Phosphorus and Total Suspended Solids – requires clarification as this could be based on the pre-developed being modelled as Agricultural Land. This may have impacts on the pollution reduction targets achieved by the design.

It is therefore considered that the proposal is inconsistent with Clause 24.6 of the DCP as it related to sewer and water.

Part H – Sustainable Water Controls for Residential Zones

As outlined above, an amended Stormwater Management Plan (SWMP) (V7) has been submitted to address these items, however, outstanding concerns remain. Consequently, the proposal is considered inconsistent with Part H of the DCP.

Part I – Erosion and Sediment Control

Erosion and sediment control drawings have been prepared and provided as part of the application. Consequently, the proposal is considered generally consistent with Part I of the DCP.

Part J – Subdivision and Engineering Controls

The subdivision layout and road design provides for safe and functional vehicle and pedestrian movement. The outer loop road has been designed to accommodate public transport services and ensure bus stops are located within 400 metres of all dwellings. It is noted however, that the site currently has limited access to public transport services. The nearest bus stop to the site is on Yamba Road, located between the old Harwood Bridge and the road linking to the Pacific Highway northbound on and off ramps. This location is approximately 2.8km from the site, being a 4-minute drive or a 30-minute walk. The applicant has identified the increase in residents under the proposal warranting an adjustment to the existing regional bus service route to include James Creek Road in the vicinity of the site. This would need to be confirmed with the local service provider, Busways North Coast Pty Ltd.

The road reserves are of a sufficient width to accommodate all the facilities that are required, including batters and a pedestrian and service area at each frontage. It is

considered that the amended road design generally complies with the relevant standards in the NR Design Manuals.

A variety of lot sizes have been provided to meet market demand. The lots are generally regular and rectangular in shape. No battle axe blocks are proposed. Furthermore, the subdivision design incorporates 23 lots less than 450m², together with 15 duplex lots (20 homes) and a multi-unit lot (12 homes) for a total 65 affordable housing sites, representing 19% of the housing product.

Lot dimensions provide sufficient area and dimensions to enable the construction of dwellings, on-site parking, provision of private open space, solar access and adequate safe vehicular access.

A plan showing a concept design for a dwelling demonstrating full compliance with the DCP, in particular compliance with the landscaped area and private open space provisions, clause C19 and C20 has been provided as part of the application for lots less than 560m² but greater than 450m².

In accordance with J10.2(f) stormwater design shall be in accordance with Section D5 of the NR Design Manuals. Specifically, Section D5 requires:

4. *At points of discharge of gutters or stormwater drainage lines or at any concentration of stormwater from one or on to adjoining properties, either upstream or downstream, Council will require the Developer to enter into a Deed of Agreement with the adjoining owner(s) granting permission to the discharge of stormwater drainage and the creation of any necessary easements with the cost of the easement being met by the Developer.*

A Legal Point of Discharge and Easement for discharge of stormwater on downstream private property has not been obtained. This issue has not been satisfactorily addressed.

The *Clarence Valley Contributions Plan 2011* and *James Creek Urban Growth Area Road Infrastructure S7.11 Development Contributions Plan 2020* are relevant pursuant to Section 7.18 of the EP&A Act. These Contributions Plans have not been considered further as the proposal is recommended for refusal.

(d) Section 4.15(1)(a)(iiia) – Planning agreements under Section 7.4 of the EP&A Act

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

(e) Section 4.15(1)(a)(iv) - Provisions of Regulations

The provisions of the EP&A Regulation 2021 have been considered and are addressed in the assessment of the application (where necessary).

3.2 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

The consideration of impacts on the natural and built environments includes the following:

- Context and setting – The subdivision design is effectively insular, with a single access point and development ‘facing inwards’ as opposed to addressing external land. The proposal involves a largely homogenous urban structure and density, resulting in a stark change in character and density from its surroundings, which predominately involve lot sizes greater than 2 hectares. Significant bulk earthworks give rise to inter-allotment retaining walls of up to 2m, commonly along rear boundaries. Greater retention of the site’s existing topography is warranted to ensure a more contextual approach and outcome for the site. In-turn, this is anticipated to improve amenity levels for any future community and avoid 3.8m high interface walls between neighbours.

A refined subdivision proposal which incorporates larger setbacks along its edges, lower density and facilitates a sensitive transition into the surrounding rural and large-lot residential context is considered warranted.

- Access and traffic – While the methodology applied in the Traffic Impact Assessment and traffic distribution is generally accepted by Council the assessment does not provide a specific stage of the development at which the upgrade of Yamba Road / James Creek Road is required. The applicant has suggested that this upgrade could occur as late as stage 2, however insufficient information has been provided to support this. It is also noted that the developer has proposed footpath connection from the development to Townsend in concept, but has not committed to providing this infrastructure as part of the development.
- Public Domain – Public open space is proposed in the form of two parks and a linear pathway loop suitable for exercise and dog walking. The Village Green “local park” consists of a large circular multipurpose lawn, shelter, BBQ facilities, seating and feature playground, while the pocket park provides a more relaxed setting for non-structured activities and visual amenity. While the provision of open space is supported, additional buffers are considered necessary to address potential land use conflict, along the northern and eastern interfaces.
- Utilities – Essential Energy has raised no objections to the proposed subdivision, subject to recommended conditions. The applicant has proposed a new trunk water supply main to provide a suitable water supply to the development site and a gravity sewerage reticulation system to service the site, including sewage pumping stations. The requirement for the subject site to be serviced by pressure sewer has previously been determined by the Maclean Urban Growth Management Strategy 2011 as referred to in Council’s Pressure Sewer Policy. Insufficient information and assessment of Council’s existing system has been provided for Council to accept the proposed gravity sewer network to service the proposal. In addition, a Legal Point of Discharge and Easements is required for discharge of stormwater on downstream private property — this has not been obtained.
- Heritage – The site does not contain or adjoin a heritage item. While an Aboriginal Cultural Heritage Impact Assessment (AHIA) was not submitted as part of the original application, the AHIA prepared by Ron Heron in 2009 was verified by Yaegl Local

Aboriginal Land Council (Yaegl LALC) and subsequently submitted as part of the Council's request for further information. The submission included correspondence from the acting CEO of Yaegl LALC advising the previous recommendations remained valid and it was not considered necessary to prepare an updated AHIA for the subject development.

