

COUNCIL ASSESSMENT REPORT

NORTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSNTH-280 – [DA2023/0759]
PROPOSAL	290 lot subdivision and childcare centre (278 residential lots, 1 commercial lot, 1 childcare centre lot, 3 drainage reserves lots, 6 public open space lots and 1 residue lot)
ADDRESS	Lot 104 DP 751388 - James Creek Road, James Creek
APPLICANT	MPD Investments Pty Ltd C/- Place Design Group
OWNER	Kahuna No 1 Pty Ltd
DA LODGEMENT DATE	15 January 2024
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	\$44,977,940 (excluding GST)
CLAUSE 4.6 REQUESTS	Nil
KEY SEPP/LEP	<ul style="list-style-type: none"> • 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; • Clarence Valley Local Environmental Plan 2011; • Residential Zones Development Control Plan 2011; and • Business Zones Development Control Plan 2011.
TOTAL & UNIQUE SUBMISSIONS ISSUES IN SUBMISSIONS	93 unique submissions plus 1 petition containing 265 signatures
DOCUMENTS SUBMITTED FOR CONSIDERATION	<p>Statement of Environment Effects prepared by Peter Bell (Place Design Group) dated November 2023, to be read in conjunction with the following Enclosures:</p> <ol style="list-style-type: none"> 1. Clarence Valley application forms (completed NSW Planning Portal) 2. Owner's consent 3. Subdivision Layout and Civil Engineering Drawings prepared by GeoLINK dated 22 November 2023. 4. Preliminary Water and Sewer Servicing Plan report prepared by GeoLINK dated 27 November 2023.

	<ol style="list-style-type: none"> 5. Traffic Impact Assessment report prepared by GeoLINK dated 24 November 2023. 6. Gardiners Road Upgrades letter prepared by GeoLINK dated 22 November 2023. 7. Stormwater Management Report prepared by GeoLINK dated 24 November 2023. 8. Flood Emergency Plan prepared by WEP dated 24 November 2023. 9. Bushfire Provisions update letter prepared by GeoLINK dated 2 November 2023. 10. Biodiversity Assessment report prepared by GeoLINK dated 7 November 2023. 11. Development Capital Cost Calculation prepared by Burchills Engineering Solutions dated 2 November 2023. 12. Master Plan and building typologies report prepared by RAD Architects dated November 2023. 13. Childcare centre architectural package prepared by RAD Architects dated 21 November 2023. 14. Childcare centre need report prepared by Business Geographics dated November 2023 15. Contaminated Land Assessment prepared by EAL dated 13 April 2011. 16. Contaminated Land Assessment Review GeoLINK dated 4 November 2019. 17. Land Use Conflict Risk Assessment - Superseded. 18. Statement of Landscape Intent prepared by Place Design Group dated 23 November 2023. 19. Geotechnical Report prepared by Regional Geotechnical Solutions dated 29 July 2021. 20. AHIMS Search Results dated 21 October 2021. 21. Aboriginal Cultural Heritage Assessment prepared by Ron Heron dated July-August 2009. 22. Yaegl Local Aboriginal Land Council letter dated 6 November 2023. <p>Response to Additional Information letter prepared by Peter Bell (Place Design Group) dated 12 March 2024 including:</p> <ol style="list-style-type: none"> 1. Attachment 1 – Geolink letter of 12 March 2024 including Gardiners Road heigh of road plan. 2. Attachment 2 – SES letter dated 8 March 2024. 3. Attachment 3 – Application for Request to Vary Development Control Plan. 4. Attachment 4 – SIDRA modelling. <p>Response to Additional Information email prepared by Peter Bell (Place Design Group) dated 12 April 2024 including:</p> <ol style="list-style-type: none"> 1. Updated Land Use Conflict Risk Assessment prepared by GeoLINK dated 11 April 2024. <p>Response to Additional Information letter prepared by Peter Bell (Place Design Group) dated 14 May 2024, including:</p> <ol style="list-style-type: none"> 1. Attachment 1 – Revised set of Geolink Plans. 2. Attachment 2 – Revised Statement of Landscape Intent. 3. Attachment 3 – Revised RAD Architecture Masterplan. 4. Attachment 4 – Geolink Stormwater Management Plan dated 24/11/2023. 5. Attachment 5 – James Creek Urban Growth Area Road Infrastructure Developer Contributions Plan. <p>Response to Additional Information letter prepared by Peter Bell (Place Design Group) dated 17 May 2024, including:</p> <ol style="list-style-type: none"> 1. Attachment 1 – Letter from NSW SES dated 14 May 2024.
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	<p>2. Attachment 2 – Revised James Creek Flood Emergency Plan report dated 17 May 2024 from Water Engineering Plus.</p> <p>3. Attachment 3 – Updated Statement of Landscape Intent dated 17 May 2024 from Place Design Group.</p> <p>4. Attachment 4 – Updated Master Plan dated 14 May 2024 prepared by Rust Architecture.</p> <p>5. Attachment 5 – Imagery of the proposed development which shows the James Creek frontage.</p> <p>Response to Additional Information letter prepared by Peter Bell (Place Design Group) dated 12 July 2024, including:</p> <p>1. Attachment 1 – Bushfire Hazard Assessment dated July 2024 including RFS request for information.</p> <p>2. Attachment 2 – Changes to Proposal resulting from Planning Panel Determination and attached Executive Summary.</p> <p>3. Attachment 3 – Email from Busway Group.</p> <p>4. Attachment 4 – Statement of Landscape Intent.</p> <p>5. Attachment 5 – Comments on Submissions.</p> <p>6. Attachment 6 – Geolink revised Design Plans.</p> <p>7. Attachment 7 – Statement regarding stormwater discharge from south west catchment to Austons Lane road reserve.</p> <p>Response to submission from Clarence Valley Council (Place Design Group, 1 August 2024)</p> <p>Amended Lot Layout and Area Plan Reference 3204/C111 Rev. F dated 16 August 2024</p>
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	Nil
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	20 August 2024
PLAN VERSION	12 July 2024 Version E and Amended Lot Layout and Area Plan Reference 3204/C111 Rev. F dated 16 August 2024
PREPARED BY	Rachel Heath, Senior Town Planner, acting on behalf of Clarence Valley Council (Consultant)
DATE OF REPORT	7 August 2024

EXECUTIVE SUMMARY

Overview

Clarence Valley Council is in receipt of a Development Application (DA2023/0759) seeking consent for a 290-lot staged residential subdivision, child care centre and associated infrastructure at the subject site, being Lot 104 DP 751388, James Creek Road, James Creek NSW 2463.

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. A briefing was held with the Panel on 22 May 2024 where key issues were discussed.

Site and Context

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 site is approximately 33 hectares in area and rectangular in shape. It has frontages to two (2) roads being, James Creek Road to the east and Austons Lane to the south. Surrounding land uses include:

- Large lot residential land to the south;
- Grazing pasture to the east and west; and
- Densely vegetated land to the north.

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 largely unconstrained, as it is:

- located above the modelled 1:100 year ARI + climate change event and only marginally impacted by probable maximum flood (PMF);
- predominately cleared of vegetation and not containing High Biodiversity Value land;
- not containing known Aboriginal Cultural Heritage significance;
- not containing an item of State or local heritage significance;
- not registered as contaminated site; and
- not within a coastal erosion or hazard area.

