

12 March 2024

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

Attention James Hamilton

Development application No: 2023/0759
Proposed subdivision and childcare centre at James Creek Road, James Creek
Response to Additional Information required.

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Dear Sir

We refer to Councils Additional Information Request dated 9 February 2024. This is a full response to Councils request. This information is provided as an addendum to the submitted Statement of Environmental Effects and other documents incorporated in the application.

This response includes the following attachments.

- Attachment 1 – Geolink letter of 12 March 2024 including Gardiners Road height of road plan.
- Attachment 2 – SES letter dated 8 March 2024.
- Attachment 3 – Application for Request to Vary Development Control Plan.
- Attachment 4 – SIDRA modelling

With respect to the items in the Council letter we advise as follows.

1. Childcare centre compliance

All states have agreed to a national approach to education and childcare described in NSW as Education and Care Services National Regulations. [NSW Regulations 2011 SI653] This agreement sets out a range of matters to be considered in the planning and operation of childcare centres. These are contained within Part 3.3 Early education and care facilities – concurrence of Regulation Authority required for certain developments within the State Environmental Planning Policy [Transport and Infrastructure] 2021. This set of regulations has given rise to the NSW Child Care Centre Planning Guidelines September 2021.

The Clarence Valley Local Environmental Plan 2011 and the Clarence Valley Residential DCP also has a series of planning measures which are applicable to the childcare centre component of the application.

All of the matters for consideration under the Regulations, LEP and the DCP have been addressed in the architectural plans as follows.

- CVC Residential DCP requirements and response are set out on Drawing no 5 of the Rust Architectural Design drawing set 2842 – Issue A-21 Nov 23
- Drawings 19 – 24 of Rust Architectural Design drawing set 2842 – Issue A-21 Nov 23 respond to the National guidelines as set out in the Child Care Planning Guidelines. Specifically, Regulations 104 and 106-115 are each examined in detail on the drawings and compliance is shown both in a sketch of the specific issue [eg fencing, outdoor space] and through a compliance table on each page.
- With respect to the Clarence Valley Local Environmental Plan 2011 the land use table for the R3 Medium density residential zone has Centre based childcare facilities as Permitted with consent. The Height of building map does not identify a building height for the land therefore it is picked up in the CVC Residential DCP where the maximum height is 9.0m and the maximum height to top plate is 6.5m. The proposal complies.
- The proposal complies with the Residential DCP as set out on RAD Drawing no 5 of the Rust Architectural Design drawing set 2842 – Issue A-21 Nov 23.

These drawings are all contained in the application documents.

2. Flood evacuation

The Council request for additional information seeks clarification on several points and our response is as follows.

- The site is marginally affected by the Probable maximum Flood [PMF] mapping which has a level of RL 7.4m. The area affected is in the SE corner of the site specifically Lot 70. It is intended to increase the height of this land using fill material from within the site. Approximately 315m³ of material will be required to raise this lot by approximately 0.5m in height to bring it above PMF. [ie RL 7.0m to RL7.5m].

Similarly, the commercial lot needs a similar treatment to raise its ground level by approximately 0.5m. The volume of fill will be approximately 700m² and that will also be won onsite.

There is a PMF incursion in the SW corner of the site, but it does not affect a residential lot.

In response to the additional information required we advise that no fill will be imported from external to the site and to bring the small areas above PMF will be part of the on-site earthworks.

- We confirm the proposal to construct the flood affected area of Gardiners Road to Q100 plus climate change level in accordance with Councils 2022 Flood study and as mapped on Councils website. The proposal is to construct the road level to RL 3.9m which is the Q100 plus climate change level.

Details are as shown on the attached Geolink letter of 12 March 2024 and Plan 3204/SK101-1 [Attachment 1]

- We have consulted with SES and a copy of their response dated 8 March 2024 is attached [Attachment 2]

We also set out below comments from Martin Giles, Principal of Water

Engineering Plus. This company have significant experience in the flood emergency field and have responded to the SES comments contained in the SES letter as follows. [the dot

- **Emphasise** that the NSW SES does not have statutory authority to endorse or approve flood emergency response plans. In addition, the NSW SES is opposed to the imposition of development consent conditions requiring private flood evacuation plans rather than the application of sound land use planning and flood risk management as outlined in the Support for Emergency Management Planning.

The above does not require a specific response, noting that it is considered that the development of the site constitutes sound land use planning by virtue of it being above the level of the PMF.

- **Note** the proposed development becomes a high flood island in a 5% flood extent due to James Creek Road becoming inundated to the north and Gardners Road to the south with a flood hazard level defined as H5 which is unsafe for vehicles and people². We note the proposed consideration to improve Gardners Road which may be raised to above the 1% AEP level and may provide access to additional services and/or facilities, but the current advice has assessed existing conditions.

As noted in the response, the development will involve improving the immunity of Gardners Road to above the 1% AEP level. Given this, there is no reason for the assessment to be based on existing conditions. NSW SES should have considered the FEP [Flood Emergency Plan] in the context of the proposed upgrading (and associated reduction in the period of isolation) or at least indicated any difference that the road upgrading would have had on their consideration of the FEP and ability to shelter in place.

- **Do not support** the plan to shelter in place during a PMF given the difficulty accessing the flood-free location, anticipated duration of isolation, likely lack of power, water and hygiene facilities.