- Construction impacts – Potential water, soil and air impacts may result from construction works associated with the proposed development. These potential impacts could be adequately mitigated by conditions of consent. A Preliminary Site Investigation ('PSI') has been prepared for the site. The report concluded that a detailed investigation or site remediation was not required. Based on the findings of the PSI, the site was not considered to represent a significant risk of harm to end users of the proposed rezoning.
- Flora and fauna impacts – The site has been substantially cleared due to previous agricultural land uses. The proposed subdivision has been designed to enable the retention of scattered trees along the property boundaries, however, will result in the loss of three immature native trees. A Biodiversity Assessment was completed to assess potential biodiversity impacts from a proposed residential subdivision. The site does not contain any areas of biodiversity value (as per the Biodiversity Values Map and Threshold Tool) and the proposal does not exceed clearing thresholds as per Part 7.2 of the Biodiversity Conservation Regulation 2017; therefore a Biodiversity Development Assessment Report (BDAR) is not required. Potential impacts as a result of the development activity can be mitigated by consent conditions.
- Natural environment – The proposed subdivision design does not appear to sensitively respond to the existing land topography requiring the incorporation of a number of retaining walls up to 2.0m, and significant cut and fill across the site. Council does not consider that suitable justification has been provided to vary clause C5.2 of the DCP which limits cut and fill to a maximum of 1.2m.
- Noise and vibration – Noise and vibration impacts during construction are likely to occur, however, these impacts could be adequately mitigated by conditions of consent.
- Natural hazards – The site is not mapped as either bushfire prone or flood affected, nevertheless, road access can be cut during local flood events. To assist in improving the current accessibility issues during flood events for the local community, the Applicant proposes to increase flood resilience beyond a Q20 flood immunity to a level that makes access to all properties serviced by Gardiners Road safer and more flood resilient. These works are proposed to be constructed and delivered as part of Stage 1 subdivision works.

The site is mapped as Acid Sulfate Soils Class 5. No works are proposed within 50m of adjacent Class 1, 2, 3 or 4 land. Nevertheless, the Contaminated Land Report prepared by Geolink, recommended an Acid Sulfate Soil Management Plan is developed prior to the commencement of works on site. Council considers that potential impacts as a result of the development activity can be mitigated by conditions of consent.

- Social impact – Through the incorporation of a Village Park, Pocket Park and neighbourhood centre the subdivision does promote some interaction between the new development area and the existing Maclean/Gulmarrad community. Greater interaction could be promoted by locating the Village Park adjacent to the

neighbourhood centre and establishing a more integrated and sensitive interface with adjacent rural land.

- Economic impact – It is considered that the proposal will have economic benefits for the local area. During the construction phase, there will be direct benefits from increased employment generation, as well as indirect benefits for local businesses. A subdivision of this scale has the potential to increase business investment in the local area due to the associated increased population.
- Site design and internal design – The proposed residential subdivision accommodates a diversity of lot sizes. All lots within the proposed subdivision exceed 400m² and are capable of accommodating building envelopes and adequate landscaping. The dual occupancies lots have a minimum site area of 800m² consistent with the DCP requirements. An extensive pathway network will allow for connectivity throughout the development, providing the residents with a variety of safe links and opportunities to access the open space network and site in general.
- Construction – It is considered that potential impacts from construction, such as dust, noise, vibration and odour, could be adequately mitigated by conditions of consent.

Accordingly, it is considered that the proposal will result in significant adverse impacts in the locality as outlined above.

3.3 Section 4.15(1)(c) - Suitability of the site

The strategic merit for residential development on the site has previously been tested and determined appropriate via a planning proposal submitted in June 2011 seeking to rezone the site to a mix of densities, comprising R1 General Residential, R3 Medium Density Residential and B1 Neighbourhood Centre. The rezoning application was considered consistent with the Maclean Local Growth Management Strategy and the Clarence Valley LEP amendment No.12 was subsequently published on 20 July 2014.

The site is predominately cleared of native woody vegetation, does not contain any vegetation mapped as high biodiversity value, and is not directly affected by flooding, bushfire, historical heritage or any known Aboriginal cultural heritage. While the site is not currently serviced by water, sewer or stormwater infrastructure, it is considered that adequate services could be provided to the site to facilitate a subdivision for residential accommodation.

Nevertheless, the current proposal is not considered to be suitable for the site due to the number of unresolved matters still to be addressed, including:

- A Legal Point of Discharge and Easements for discharge of stormwater on downstream private property not been obtained. Council cannot support the proposed arrangement for stormwater discharge without having an established Legal Point of Discharge and appropriate easement on the downstream receiving property;
- Insufficient information and assessment of Council's existing system has been provided for Council to accept the proposed gravity sewer network to service the proposal;
- The DRAINS model has not been expanded to assess the downstream impacts on the James Creek and Austons Lane road reserves and downstream stormwater infrastructure. Without this information it cannot be determined if safe velocity and depths can be achieved over James Creek Road in major storm events;
- MUSIC model treatment train shows losses within the system – this requires clarification and could have impacts on the water balance calculations;

- Pre-developed catchment baseflow parameters for Nitrogen, Phosphorus and Total Suspended Solids – requires clarification as this could be based on the pre-developed being modelled as Agricultural Land. This may have impacts on the pollution reduction targets achieved by the design;
- Council does not consider that suitable justification has been provided to vary clause C5.2 of the DCP which limits cut and fill to a maximum of 1.2m;
- A refined subdivision proposal which incorporates greater integrated housing outcomes, fosters a stronger sense of place and community, incorporates larger setbacks along its edges, lower density and facilitates a sensitive transition into the surrounding rural and large-lot residential context is considered warranted.