The site is mapped as:

- Class 5 Acid Sulfate Soils; and
- Marginally within the Coastal Environment Area.

The site is not mapped as Bushfire Prone Land, nonetheless, the NSW Rural Fire Service (RFS) has advised that the site and most of the surround lands accommodate bushfire prone vegetation.

Two previous development applications have been lodged on the land previous to this application.

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 applicant and did not proceed to determination.

Development application SUB2021/0042 (PPSNTH-137) sought development consent for a 336-lot subdivision (329 residential lots, 1 commercial lot, 4 drainage reserves and 2 associated public open space areas) which was refused by the Northern Regional Planning Panel in June 2023. The Reasons for the Decision as set out in the determination are as follows:

- *The development application was refused for the reasons attached to the Council's assessment report.*
- *The Panel agrees with the Council assessment that the proposed inward facing urban structure, density, and proposed lot design relates poorly to the existing topographical form and presents a stark change to surrounding rural and semi-rural setting and character.*
- *The Panel considers there is inadequate social infrastructure and services to support the proposed development including bus services and given the distances to local shops and facilities.*
- *The Panel also concluded there was insufficient consideration of flood evacuation, but notes the verbal advice provided by Council staff of an offer by the Applicant to upgrade Gardiners Road to enable evacuation in a 1:100 year flood event.*
- *The Panel agrees with Council's view that additional information and design amendments which might result in a more integrated 'village' style settlement may resolve these and other issues addressed in Council's assessment report.*

Council's reasons for refusal referenced in the Panel's Reasons for the Decision are detailed in the report below.

The Proposal

Approval is being sought for subdivision of the site, as well as development application for a childcare centre.

The proposed subdivision, comprises:

- 277 residential lots ranging from 358m² to 960m²;
- A single 8,732m² multi-dwelling lot which is envisioned to accommodate up to 28 town-houses (subject to a future DA);
- 1 childcare centre lot of 3,391m²;
- 1 commercial centre lot 2,189m²;
- 3 drainage/stormwater basin lots (17,979m²);
- 6 open space/park lots (23,795m²); and
- 1 balance lot (54,098m²).

Physical works proposed in association with the subdivision include:

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

A centre-based childcare facility is also incorporated into the application. The proposed childcare centre incorporates a purpose-built single storey building, with a capacity for 103 children and 26 staff, operating 7.00am to 7.00pm Monday to Friday.

Relevant Legislation

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;*
 - *Chapter 3 – Educational Establishments and Child Care Facilities;*
- *Clarence Valley Local Environmental Plan 2011;*
- *Clarence Valley Residential Zones Development Control Plan 2011; and*
- *Clarence Valley Business Zones Development Control Plan 2011.*

No local character statement or site-specific Development Control Provisions have been pursued and adopted to provide direct guidance and expectations for the development of this site, within its context.

The development application has provided an assessment of the proposal against all pre-requisite requirements. The assessment demonstrates that the proposed development is consistent with the objectives of the *Environmental Planning and Assessment Act 1979*, compliant with the *Clarence Valley Local Environmental Plan 2011* development standards and largely compliant with the Clarence Valley Development Control Plan.

Stakeholder Engagement

The Development Application was referred to Transport for NSW, Essential Energy and the NSW Rural Fire Service for consultation. No objections to the proposal have been raised by these agencies subject to conditions being imposed. There are no outstanding issues arising from this consultation.

The proposal was notified in accordance with Clarence Valley Council's Community Participation Plan from 28 March to 13 May 2024. A total of 93 unique submissions and 1 petition objecting to the proposal were received.

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. These matters of concern have been considered and addressed in this report, Council considers these issues have been satisfactorily addressed.

Assessment

While the proposed subdivision pattern is not considered to necessarily best reflect the site's rural context nor promote landscape-oriented development, the proposal does achieve the strategic identification and zoning of the land, adequately addressing the provision of services and providing for housing. On balance the proposal is:

- compliant with the relevant development standards;

- largely compliance with the relevant development controls;
- can be supported by all necessary essential services and infrastructure;
- sited on largely unconstrained residential zoned land; and
- will make a positive contribution to housing growth and diversity in the Clarence Valley LGA.

In contrast to the previous Development Application (SUB2021/0042), which was not supported:

- The subdivision design for DA2023/0759 is less insular and more open to James Creek Road through conversion of residential lots to open space either side of the planned commercial precinct;
- A continuous 50m buffer is proposed to rural land around the north, east and west perimeters to mitigate potential land use conflicts with adjoining rural properties and is largely reflective of the Indicative Concept Plan submitted with the planning proposal for the rezoning;
- The buffer facilitates perimeter lots and public open space addressing the external adjoining rural landscape;
- A 5m wide vegetated buffer is proposed along the southern boundary, which will be dedicated to Council for ongoing maintenance, to provide visual screening and improved amenity to existing large lot residential properties adjacent Austons Lane; and
- No development has been proposed within the north-west catchment to address concerns regarding stormwater discharge onto neighbouring rural land.

Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(b) of the EP&A Act, Development Application DA2023/0759 is recommended for approval subject draft conditions of consent 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.

Predominant land uses in James Creek include agriculture, particularly in the locality's in the north and east, rural residential development in the south and environmental protection, including Yaegl Nature Reserve in the west. Sugar cane is prevalent upon low-lying land, while beef/dairy cattle grazing typically occurs on higher land which has not been subdivided or avoided due to steep slopes or environmental protection.

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 and Immediate Context

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 (refer to **Figures 2 and 3**). The site fronts 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 in area and rectangular in shape. The crest of a small hill is located slightly north-west of the centre point of the site, with slopes ranging from

approximately 3 to 10% falling towards each property edge. Elevations range 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 for 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 under the *Clarence Valley Local Environmental Plan 2011* (refer to **Figure 4**):

- R1 – General Residential;
- R3 – Medium Density Residential; and
- E1 – Local Centre.