As noted above, the NSW SES consideration assumed existing conditions rather than the upgraded Gardners Road which will significantly improve access and considerably reduce any period of isolation.

Unless the period of isolation is excessive, it is considered preferable for people to remain in their own houses rather than having to evacuate during periods of extreme rainfall. Further, it is considered that the risk of injury whilst travelling during such conditions is significantly greater than the residual risks associated with sheltering in place in an area above the level of the PMF.

However, noting that the NSW SES does not support sheltering in place, it is intended to revise the FEP to nominate evacuation to the Council evacuation centre based on triggers derived from the results of flood modelling. It is noted that it will be necessary to access the Council flood model to obtain relevant data.

- **Recommend** that clarification is required on the flood modelling. Modelling between the 1%AEP and PMF would be useful to understand at which level the site becomes impacted. The PMF modelling should also include climate change. This data is not clear from the extent of inundation of the developed site in the FEP.

As noted in Section 2.3 of the FEP, all residential and commercial floors will be located above the level of the PMF. The inundation of the existing site (prior to its development) is not relevant to final form of development.

Further, the levels nominated in the FEP reflect Council's adopted flood levels for the PMF. There should be no need to consider flooding beyond the Council flood study.

- **Recommend** further work is undertaken to understand the evacuation capacity constraints and time required for evacuation and proposed location and facilities. If residents do not evacuate prior to losing all access and egress routes, they are likely to require resupply and potentially require rescue increasing risk to life and adding strain to limited NSW SES resources.

The updated FEP will include the consideration of appropriate triggers and the evacuation time afforded by the triggers to ensure that ample time is available for evacuation.

- **Recommend** ensuring that the development complies with Ministerial Directions relating to evacuation ability of sensitive development in a PMF flood.

The updated FEP will consider relevant Ministerial Directions in this regard.

- **Recommend** referring this proposal to the Biodiversity and Conservation Division of the Department of Climate Change, Energy, Environment and Water (DCCEEW), particularly regarding the lots that are impacted in the PMF, given the extent of planned infill.

As the application is being reviewed by Council and all residential and commercial floors will be located above the level of the PMF, the need to refer the proposal to DCCEEW is uncertain.

- **Recommend** the development of robust, thorough, and detailed flood emergency management plans to satisfy the need for ongoing community awareness and the importance of early evacuation when the development is completed.

The FEP will include requirements with regard to community awareness and early evacuation.

In summary, based on the response of NSW SES, it is necessary to revise the FEP from a plan envisaging sheltering in place as the lots are all above the level of the PMF, to one focussed on early evacuation to a defined evacuation centre.

As noted above, it will be necessary to access the Council flood model in order to confirm periods of isolation and to identify appropriate triggers for evacuation based on the warning time associated with a particular trigger.

In accordance with the recommendations of the NSW SES, the FEP will detail requirements for ongoing community awareness and the need to evacuate upon the trigger being reached. The FEP will detail the location of the evacuation centre and the route to access the centre.

A revised Flood Evacuation Plan based upon these principles will be provided to Council as soon as possible.

3. Footpath connection

The applicant agrees to accept a condition on the subdivision approval calling for the construction of a footpath from the site to the corner of James Creek Road and Gardiners Road. This has been the subject of several discussions with Council officers because of the design constraints within James Creek Road brought about by the offset position of the roadway. The applicant reaffirms his commitment to undertake these works in accordance with Councils requirements and looks forward to receiving a draft condition which sets out the design criteria.

4. Cut and fill variation under Residential DCP.

This application has been lodged with the NSW Planning Portal on 16 February 2024.

5. Subdivision requirements for lots less than 450 m2

The CVC Residential DCP at J8 required.

- For lots less than 506m2 and greater than 450m2 a subdivision application must show a concept design for a dwelling showing full compliance with the DCP.
- To subdivide lots less than 450m2 a development application is required showing full compliance with the DCP.

We attach a Variation request for this part of the DCP. [Attachment 3] The application documents contain typologies which show how the smaller lots are to be developed in accordance with the DCP. Specifically, the Rust Design Architecture Plans 2842 Drawings 1 – 18 show typologies for a range of residential products and tests them against the provisions of the DCP. Of note is that the multi residential site does not form part of this application however the typology provides proof of concept that the size and dimensions of the proposed lot will accomplish the land use supported by the R3 zoning.

6. LUCRA engagement with the surrounding landowners

The previous applications for the site raised issues many of which were put forward by the local community. These included setbacks, buffers, stormwater and other interface concerns on adjoining land. The current application has been changed considerably from the earlier site planning as a direct result of community concerns and input raised by neighbouring landholders at the meeting convened by Council in May 2023. The revised LUCRA report does identify this earlier consultation and highlights the changes in the fresh application.

That said, the LUCRA consultant is in the process of reaching out to immediate neighbours to update them with the current application and to seek their views. Furthermore, as the application is about to be publicly advertised, we advise that we are available to meet with adjoining owners and invite them to contact the writer with a view to discussing the application.

7. SIDRA modelling

We attach the SIDRA modelling as requested. [Attachment 4]

This completes the response to the additional information requested by Council.

Yours faithfully



Planning Principal
Place Design Group