3.4 Section 4.15(1)(d) - Public Submissions

These submissions are considered in Section 5 of this report.

3.5 Section 4.15(1)(e) - Public interest

The proposed development is not considered to be in the public interest due to the number of unresolved matters still to be addressed, as outlined above. Several aspects of the proposal are inconsistent with planning controls. Of particular concern:

- a Legal Point of Discharge and Easements for discharge of stormwater on downstream private property not been obtained;
- insufficient information has been provided for Council to accept the proposed gravity sewer network to service the proposal; and
- It is contingent upon proponents of development on land to ensure the development does not adversely impact on adjacent primary production. While a 50m buffer and up to half of which is to be vegetated, is what is now proposed for the western boundary of the subject land, this same treatment should be applied to all boundaries adjacent to rural zoned land (the north and east).

On balance the proposal is considered to be contrary to the public interest.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in Table 5.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

Table 4: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
N/A			

Referral/Consultation Agencies			
RFS	S4.14 – EP&A Act Development on bushfire prone land	No objection raised.	Y
Essential Energy	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development near electrical infrastructure	No objections raised subject to recommended conditions being imposed.	Y
Transport for NSW	Section 2.121 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development that is deemed to be traffic generating development in Schedule 3.	No objection raised.	Y
Integrated Development (S 4.46 of the EP&A Act)			
N/A			

4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 6**.

Table 5: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	<p>Council's Engineering Officer reviewed the submitted plans and identified the following outstanding concerns.</p> <p><u>Stormwater</u></p> <ul style="list-style-type: none"> A Legal Point of Discharge and Easements are required for discharge of stormwater on downstream private property in accordance with Clause D5.20 of Part D5 NR Design Guidelines as referred to by the DCP in Clause J10.2 item (f) – this has not been obtained. An expanded DRAINS model is required to assess downstream impacts. The MUSIC model treatment train and pre-developed catchment baseflow parameters require clarification. <p><u>Traffic</u></p> <ul style="list-style-type: none"> The methodology applied in the Traffic Impact Assessment and traffic distribution is generally accepted by Council. 	N

	<ul style="list-style-type: none"> • Insufficient information has been provided to support upgrade of Yamba Road / James Creek Road to occur as late as stage 2. • The developer has proposed a footpath connection from the development to Townsend in concept, but has not committed to providing this infrastructure as part of the development. Clarification of the commitment is required. 	
Water Cycle	<p>Council's Engineering Officer reviewed the proposal and raised concerns in relation to the proposed sewer system:</p> <ul style="list-style-type: none"> • A conventional gravity sewer system with pump stations has been proposed. • The proposal would generate a design flow of 20.8L/s for a gravity sewer system, versus a design flow of 9.1L/s for a pressure sewer system. This would bring the timeline for augmentation of the Woodford Island STP forward by approximately 33%. • Insufficient information and assessment of Council's existing system has been provided for Council to accept the proposed gravity sewer network to service the proposal. 	N
Strategic Planning	<p>Council's Town Planning Officer reviewed the proposal and raised concerns in relation to:</p> <ul style="list-style-type: none"> • The Land Use Conflict Risk Assessment (LUCRA) prepare by Geolink makes a range of assumptions and statements that are not based on the activities typical of an agricultural enterprise in the region. • Adequate consultation with the adjoining rural landowners has not been undertaken. • All rural zoned land can be used for a range of agricultural activities including various intensive forms of agriculture such as horticulture, without consent. For this reason, a 50m buffer should be regarded as a minimum in accordance with the NSW Department of Primary Industry 2018 Primefact, Buffer Zones to Reduce Land Use Conflict with Agriculture (The Buffer Guideline) between residential development and cattle grazing. • While a 50m buffer and up to half of which is to be vegetated, is what is now proposed for the western boundary of the subject land. This same treatment should be applied to all boundaries adjacent to rural zoned land (the north and east). 	N
Environment	<ul style="list-style-type: none"> • Further consideration of impacts of proposal on Coastal Emu identified near the site 	Y
Open Spaces	<ul style="list-style-type: none"> • Buffer to Austons Lane • Siting of the central Village Green on R3 zoned land • Improved connection to medium density zoned lot 	N

The outstanding issues raised by Council officers are considered in the Key Issues section of

this report.

4.3 Community Consultation

The proposal was notified in accordance with the Council's Community Participation Plan from 9 November 2021 until 14 January 2022. The notification included the following:

- A sign placed on the site;
- Notification letters sent to adjoining and adjacent properties (64 letters);
- Notification on Clarence Valley Council's website.

The Council received a total of 48 unique submissions plus 1 petition (171 signatures), comprising 49 objections to the proposed development in its current form.

Amended application lodged including a revised subdivision layout to facilitate enlargement of the proposed stormwater detention basin in the north-west corner from 3208m² to 6366m² and provide additional supporting information, as requested by Council.

Upon receiving the amended design in response to Council's first additional information letter the amended application was re-advertised and notified to those that had put in submissions. The exhibition period between 12 August 2022 until 9 September 2022. A total of 25 unique submissions, comprising 25 objections to the proposed development. No new issues that those mentioned above were raised.

A further amended application was lodged including a revised subdivision layout to provide a buffer to adjoining rural land west of the subject site, as well as further supporting information, as requested by Council.

A third notification of the application was undertaken between 28 April to 15 May 2023. A total of 27 unique submissions, comprising 27 objections to the proposed development. No new issues that those mentioned above were raised.

The issues raised in these submissions are considered in **Table 7**.