Figure 2 – Subject Site and Surrounds



Figure 3 – Subject Site

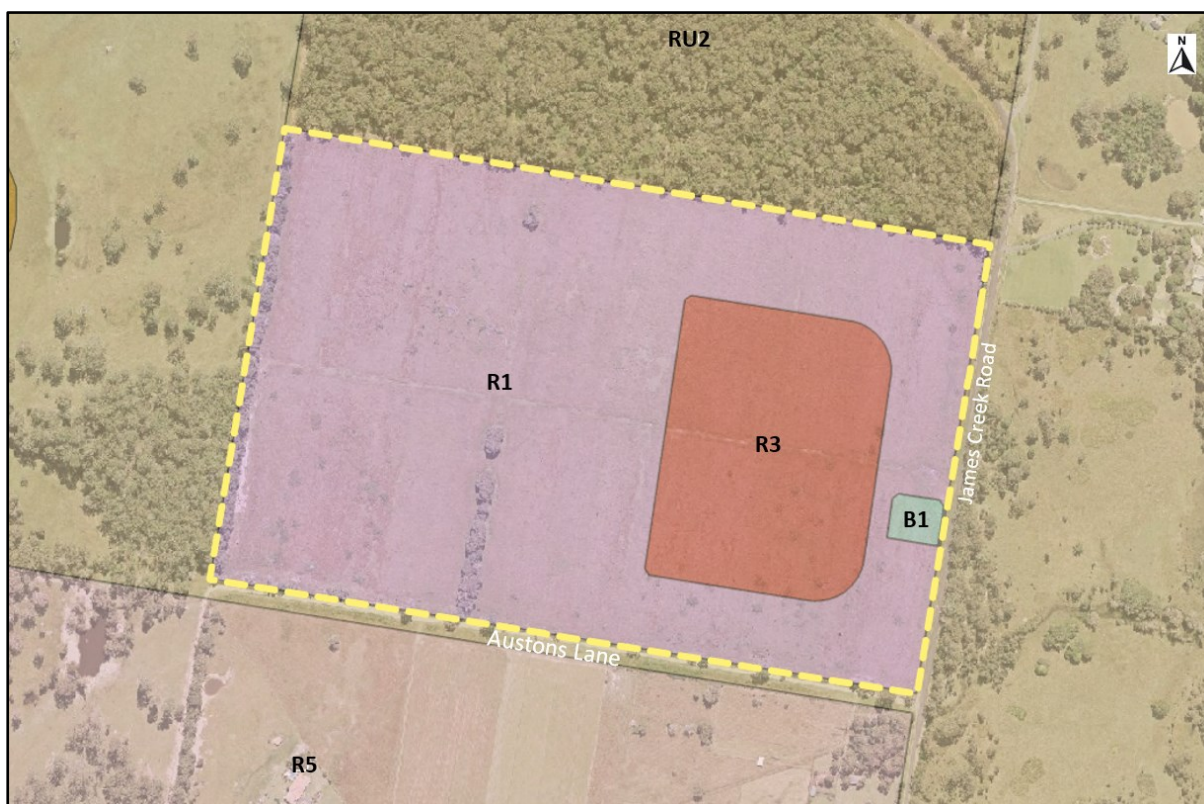


Figure 4 – Land Zoning

1.3 Site History

In 2005 the then landowners first approached Council with a request for consideration of the subject site to be rezoned for residential accommodation and supporting infrastructure. At that time, the subject site was zoned 1(a) Rural (Agricultural Protection) Zone under the *Maclean Local Environmental Plan 2001*.

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 NSW 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 NSW Government in 2009. It identified a number of areas within the Clarence Valley that may be suitable to accommodate future housing subject to a more detailed planning assessment through a local growth management strategy (LGMS). One of these areas was James Creek.

Clarence Valley Council finalised its Standard Instrument Local Environmental Plan program in December 2011. The *Clarence Valley Local Environmental Plan 2011* (the LEP) repealed the Maclean LEP 2001 amongst other former environmental planning instruments which applied across the Clarence Valley. The subject site was initially zoned RU1 Primary Production under the Clarence Valley LEP 2011.

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 (now E1 Local 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 stated objection to the proposed rezoning 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 yet 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 Maclean Urban Catchment Growth Management Strategy 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 and finalise the amendment to rezone the subject site.

The LEP amendment No.12 was subsequently published on 20 July 2014. This amendment applied the R1, R3 and B1 (now E1) land use zones to the site and relevant development standards to facilitate its urban development. In accordance with the NSW Government's Gateway Determination conditions the site was not included as an Urban Release Area under the LEP nor was the Indicative Concept Plan given any weight through site-specific provisions or planning agreements. No local character statement or site specific DCP provisions have been pursued and adopted to provide direct guidance and expectations for the development of this site within its context.

Two previous Development Applications have been lodged on the land previous to this application.

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.

Development application SUB2021/0042 (PPSNTH-137) sought development consent for a 336 lot subdivision (329 residential lots, 1 commercial lot, 4 drainage reserves and 2 associated public open space areas) which was refused by the Northern Regional Planning Panel in June 2023. The Reasons for the Decision as set out in the determination are as follows.

- *The development application was refused for the reasons attached to the Council's assessment report.*
- *The Panel agrees with the Council assessment that the proposed inward facing urban structure, density, and proposed lot design relates poorly to the existing topographical form and presents a stark change to surrounding rural and semi-rural setting and character.*
- *The Panel considers there is inadequate social infrastructure and services to support the proposed development including bus services and given the distances to local shops and facilities.*
- *The Panel also concluded there was insufficient consideration of flood evacuation, but notes the verbal advice provided by Council staff of an offer by the Applicant to upgrade Gardiners Road to enable evacuation in a 1:100 year flood event.*

- *The Panel agrees with Council's view that additional information and design amendments which might result in a more integrated 'village' style settlement may resolve these and other issues addressed in Council's assessment report.*

Council's assessment report referenced in the Planning Panels Determination detailed the following reasons for refusal:

- 1. The proposed development is inconsistent with the following clauses of the Clarence Valley Local Environmental Plan 2011:*
 - a. 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:*
 - e. 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.

- f. 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).

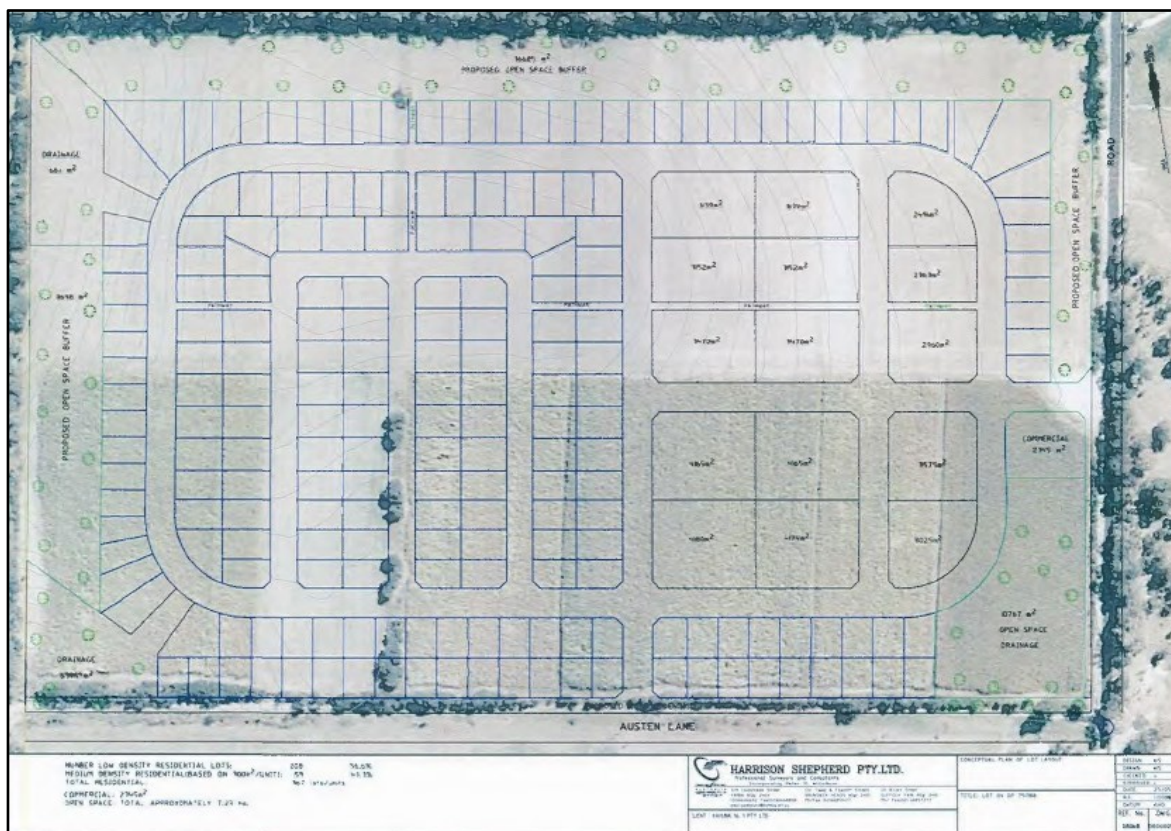


Figure 5 – Indicative Concept Plan (source: Planning Proposal, Harrison Shepherd Pty Ltd April 2011)

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

An overview of the proposed development is outlined in the section below. For full details for the proposal please review to the Statement of Environmental Effects and supporting enclosures submitted in support of the development application.

Subdivision

The application, as originally lodged, sought consent for a 290-lot subdivision comprising (refer to **Figure 6**):

- 280 residential lots ranging from 358m² to 960m², with the exception of a single 8,732m² multi-dwelling site;
- 1 childcare centre lot of 3,391m²;
- 1 commercial centre lot of 2,189m²;
- 3 drainage/stormwater basin lots (15,498m²);
- 4 open space/park lots (25,120m²); and
- 1 balance lot (54,098m²).

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
R1 General Residential Zoned Land		
>450 m ²	113	40%
>600 m ²	78	28%
>800 m ²	15	5%
R3 Medium Density Zoned Land		
>350 m ²	51	18%
>600m ²	22	8%
Multi-Dwelling site	1	1%
Total	280	100

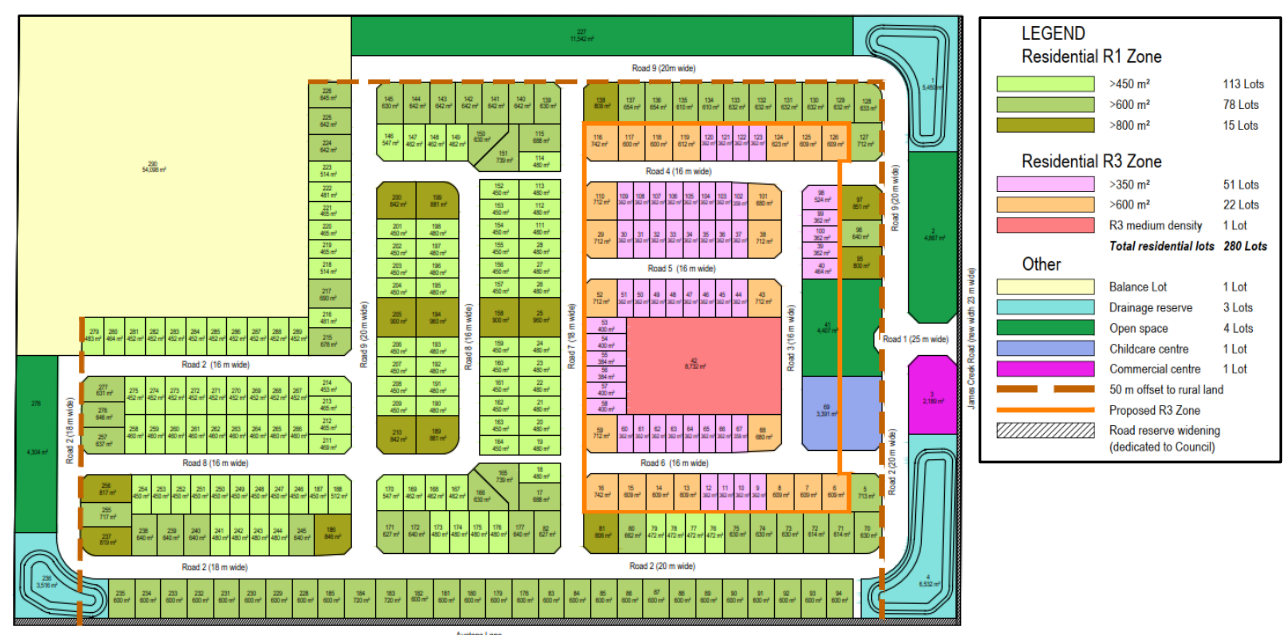


Figure 6 – Proposed Subdivision Plan (as originally lodged) (Source: Geolink)

Further supporting information and amended technical reports have been progressively submitted by the applicant in response to three (3) formal requests for further information issued by Council and the public submissions that were received during public exhibition.

The applicant has made minor amendments to the subdivision plan, specifically:

1. Increasing the size of the south-western drainage lot and a corresponding reduction in the size of the western open space lot (refer to **Figure 7**); and
2. Converting the end two (2) residential lots adjacent Austons Lane, to open space lots (refer to **Figure 7**).

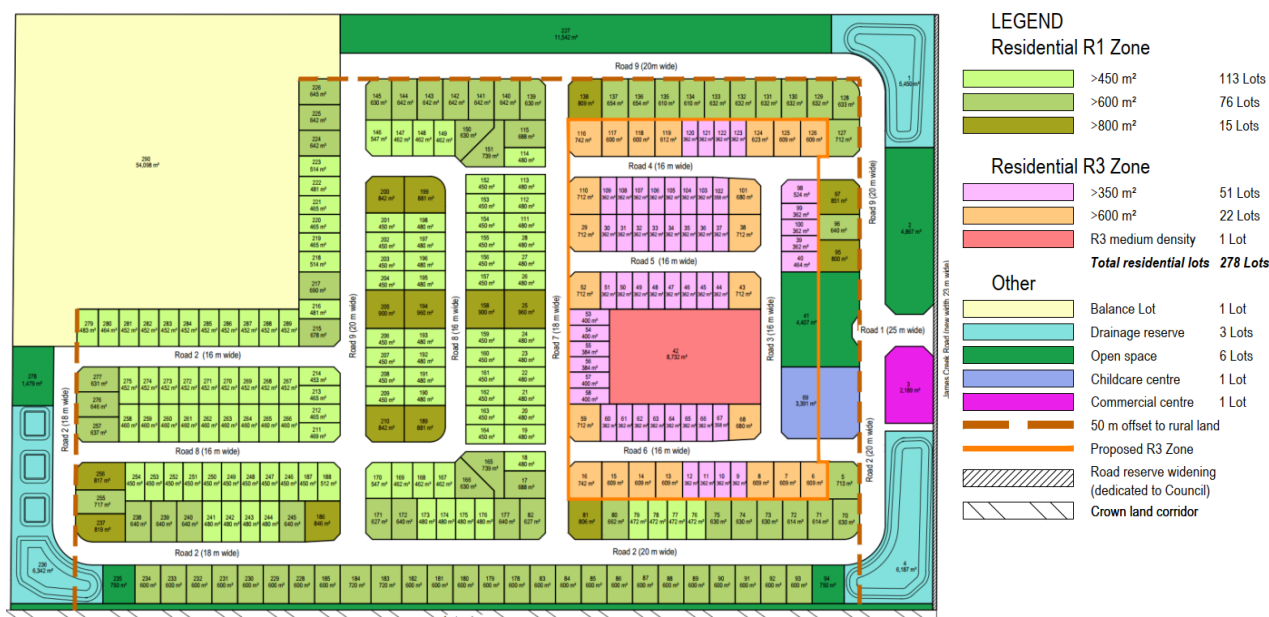


Figure 7 – Proposed (Revision F) Subdivision Plan (Source: Geolink)