Table 6: Community Submissions

Issue	No of submissions	Council Comments
<p>Impact on Services.</p> <p>Submissions raised concern that the development increased demand on infrastructure and ancillary business services and the lack of public transport services currently available. The provision for electric vehicle changing stations in public spaces was also raised.</p>	<p>R1 – 30 submissions R2 – 15 submissions R3 – 17 submissions</p>	<p>It is noted that the site currently has limited access to public transport services. The nearest bus stop to the site is on Yamba Road, located between the old Harwood Bridge and the road linking to the Pacific Highway northbound on and off ramps. This location is approximately 2.8km from the site, being a 4-minute drive or a 30-minute walk. The applicant has identified the increase in residents under the proposal warranting an adjustment to the existing regional bus service route to include James Creek Road in the vicinity of the site. This would need to be confirmed with the local service provider, Busways North Coast Pty Ltd.</p> <p>A neighbourhood centre provides future opportunity for local shops, health care services, and food and drink</p>

		<p>outlets that provide services to residents and opportunities for social interaction.</p> <p>Local recreation spaces also provide opportunities for community interaction to promote active and healthy lifestyles for residents.</p> <p>A new trunk water supply main is proposed to provide a suitable water supply to the development site and a gravity sewerage reticulation system to service the site, including sewage pumping stations. Insufficient information and assessment of Council's existing system has been provided for Council to accept the proposed gravity sewer network to service the proposal.</p> <p>Outcome: Council does not consider this issue has been satisfactorily addressed.</p>
<p>Lack of flood free access from Townsend along Gardiners Road.</p> <p>Submissions raised concern that James Creek becomes isolated during flood events and there is little time and routes available to provide safe evacuation.</p>	<p>R1 – 18 submissions R2 – 9 submissions R3 – 6 submissions</p>	<p>Gardiners Road is subject to flooding. James Creek Urban Growth Area Road Infrastructure Developer Contributions Plan recommends works to create a road with a Q20 flood immunity. In addition to this requirement, the developer would contribute works to further increase flood resilience beyond Q20 to a level that makes access to all properties serviced by Gardiners safer and more flood resilient. This improved resilience would be determined through engineering design of the works. These works would be constructed and delivered as part of Stage 1 subdivision works.</p> <p>Outcome: Council considers this issue has been satisfactorily addressed.</p>
<p>Access to Austons Lane.</p> <p>Submissions raised concerns the development did not propose upgrades to Austons Lane despite it being proposed as an alternative access during emergencies.</p>	<p>R1 – 3 submissions R2 – 2 submissions R3 – 2 submissions</p>	<p>A 5 metre wide road widening to Austons Lane is proposed which will be externally landscaped with buffer planting to provide an improved interface to the development. This land is proposed to be transferred to Council for ownership and maintenance.</p> <p>It is considered that a larger setback and lower density along this interface would assist in facilitating a more sensitive transition between the proposed development and the large-lot residential context opposite Austons Lane.</p> <p>Outcome: Council does not consider this issue has been satisfactorily addressed.</p>
<p>Stormwater management (quality and quantity) and flooding.</p> <p>Submissions raised concern regarding stormwater management and the ongoing cost to Council of the proposed stormwater basins.</p>	<p>R1 – 24 submissions R2 – 16 submissions R3 – 16 submissions</p>	<p>Through submissions, adjoining landowners expressed significant concern about the design and, importantly, the ongoing management of storm water retention basins and associated infrastructure. Council considers this concern is well founded.</p> <p>Clause D5.20(4) of Part D5 NR Design Guidelines as referred to by the DCP in Clause J10.2 item (f), specifies that "<i>At points of discharge of gutters or stormwater lines or at any concentration of stormwater from one or on to adjoining properties, either upstream or downstream,</i></p>

		<p><i>Council will require the Developer to enter into a Deed of Agreement with the adjoining owner(s) granting permission to the discharge of stormwater drainage and the creation of any necessary easements with the cost of the easement being met by the Developer."</i></p> <p>A Deed of Agreement with the adjoining owner has not been obtained.</p> <p>Outcome: Council does not consider this issue has been satisfactorily addressed.</p>
<p>Impacts on adjoining rural land uses / lack of buffers.</p> <p>Submissions raised concerns the development would result in land use conflict with surrounding rural land and primary producers; and inadequate buffers were proposed to address the potential conflict.</p>	<p>R1 – 23 submissions R2 – 16 submissions R3 – 14 submissions</p>	<p>All rural zoned land can be used for a range of agricultural activities including various intensive forms of agriculture such as horticulture, without consent. With approvals in place, uses such as Private Native Forestry are also common. For this reason, a 50m buffer should be regarded as a minimum.</p> <p>A vegetated buffer is considered far superior, particularly in terms of preventing spray drift, dust and to some extent, noise and odour.</p> <p>A 50m buffer and up to half of which is to be vegetated, is now proposed for the western boundary of the subject land. Council considers that this same treatment should be applied to all boundaries adjacent to rural zoned land (the north and east).</p> <p>Outcome: Council does not consider this issue has been satisfactorily addressed.</p>
<p>Inconsistency of development with planning proposal and adopted Council policies.</p> <p>Submissions raised concern about the extent of difference between the concept plan contained in the planning proposal and various adopted Council policy documents and Council resolutions regarding infrastructure provision.</p>	<p>R1 – 12 submissions R2 – 9 submissions R3 – 7 submissions</p>	<p>Council officers recognise that the indicative concept plan (refer to Figure 5) submitted with the planning proposal to rezone the site has created a level of expectation within the local community, however, the planning proposal is not identified as a matter for consideration under clause 4.15 of the EP&A Act.</p> <p>It is noted that the amended subdivision design now incorporates a 50m separation distance between the western boundary of the subject land and the nearest proposed dwellings, which is more reflective of the rezoning plan.</p> <p>As outlined throughout this report, Council considers the proposal to be inconsistent with the Maclean Urban Growth Management Strategy 2011 and Council's Pressure Sewer Policy, Clause 7.8 of the Clarence Valley Local Environmental Plan 2011 in relation to provision of essential services and various Development Control Plan provisions.</p> <p>Outcome: Council does not consider this issue has been satisfactorily addressed.</p>
<p>Urban design and Local Character.</p>	<p>R1 – 41 submissions</p>	<p>The subdivision design is effectively insular, with a single access point and development 'facing inwards' as</p>