The application, as amended, now seeks consent for a 290-lot subdivision comprising (refer to **Figure 7**):

- 278 residential lots;
- 1 commercial centre lot;
- 1 childcare centre lot;
- 3 drainage/stormwater basin lots (17,979m²);
- 6 open space/park lots (23,795m²); and
- 1 balance lot.

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

Table 2 – Amended Residential Lot Size Breakdown

Lot Size	Number of Lots	Proportion
R1 General Residential Zoned Land		
>450 m ²	113	41%
>600 m ²	76 (-2)	27%
>800 m ²	15	5%
R3 Medium Density Zoned Land		
>350 m ²	51	18%
>600m ²	22	8%
Multi-Dwelling site	1	1%
Total	278 (-2)	100

The application states that *“the key elements of the design derive from addressing the existing zoning of the land and to use the planning provisions of the R1 and R3 zone. This has resulted in increased housing diversity and affordability by including 51 lots greater than 350m² in area within the R3 zone. Additionally, a townhouse development site has been provided which indicatively can contain 38 units [subject to separate application].*

The remainder of the development has a more traditional housing style with larger lots and in particular lots exceeding 600m² are located on the periphery of the development. This assists with providing a transition to the neighbouring rural and semi-rural areas adjoining the site. This transition has been further assisted by the inclusion of a 50m separation area between the neighbouring rural uses to the north, east and west of the site. This area separates rural activities from the residential lots and included open space areas, stormwater management and roads for access. The open space areas will be vegetated but managed as usable open space adding to the recreational opportunities for the local community. These interfaces will be fenced with chainwire fencing to prevent domestic animals from crossing into rural property.”

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.

The internal road network comprises a main ring road suitable for future bus access and several smaller loop roads providing permeability throughout the estate. Footpaths and shared paths are proposed throughout the estate and are detailed on the design layout plans prepared by Geolink as part of the Engineering Plans submitted with the application.

The proposal also includes a shared path extending from the development frontage, south along James Creek Road to the James Creek / Gardiners Road intersection.

The majority of lots proposed are of regular shape, likewise incorporate north-south and east-west orientated lots within the optimum solar access range.

As detailed in *Attachment 2B – Executive Summary Design* of the Request for Information Response dated 15 July 2024, the proposal is pursuing bulk earthworks strategy across the site, to create flat developable lots. The site layout and road layout has been designed to follow the contours of the site reducing the need for extensive retaining walls and reflecting the natural topography while also enabling all lots to drain to the street, thereby avoiding inter allotment drainage. Retaining walls, to a maximum height of 1.5m are proposed to under 7% of the proposed lots. The retaining walls are primarily limited to the rear setbacks, with some located within side setbacks. No retaining walls are proposed within front setbacks.

The subdivision plan (as amended) incorporates 6 open space lots comprising a primary Village Green near the entrance to the estate, Entry Parkland fronting James Creek Road and 4 additional boundary parks adjacent the drainage reserves around the boundaries of the site.

The Village Green “local park” consists of a large circular multipurpose lawn, seating, exercise station and feature playground to create a space and will provide significant amenity for the new community as well as enhancing the entrance experience.

The Entry Parkland is proposed to contain a large open sided community shelter with fixed furniture designed to be a flexible space and complimented by a grassed informal gathering area/amphitheatre, shaded BBQ/rest area, grassed mounding and additional street car parking.

The remaining open space lots will be improved by native landscaped planting in accordance with Planning for Bushfire Protection requirements for asset protection zones.

The proposed open space lots and drainage reserves will be transferred to Council for on-going ownership and maintenance. In addition, road widening is proposed along the southern property boundary to Austons Lane, to provide a 5 metre landscape buffer, which will also be transferred to Council.

The proposal also includes a commercial lot with a site area of 2,189m² in response to the existing E1 Local Centre zoned portion of the site, adjacent the proposed childcare centre and primary open space. Whilst not wholly located within the land zoned E1, provides an equivalent area. In accordance with Section 5.3 of the Clarence Valley LEP, the adjustment of the zone boundaries is less than 20 metres from the current zoning.

The proposal also includes civil works to establish the physical infrastructure, including sewerage infrastructure, water supply infrastructure, stormwater management infrastructure and landscaping which are described further throughout this report.

Subdivision Staging

The subdivision is proposed to occur in five stages, as illustrated in **Figure 8**, which proposed the following:

- **Stage 1A** – 69 lots consisting of two open spaces lots, two drainage reserves, the commercial centre and childcare centre, an R3 medium density lot (8,732m²) and R3 residential lots ranging from 358m² to 960m².
- **Stage 1B** – 25 R1 residential lots ranging from 472m² to 806m².
- **Stage 2** – 46 lots consisting of an open spaces lot and a combination of R3 and R1 residential lots ranging from 358m² to 900m².
- **Stage 3** – 87 lots consisting of an open spaces lot and R1 residential lots ranging from 450m² to 960m².
- **Stage 4** – 63 lots consisting of a drainage reserve, an open spaces lot, a balance lot and R1 residential lots ranging from 450m² to 819m².

Accompanying reports submitted with the Development Application nominate that the proposed staging is preliminary in nature and that the number of stages, the number of lots in each stage and the sequence of staging may be influenced by the market at the time and possibly by the provision of services.

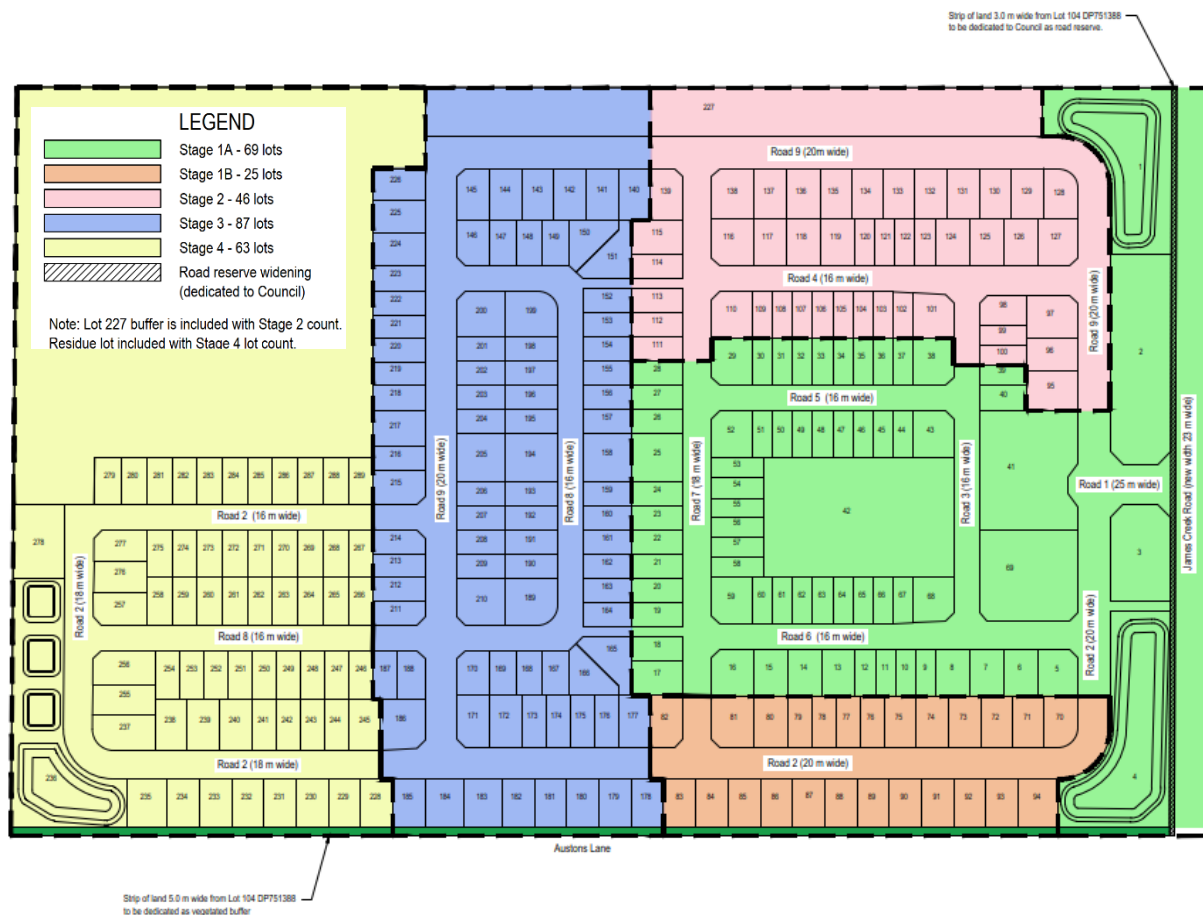


Figure 8 – Indicative Staging Plan (Source: Geolink)

Childcare Centre

A centre-based childcare facility is also incorporated into the application (refer to **Figure 9**). The proposal for the child care centre is driven by an existing need in the area for child care services, as documented in the Needs Assessment prepared by Business Geographics (November, 2023) and submitted with the application.

The proposed childcare centre incorporates a purpose-built single storey building, with a capacity for 103 children and 26 staff, operating 7.00am to 7.00pm Monday to Friday.

The centre is proposed to cater for children aged from birth to five years, with 1x babies' room (including designated sleep area), 3x toddlers' rooms and 2x preschool rooms located off a single hallway and separated by shared amenities and preparation rooms. All education rooms open onto outdoor play and leisure space with shaded areas (refer to **Figure 10**).

The proposed centre also incorporates supporting facilities including reception, the director's office, staff room, kitchen, storeroom and laundry located on the opposite side of the hall.

A total 37 onsite parking spaces are indicated, comprising 26 spaces for staff and 11 spaces for is provided for child set down and pick up, 2 of which are accessible spaces.

Minor retaining and fencing is also proposed, including a child safe fence to separate the car parking area from the building entrance, indoor and outdoor play areas.

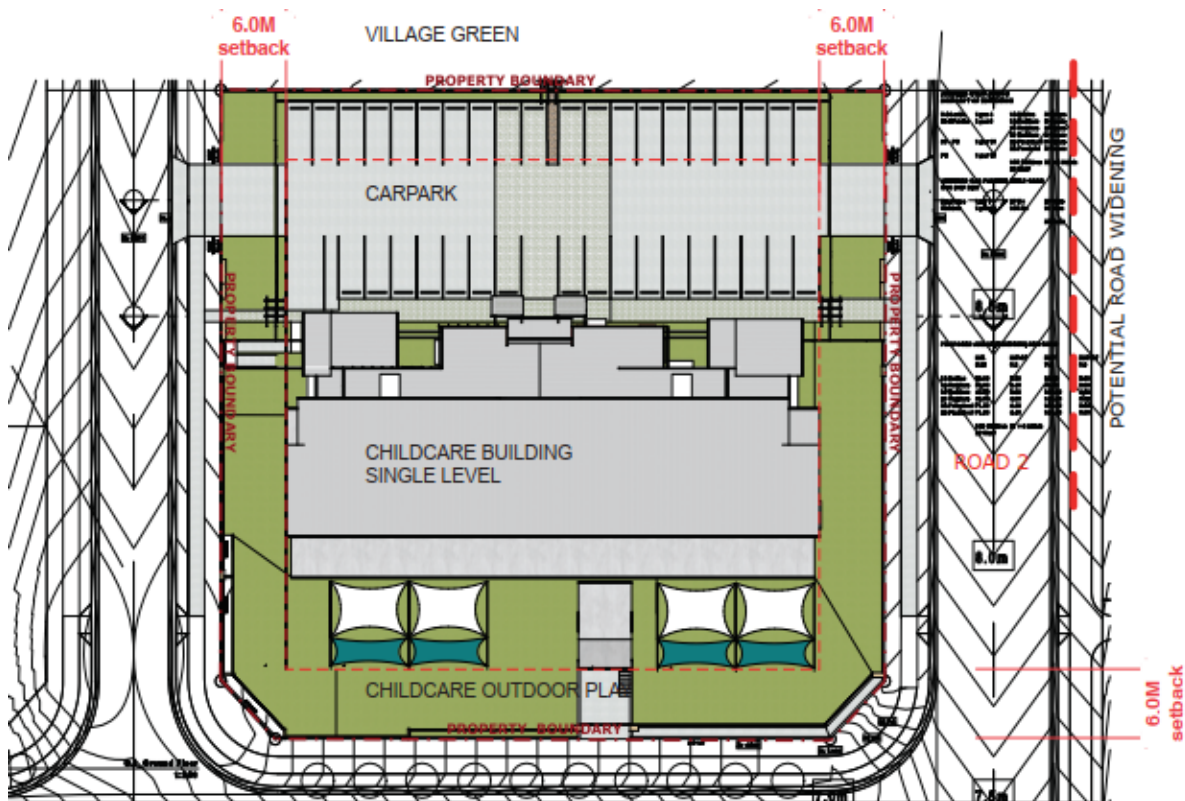


Figure 9 – Proposed Childcare Site Plan (Source: Rust Architecture Design)



Figure 10 – Proposed Childcare Internal Layout (Source: Rust Architecture Design)