<p>Submissions raised concern about the density of the development, inconsistency with the surrounding built environment, provision of open space, pedestrian connectivity, heat island effect, light pollution and lack of affordable housing options.</p>	<p>R2 – 23 submissions R3 – 16 submissions</p>	<p>opposed to addressing external land. The proposal involves a largely homogenous urban structure and density, resulting in a stark change in character and density from its surroundings, which predominately involve lot sizes greater than 2 hectares. Significant bulk earthworks give rise to inter-allotment retaining walls of up to 2m, commonly along rear boundaries. Greater retention of the site's existing topography is warranted to ensure a more contextual approach and outcome for the site. In-turn, this is anticipated to improve amenity levels for any future community and avoid 3.8m high interface walls between neighbours.</p> <p>A refined subdivision proposal which incorporates larger setbacks along its edges, lower density and facilitates a sensitive transition into the surrounding rural and large-lot residential context is considered warranted.</p> <p>Outcome: Council does not consider this issue has been satisfactorily addressed.</p>
<p>Traffic, transport and access.</p> <p>Submissions raised concern about additional traffic volumes generated by the proposed development, vehicular / pedestrian access and safety along James Creek Road to Townsend, timing of proposed upgrades to Gardiners Road and intersections external to the site, internal road widths.</p>	<p>R1 – 34 submissions R2 – 21 submissions R3 – 14 submissions</p>	<p>The applicant has provided an amended Traffic Impact Assessment (TIA) to address the impacts of the traffic generated by the proposal on the surrounding road network.</p> <p>While the methodology of the TIA and traffic distribution is generally accepted by Council the assessment does not provide a specific stage of the development at which the upgrade of Yamba Road / James Creek Road is required. In the most recent response, the applicant has suggested that this upgrade could occur as late as stage 2, however insufficient information has been provided to support this.</p> <p>The developer has proposed a footpath connection from the development to Townsend in concept which would provide a safe pedestrian connection, but has not committed to providing this infrastructure as part of the development.</p> <p>Outcome: Council does not consider this issue has been satisfactorily addressed.</p>
<p>Lack of Aboriginal Cultural Heritage Assessment / consideration.</p> <p>Submissions raised concern about the level of Aboriginal Cultural Heritage Assessment and consultation with Aboriginal heritage stakeholders.</p>	<p>R1 – 14 submissions R2 – 5 submissions R3 – 2 submissions</p>	<p>While an Aboriginal Cultural Heritage Impact Assessment (AHIA) was not submitted as part of the original application, the AHIA prepared by Ron Heron in 2009 was verified by Yaegl Local Aboriginal Land Council and subsequently submitted as part of the Council's request for further information. The submission included correspondence from the acting CEO of Yaegl LALC advising the previous recommendations remained valid and it was not considered necessary to prepare an updated AHIA for the subject development.</p> <p>Outcome: Council considers this issue has been satisfactorily addressed.</p>
<p>Bushfire Hazard.</p>	<p>R1 – 18 submissions</p>	<p>Neither the subject site, nor the land north immediate north of the site is mapped as bushfire prone land.</p>

<p>Submissions raised concern that the vegetated land north of the development site should be considered as a bushfire hazard.</p>	<p>R2 – 9 submissions R3 – 2 submissions</p>	<p>Nevertheless, the application was referred to the NSW Rural Fire Services for review. On 16 May 2022, from the NSW Rural Fire Services, advised following their review of the plans and documents for the proposal, that they had no concerns or issues in relation to bushfire.</p> <p>Outcome: Council considers this issue has been satisfactorily addressed.</p>
<p>Lack of Public Consultation.</p> <p>Submissions raised concern the development did not provide adequate consultation to adjoining neighbours, James Creek residents and Aboriginal heritage stakeholders.</p>	<p>R1 – 14 submissions R2 – 5 submissions R3 – 3 submissions</p>	<p>The development application has been publicly exhibited and notified on three (3) separate occasions in accordance with Council's Community Participation Plan.</p> <p>Council's Community Participation Plan does not require pre-lodgement consultation, however, engagement is well established as best practice for planning, is an important object of the EP&A Act and considered a critical step in reducing land use conflict.</p> <p>Post lodgement, Council has assisted the applicant in meeting with some adjoining landowners and key stakeholders however it is noted that there has been little, if any, direct communication between the applicant and the owners of the rural land to the east or north. Without direct consultation with them, it is not really possible to address any intended uses within the LUCRA.</p> <p>Outcome: Council does not consider this issue has been satisfactorily addressed.</p>
<p>Biodiversity.</p> <p>Submissions raised concern the development would adversely impact wildlife, fencing of the property would affect the local Emu population and covenants restricting the types/number of domestic animals should be considered.</p>	<p>R1 – 21 submissions R2 – 10 submissions R3 – 10 submissions</p>	<p>A Biodiversity Impact Assessment has been submitted as part of the application and amended to consider impacts on the local Emu population in response to community submissions.</p> <p>Outcome: Council considers this issue has been satisfactorily addressed.</p>

5. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

- Stormwater management;
- Sewer servicing;
- Traffic infrastructure;
- Land use conflict assessment; and
- Urban design/local character.