2.2 Background

The development application was lodged on **15 January 2024**. 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
23 January 2024	DA referred to external agencies (NSW State Emergency Service, Essential Energy and Transport for NSW)
9 February 2024	First Request for Information from Council to applicant
15 March 2024	Part of Additional Information Lodged
12 April 2024	Updated LUCRA report submitted
28 March 2024	Public exhibition of the application (28 March to 13 May 2024)
24 April 2024	Second Request for Information from Council to applicant
14 May 2024	Part of Additional Information Lodged
15 May 2024	Panel Briefing meeting
17 May 2024	Part of Additional Information Lodged
30 May 2024	DA referred to external agencies (NSW Rural Fire Service)
13 June 2024	Third Request for Information from Council to applicant
15 July 2024	Full Additional Information Response Lodged

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 of relevance to the Development Application include the following:

- (a) *the provisions of -*
 - (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*
- (iiia) 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),*
- (v) (Repealed)*
- 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 requiring consultation and concurrence (s4.13 of the EP&A Act):

- In accordance with section 2.122 of *State Environmental Planning Policy (Transport and Infrastructure) 2021* (Transport and Infrastructure SEPP), 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:

- Integrated Development (s4.46 of the EP&A Act)
- Designated Development (s4.10 of the EP&A Act)
- Crown DA (s4.33 of the EP&A Act) - 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 planning instruments 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 <ul style="list-style-type: none"> • 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 2: Coastal Management <ul style="list-style-type: none"> • Section 2.11 – The matters for consideration for the coastal environment area are considered in the development application and the proposal is satisfactory subject to conditions. Chapter 4: Remediation of Land <ul style="list-style-type: none"> • 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 <ul style="list-style-type: none"> • 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 Chapter 3: Educational Establishments and Child Care Facilities <ul style="list-style-type: none"> • Part 3.3 – The matters for consideration for centre-based child care facilities are considered in Enclosure 13 of the Development Application and the proposal is satisfactory subject to conditions. • Part 3.7 – 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 4.3 – Height of Buildings • Clause 7.1 – Acid Sulfate Soils • Clause 7.2 – Earthworks • Clause 7.8 – Essential Services 	Y

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 E1 Local 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* or where a proponent will require a permit from Council, in accordance with Council's Development Control Plan (DCP).

Removal of up to 0.1ha of PCT 3253 Northern Hinterland Grey Gum-Turpentine Mesic Forest is proposed under this Development Application to facilitate the proposed subdivision. This amount of clearing does not exceed BOS thresholds as per Part 7.2 of the *Biodiversity Conservation Regulation 2017*.

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. Consent is being pursued for vegetation removal at the site.

Approval from the Native Vegetation Panel or a permit from the Council is not required, as consent for clearing is being sought. The proposal meets the requirements of Chapter 2 of the Biodiversity and Conservation SEPP.

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 the Koala residing in the locality.
- The site provides poor foraging and refuge habitat based on the lack of trees and relatively poor resources for Koalas.
- No Core Koala Habitat 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.

Considering the findings, 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

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 *State Environmental Planning Policy (Planning Systems) 2021* ('Planning Systems SEPP'). This is due to the proposal having 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 2: Coastal Management

The northwest corner of the subject site is mapped as Coastal Environment Area, as shown in **Figure 11**. While no works are proposed within the northwest catchment of the subject site, stormwater runoff from the proposed southwest detention basin is proposed to be discharged via a lawful point of discharge to Austons Lane and flow towards the mapped coastal environment area and James Creek.

The bioretention basins will perform the dual function of providing peak flow attenuation and treatment of stormwater. There will also be some infiltration of stormwater through the base of the basins into the underlying soils, thereby reducing the volume and frequency of surface runoff from the site.

Modelling results demonstrate that the basins:

- provide the required level of stormwater peak flow attenuation for all relevant design storm events, significantly exceeding Council's requirements, with the post-development peak flows being at least 10% lower than the pre-development peak flows for all design events.
- achieve Council's required pollutant load reduction targets and that post-development loads of key pollutants are less than the pre-development loads.

The proposal is not anticipated to cause any impacts of significance to the biophysical, hydrological or ecological integrity of the coastal environment area.

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 up to 0.1ha of PCT 3253 vegetation and non-native pastureland. An ecological assessment has been prepared demonstrating the proposal is not likely to have a significant impact on threatened species, ecological communities, or their habitats.

The proposal will not impact access to the foreshore, cause detrimental overshadowing, wind funnelling, loss of views from public spaces and has been designed in direct response to the site's attributes and constraints.

An AHIMS search has confirmed the site has no identified items or places of heritage significance, further, no potentially contaminating activities were identified on or in the immediate vicinity of the site.



Figure 11 – Coastal Environment Area (Source: NSW Planning Portal Spatial Viewer)

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.

A Preliminary Site Investigation ('PSI') was prepared for the site in 2011 by EAL Consulting Service. 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 PSI 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

Chapter 2 - Infrastructure

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 provided the following matters are addressed and or included in Council's conditions of consent:

1. The supporting Traffic Impact Assessment (TIA) identifies the need for improvements to the Yamba Road and James Creek Road intersection to support the proposed subdivision. Council should be satisfied that appropriate road infrastructure can be provided within the land available.

TfNSW recommends a strategic design be prepared, in accordance with TfNSW factsheet, to clarify the scope of works at the intersection and demonstrate a compliant design can be achieved within the road reserve available.

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.

2. The developments proposed intersection with James Creek Road may have implications for the current speed zone. TfNSW is responsible for the review and/or approval of permanent speed zones in NSW in accordance with the recently updated and now titled "NSW Speed Zoning Standard". TfNSW recommend Council seek an 'agreement in principle' to change and/or relocate the current speed zone prior to finalising the intersection design, as necessary.
3. The subdivision layout currently does not appear to provide any provision for future public/school bus facilities. A subdivision of this size has potential to create future demand for public/school bus service be provided. TfNSW recommends Council consider conditioning the development to provide the relevant infrastructure to enable future bus services.

The proposed infrastructure works and provision for buses within the estate to address these matters are discussed further in the DCP section of this report. Proposed conditions of consent have been included in Attachment 1.

The proposal was also referred to Essential Energy in accordance with Clause 2.48(2) of the Transport and Infrastructure SEPP given the proximity of overhead electricity power lines 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.

Chapter 3 – Educational Establishments and Child Care Facilities

The chapter aims to facilitate the effective delivery of educational establishments and early education and childcare facilities across the State. The SEPP determines that a consent authority must take into consideration the Child Care Planning Guidelines and National Quality Framework when assessing a Development Application for a centre-based childcare facility.