5.1 Stormwater Management

An amended Stormwater Management Report (Version 7) was provided in April 2023 as part of the applicant's response to Council's request for further information. The following information has been provided:

- Guidelines used for MUSIC modelling parameter assumptions
- Additional pollutant load comparison tables
- Justification for 'failing' parameters used in the MUSIC model parameters
- Additional water runoff volumes calculated for catchment 1 using MUSIC storms for different rainfall events
- Catchment water balances for the remaining catchments

Council's engineers have reviewed the application. In addition, Council has engaged the services of a third party to independently review the engineering aspect of the application, including the stormwater response. Both Council's engineers and the independent reviewers identified a key issue, being:

Clause D5.20(4) of Part D5 NR Design Guidelines as referred to by the DCP in Clause J10.2 item (f), specifies that "At points of discharge of gutters or stormwater lines or at any concentration of stormwater from one or on to adjoining properties, either upstream or downstream, Council will require the Developer to enter into a Deed of Agreement with the adjoining owner(s) granting permission to the discharge of stormwater drainage and the creation of any necessary easements with the cost of the easement being met by the Developer." A Deed of Agreement with the adjoining owner has not been obtained and easement not provided.

Table 3.13 – Catchment 1 Surface Water Volumes for Specific Rainfall Events – indicates that not all rainfall events can be controlled to mimic the pre-development case. It is accepted that it would be unachievable to manage stormwater runoff from a development of this scale to mimic existing conditions in all aspects for all events.

However, based on Council's DCP and NRDC controls, and external third-party professional engineering advice, Council cannot support the proposed arrangement for stormwater discharge without having an established Legal Point of Discharge and appropriate easement on the downstream receiving property.

Further outstanding concerns were also identified, including:

- The DRAINS model has not been expanded to assess the downstream impacts on the James Creek and Austons Lane road reserves and downstream stormwater infrastructure. Without this information it cannot be determined if safe velocity and depths can be achieved over James Creek Road in major storm events.
- The MUSIC model treatment train shows losses within the system. This requires further clarification and could have impacts on the water balance calculations.
- The pre-developed catchment baseflow parameters for Nitrogen, Phosphorus and Total Suspended Solids require clarification as this could be based on the pre-developed being modelled as Agricultural Land. This may have impacts on the pollution reduction targets achieved by the design.

Resolution: These issues have not been resolved and accordingly, warrant refusal of the application.

5.2 Sewer Servicing

The developer has provided a Gravity Sewer Assessment for the proposal to be serviced by conventional gravity sewer system with pump stations despite the requirement for the

development to be serviced by pressure sewer previously being determined by the Maclean Urban Growth Management Strategy 2011 and referred to in Council's Pressure Sewer Policy and Maclean Sewerage Scheme Concept Design Report Volume 1 Nov 2005.

The proposed conventional gravity sewer has been reviewed in terms of peak wet weather discharge. Using the Council advised rates for gravity sewer, the proposal would generate a design flow of 20.8L/s for a gravity sewer system, and a design flow of 9.1L/s for a pressure sewer system.

Considering the Gulmarrad Urban Release Area of 2425 Equivalent Persons (EP), along with the proposal for 1047EP, this accounts for 3472 EP which is 86.8% of the 4000EP augmentation required for the Woodford Island STP. If 9.1L/s has been considered for future pressure sewer loading of James Creek equating to 1047EP, a flow rate of 20.8 L/s would equate to an equivalent EP of 2393 EP. Thus, equating to a future total of 4818EP which is greater than what has been determined under the Woodford Island STP augmentation. This would bring the timeline for augmentation forward by approximately 33%.

At some time in the future the Woodford Island STP needs to be augmented from its current design capacity of 8,000EP to 12,000EP. As part of the rezoning at Gulmarrad, Council resolved in July 2008 to undertake a Review of Environmental Factors (REF) for this augmentation. The REF was approved by Council in March 2010 (item 13.032 – 16 MARCH 2010). The STP has been designed to facilitate this augmentation including an additional tank, an additional set of blowers and mechanical equipment on the sand filter.

By specifying the requirement for pressure sewer at Gulmarrad and James Creek Council has enabled deferral of the augmentation. Consequently the STP upgrade is not currently in Council's forward plans, given the design flow for full treatment at the STP from a pressure sewer system is half that of the design flow from a gravity sewer network (i.e., 240L/EP/day x 3.5ADWF, compared with 150L/EP/day x 2.5ADWF).

Insufficient information and assessment of Council's existing system has been provided for Council to accept the proposed gravity sewer network to service the proposal.

For Council to consider a gravity system, a review of the Maclean Urban Growth Management Strategy 2011 would be required to determine the required upgrade and timing of the downstream system. A portion of these implications on Council in terms of service delivery and cost would need to be considered and re-couped (cost met by the developer).

Resolution: The issue has not been resolved and accordingly, warrants refusal of the application.

5.3 Traffic Infrastructure

The applicant provided an amended Traffic Impact Assessment to address the impacts of the traffic generated by the proposal on the surrounding road network. The existing Section 94 plan for the James Creek Urban Release Area apportions 50% of cost for providing upgrades to the existing network to developers with the remainder being met by Council. This is seen to be in favour of the developer as the identified upgrades mostly benefit the new developed land.

The methodology of the Traffic Impact Assessment and traffic distribution is generally acceptable to Council however the assessment does not provide a specific stage of the development at which the upgrade of Yamba Road / James Creek Road is required. In the most recent response, the applicant suggested that this upgrade could occur as late as stage

2, however insufficient information has been provided to support this. On this basis, the upgrade would need to be required prior to release of stage 1 of the development.

The applicant has relied heavily on the existence of the contributions plan, and it is likely that Council will be responsible for delivery and construction of these infrastructure upgrades (financial and physical construction). Historically, an upgrade of James Creek Road has been undertaken by Council in the past and 50% of these costs could be re-couped through the contributions plan.

Based on the requirement to upgrade the Yamba Road / James Creek Road intersection prior to stage 1 of the development, it is likely that the developer would construct this infrastructure upgrade and seek a reduction in contributions under works in kind being undertaken. Further to this, the applicant has proposed to provide the raising of Gardiners Road above the minimum Q20 flood as referenced in the contributions plan.

It is also noted that the developer has proposed a footpath connection from the development to Townsend in concept, but has not committed to providing this infrastructure as part of the development.

Resolution: This issue could be resolved through imposing conditions of consent.

5.4 Land Use Conflict

The overarching planning framework that applies to the proposed development and adjacent lands includes statutory documents such as the Local Strategic Planning Statement (LSPS) and the LEP, specifically through land use zoning and the objectives relating to these zones.

One of the priorities for rural land in the LSPS is to “*Protect agricultural land and increase opportunities for access to locally produced fresh food and economic growth*”. The LSPS also states:

“Protecting agricultural land from urban development and incompatible land uses and avoiding the potential for ‘reverse sensitivity’ issues and complaints from new neighbours in farming communities is important. Engaging in policy development and implementing state government policy, such as the ‘Right to Farm’, will be considerations for all rezoning and development applications. Any proposals for rezoning and advice of development applications should be mailed to landholders that may be impacted, rather than relying on email, newspapers or online platforms.”

‘Right to Farm Policy’ is an additional policy area (together with the Right to Farm Act 2019) that also needs to be considered in the context of development in rural areas. The concept of ‘Right to Farm’ has multiple facets, but the common interpretation is that it relates to a desire by farmers to undertake lawful agricultural practices without conflict or interference arising from complaints from neighbours and other land users.

The zoning of the land adjacent to the proposed development is RU1 Primary Production, RU2 Rural Landscape and R5 Large Lot Residential. The land most directly impacted by the proposed development in terms of ongoing primary production are the lands to the East and West, primarily zoned RU1. The Objectives of RU1 zoned land are outlined below but are very much focused on primary production as well as minimising land use conflict with adjoining zones.

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.

- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To prevent dispersed rural settlement.
- To ensure that development does not unreasonably increase the demand for public services or public facilities.
- To ensure development is not adversely impacted by environmental hazards

It is therefore contingent upon proponents of development on land that has been recently re-zoned, to ensure that these developments do not adversely impact on adjacent primary production and that the land use objectives of RU1- Primary Production zoned land, continues to be realised into the future.

Both the Handbook and the Land Use Conflict Risk Assessment Guide (2011) make it very clear that communication between landholders is one of the most critical steps in reducing Land Use Conflict. Engagement is also a well established as best practice for planning, and an important object of the EP&A Act.

A revised Land Use Conflict Risk Assessment prepared by GEOLINK (the LUCRA) and the peer review by HORTUS Group was submitted as part of the applicant's response to Council's request for further information. It is understood that there has now been two meetings between the proponents and the landowners and public submission has also been reviewed by the proponents. Accordingly, the LUCRA now more accurately reflects, the nature of the adjacent agricultural operation.

It is noted however that there has been no direct communication with the owners of the rural land to the east or north. The northern Lot is heavily timbered and while unlikely to be cleared for agricultural use, could still be used for some form of grazing and or possibly subject to Private Native Forestry. However, without consultation, it is not really possible to address any intended uses within the LUCRA.

The revised LUCRA makes appropriate reference to the more recent NSW Department of Primary Industry 2018 Primefact, Buffer Zones to Reduce Land Use Conflict with Agriculture and incorporated a 50m separation distance between the western boundary of the subject land and the nearest proposed dwellings.

The minimum suggested buffer distance in the Guideline between sensitive receptors (essentially land used by people for public or private purposes) and cattle grazing is 50m. In relation to cattle yards, it is 200m for the reasons stated above as well as quarantining, as required by law, when new stock are bought onto a property.

The treatment of the cattle yards to the east of proposed development in the LUCRA is that it is "*small scale*", that "*This yard is not expected to represent any regular or intensive use and is not expected to significantly affect the presence of rural noise in the area*" and that it is "*likely be used occasionally for low intensity or hobby farm purposes ancillary to existing low intensity grazing activity. Therefore, potential impacts associated with its use would be low*". The LUCRA also states there is "*no formal road access*"

Without consulting the owners of the property, it is not possible to arrive at this conclusion. Furthermore, this conclusion is inconsistent with the normal use of a stockyard on a typical 70 hectare landholding that is used to graze a commercial sized herd and which in a normal

season could run upwards of 50 head. This scale of operation would certainly allow the owner to satisfy the Australian Tax Office requirements for being treated as a primary producer.

The LUCRA also suggests that an ~30m buffer between the existing cattle yards and the proposed development is sufficient, essentially because the yards are not used for intensive type purposes. Moreover, the LUCRA states that the “*recommended buffer metrics and the reference to stock yards [in the DPI Guideline] is more akin to regularly used formal yards for extended holding, processing, sales, or loading and unloading volumes of livestock (the subject yard/pen is not considered to align with this use/purpose given its appearance and setting)*”.

Both these conclusions are considered to be incorrect. The Guideline clearly relates to any form of ‘stock yards’ typically used in agricultural operations. Feedlots and other forms of intensive animal agriculture are treated quite separately in the Guideline. Furthermore, there is a gated access point to the stockyards onto James Creek Road.

All rural zoned land can be used for a range of agricultural activities including various intensive forms of agriculture such as horticulture, without consent. With approvals in place, uses such as Private Native Forestry are also common. For this reason, a 50m buffer should be regarded as an absolute minimum. A vegetated buffer is far superior, particularly in terms of preventing spay drift, dust and to some extent, noise and odour.

A 50m buffer and up to half of which is to be vegetated, is now proposed for the western boundary of the subject land. It is Council’s position that this same treatment should be applied to all boundaries adjacent to rural zoned land (the north and east).

Resolution: The issue has not been resolved and accordingly, warrants refusal of the application

5.5 Urban design/local character

The subdivision design is effectively insular, with a single access point and the development ‘facing inwards’ as opposed to addressing the external adjoining rural landscape. Despite a ‘salt and peppering’ of lot sizes throughout the subdivision, the proposal represents a stark change in character and density from its surroundings, which predominately involve lot sizes greater than 2 hectares.

The largely homogenous urban structure does not appear to directly create or foster character precincts, however the diversity of lots will create varied price points and future built form for any future community.

Significant bulk earthworks give rise to inter-allotment retaining walls of up to 2m, commonly along rear boundaries. Greater retention of the site’s existing topography is warranted to ensure a more contextual approach and outcome for the site. In-turn, this is anticipated to improve amenity levels for any future community and avoid 3.8m high interface walls between neighbours.

Considering the limited site constraints within the subject land and desired medium density outcomes for a portion of the site, further opportunities to deliver housing diversity and character are identified than the proposal facilitates. Particularly within immediate proximity of its amenity areas, a refined subdivision proposal which incorporates greater integrated housing outcomes would better facilitate the medium density zone objectives, as well as foster a stronger sense of place and community. Converse to the ‘core’ of the site, its edges require

a larger setback, lower density and genuine address to facilitate a transition into the surrounding rural and large-lot residential context.

Resolution: The issue has not been resolved and accordingly, warrants refusal of the application

6. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application cannot be supported.

Key outstanding issues include stormwater management, particularly the requirement for a legal point of discharge and easement for the discharge of stormwater on downstream private property; insufficient information and assessment provided to enable Council to accept the proposed gravity sewer network to service the proposal; inadequate provision of buffers to minimise land use conflict with adjoining rural land.

The proposed residential subdivision is not considered to be suitable for the site due to the number of unresolved matters still to be addressed as outlined in the report above.

It is considered that the key issues as outlined in Section 6 have not been resolved satisfactorily through amendments to the proposal and/or in the recommended draft conditions at **Attachment A**.

7. RECOMMENDATION

That the Development Application SUB2021/0042 for a 336-lot staged residential subdivision and associated infrastructure works at James Creek Road, James Creek be REFUSED pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979* subject to the draft reasons for refusal attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Draft reasons for refusal

Attachment A: Draft reasons for refusal

That development application SUB2021/0042 (PPSNTH-137) for subdivision of Lot 104 DP 751388 to create a 336-lot staged residential subdivision at James Creek Road, James Creek be REFUSED pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979* subject to the reasons for refusal outlined below.

The recommendation is provided for the following reasons:

1. The proposed development is inconsistent with the following clauses of the *Clarence Valley Local Environmental Plan 2011*:
 - a. 1.2 Aims of the Plan – “(e) to provide adequate access and services to development carried out in accordance with this Plan”, as the proposal has not satisfactorily demonstrated the proposal incorporates adequate stormwater management and sewer services to the development.”
 - b. 7.8 Essential Services – “Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the proposed development are available or that adequate arrangements have been made to make them available when required”. Clause D5.20(4) of Part D5 NR Design Guidelines as referred to by the DCP in Clause J10.2 item (f), specifies that “At points of discharge of gutters or stormwater lines or at any concentration of stormwater from one or on to adjoining properties, either upstream or downstream, Council will require the Developer to enter into a Deed of Agreement with the adjoining owner(s) granting permission to the discharge of stormwater drainage and the creation of any necessary easements with the cost of the easement being met by the Developer.” A Deed of Agreement with the adjoining owner has not been obtained and easement not provided. Insufficient information and assessment of Council’s existing sewer system has been provided for Council to accept the proposed gravity sewer network to service the proposal.
2. The proposal is inconsistent with the following Parts of the Clarence Valley Residential Zones Development Control Plan 2011:
 - a. C3 Site Assessment Requirements - Clause C3 requires consideration of the existing site conditions and an assessment of the impact of the proposed development on the surrounding area. The proposal presents a stark change in character and density from its surroundings. A refined subdivision proposal which incorporates greater integrated housing outcomes, fosters a stronger sense of place and community, incorporates larger setbacks along its edges, lower density and facilitates a sensitive transition into the surrounding rural and large-lot residential context is warranted.
 - b. C5 Building Design Requirements - Clause C5.2 limits cut and fill to a maximum height of 1.2m. The subdivision design indicates typical retaining wall detail with a maximum height of 2.0m. Insufficient information has been provided to justify a variation of this control.
 - c. C24 Provision of Essential Services - Council’s Pressure Sewer Policy 2008 notes areas where Council has resolved that pressure sewerage will provide the centralised reticulation. This currently includes James Creek. A conventional gravity sewer system with pump stations is proposed to service the proposed development. Insufficient information and assessment of Council’s existing system has been provided for Council to accept the proposed gravity sewer network to service the proposal.
 - d. J10 Stormwater Management - In accordance with J10.2(f) stormwater design shall be in accordance with Section D5 of the NR Design Manuals. Specifically, Section D5 requires:
 5. *At points of discharge of gutters or stormwater drainage lines or at any concentration of stormwater from one or on to adjoining properties, either upstream or downstream, Council will require the Developer to enter into a Deed of Agreement with the adjoining owner(s) granting permission to the discharge of*

stormwater drainage and the creation of any necessary easements with the cost of the easement being met by the Developer.

A Legal Point of Discharge and Easement for discharge of stormwater on downstream private property has not been obtained.

3. The proposed development is inconsistent with the Local Strategic Planning Statement objective to “*Protect agricultural land and increase opportunities for access to locally produced fresh food and economic growth*” and State Government policy, such as the ‘*Right to Farm Policy*’, published by the NSW Department of Primary Industries. The proposed subdivision does not incorporate appropriate land use buffers in response to the adjoining rural character and amenity of the locality to ensure a suitable edge/interface is achieved and potential land use conflict is mitigated. A 50m buffer treatment should be applied to all boundaries adjacent to rural zoned land (the north, east and west).