The following addresses the principal development standards within Chapter 3 of the Transport and Infrastructure SEPP relevant to the subject proposal:

Requirement	Proposal	Comply (Y/N)
3.22 – Concurrence of the Regulatory Authority This clause applies to development for the purpose of a centre-based child care facility if: (a) the floor area of the building or place does not comply with regulation 107 (indoor unencumbered space requirements) of the <i>Education and Care Services National Regulations</i> , or (b) the outdoor space requirements for the building or place do not comply with regulation 108 (outdoor unencumbered space requirements) of those Regulations.	The proposed childcare centre has a capacity for 103 children. The proposal requires a minimum unencumbered indoor and outdoor space, as follows: <ul style="list-style-type: none"> Indoor: 334.75m² Outdoor: 721m² The proposed development provides unencumbered indoor and outdoor space, as follows: <ul style="list-style-type: none"> Indoor: 354.3m² Outdoor: 736.92m² The proposal complies with the required minimum amount of unencumbered indoor and outdoor space and concurrence from the Regulatory Authority is therefore not required.	Y
3.23 – Matters for Consideration by Consent Authorities Before determining a development application for development for the purpose of a centre-based child care facility, the consent authority must take into consideration any applicable provisions of the <i>Child Care Planning Guideline</i> , in relation to the proposed development.	The proposal has been assessed against the relevant provisions of the Child Care Planning Guidelines, refer to below for discussion.	Y

<p>3.24 – Additional Matters for Consideration by Consent Authorities</p> <p>The consent authority must consider the following matters before determining a development application for development for the purpose of a centre-based child care facility on land in a prescribed zone — (a) whether the proposed development is compatible with neighbouring land uses, including its proximity to restricted premises, sex services premises or hazardous land uses, (b) whether the proposed development has the potential to restrict the operation of existing industrial land uses, (c) whether the location of the proposed development will pose a health or safety risk to children, visitors or staff.</p>	<p>The proposed development is not on land in a prescribed zone.</p>	<p>N/A</p>
<p>3.25 – Floor Space Ratio</p> <p>Development consent must not be granted for the purposes of a centre-based child care facility in Zone R2 Low Density Residential if the floor space ratio for the building on the site of the facility exceeds 0.5:1. This section does not apply if another environmental planning instrument or a development control plan sets a maximum floor space ratio for the centre-based child care facility</p>	<p>The proposed development is not on land in Zone R2 Low Density Residential.</p>	<p>N/A</p>
<p>3.26 – Non-Discretionary Development Standards</p> <p>(a) Location (b) Indoor and Outdoor Space (c) Site Area and Site Dimensions and (d) Colour of Building Materials or Shade Structures</p>	<p>The non-discretionary development standards subject of this clause including location, indoor and outdoor space, site area and dimensions, and building materials and finishes have been considered satisfactory during the assessment of the application.</p>	<p>Y</p>
<p>3.27 – Development Control Plans</p> <p>A provision of a development control plan that specifies a requirement, standard or control in relation to any of the following matters (including by reference to ages, age ratios, groupings, numbers or the like, of children) does not apply to development for the purpose of a centre-based child care facility: (a) operational or management plans or arrangements (including hours of operation), (b) demonstrated need or</p>	<p>Provisions contained in Clarence Valley DCP 2012 pertaining to matters within this clause have not been applied when assessing the proposed development.</p>	<p>Y</p>

demand for child care services, (c) proximity of facility to other early education and care facilities, (d) any matter relating to development for the purpose of a centre-based child care facility contained in— (i) the design principles set out in Part 2 of the Child Care Planning Guideline, or (ii) the matters for consideration set out in Part 3 or the regulatory requirements set out in Part 4 of that Guideline (other than those concerning building height, side and rear setbacks or car parking rates).		
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Compliance with the Child Care Planning Guidelines

The Department of Planning, Industry and Environment's publication, *Child Care Planning Guideline. Delivering Quality Child Care for NSW* (September 2021), establishes the assessment framework to deliver consistent planning outcomes and design quality for centre based childcare facilities in the State. Consideration of the applicable provisions of the guideline is addressed below:

Requirement	Proposal
Chapter 2. Design Quality Principles	
Principle 1 – Context	The proposed centre based child care facility is driven by an existing need in the area for childcare services. There are five (5) long day care centres in the local catchment supplying a total of 297 places to a market of 930 children under 5 (Business Geographics, November 2023). The nearest existing child care centres are over 3kms away in Maclean and Harwood.
Principle 2 – Built Form	The proposed bulk and height of the facility is considered appropriate to the desired future character of the estate, positioned near the entrance to the estate, adjacent open space and broader rural residential locale.
Principle 3 – Adaptive Learning Spaces	The proposed child care facility provides sufficient fit for purpose indoor and outdoor play areas. The areas achieve a mix of inclusive learning spaces catering for children of varied ages and abilities and allowing for a variety of opportunities for interactions to learn, play and socialise.
Principle 4 – Sustainability	Whilst largely south facing, the child care centre architectural package states the breakdown of the building's mass and form allows ample natural light and ventilation, creating a pleasant and breathable environment within the facility.

	<p>The plans indicate skylights over the hall facilitate natural light. Compliance with the requirements for solar access and natural ventilation will be confirmed at the construction certificate stage.</p>
Principle 5 – Landscape	<p>While ample landscaping area is provided within setbacks and outdoor areas, a landscape design has not been provided as part of the application. Preparation of a detailed landscaping plan will be conditioned for approval prior to the issue of a construction certificate for the child care facility to ensure any proposed landscaping results in an attractive development with good amenity, contributes positively to the streetscape, enhances the development's environmental performance and contributes to making the outdoor spaces assets for learning.</p> <p>Upon review of the application the NSW RFS has also recommended a condition that any landscaping needs to comply with the landscaping requirements for Planning for Bushfire Protection.</p>
Principle 6 – Amenity	<p>The proposed built form respects the surrounding future residential context and is of a scale appropriate to the site and its location within the proposed estate.</p>
Principle 7 – Safety	<p>The proposed development is considered to provide sufficient safety and security. It has clearly defined public and private spaces with controlled access for parents and children. It will also employ adequate passive surveillance throughout the design and proposed centre.</p>
Chapter 3. Matters for Consideration	
3.1 – Site Selection	<p>The location of the child care centre is considered to be satisfactory and is easily accessible given its location in proximity to the entry to the estate, commercial lot and village park. There are no obvious environmental hazards on the site. It is considered that the development will be compatible with adjoining residential uses, and the centre will service a growing population which has increased the demand for child care facilities. Appropriate onsite parking is provided.</p>
3.2 – Local Character, Streetscape and the Public Domain Interface	<p>The development respects the adjoining local road frontages, providing clear delineation between the child care centre and the public domain with fencing and landscaping. The</p>

	<p>building is an appropriate scale in relation to the size of the site. Fences and retaining walls respond to and complement the context and character of the area and do not dominate the public domain</p>
3.3 – Building Orientation, Envelope, Building Design and Accessibility	<p>The proposed building is of a form and scale appropriate for the lot, with suitable setbacks allowing for landscaping and consistent with the intended future character of the subdivision estate.</p> <p>The design demonstrates safety and accessibility has been considered for all users.</p>
3.4 - Landscaping	<p>As outlined above, suitable landscaping area is provided within setbacks and outdoor areas, however a landscape design has not been provided as part of the application. It is also noted that the NSW RFS has recommended a condition that any landscaping needs to comply with the landscaping requirements for Planning for Bushfire Protection. Preparation of a detailed landscaping plan will be conditioned for approval prior to the issue of a construction certificate for the proposed child care facility.</p>
3.5 – Visual and Acoustic Privacy	<p>Positioning of the child care facility close to the village green, adjacent to the main entry and separated from residential dwellings by local roads, along with the provision for landscaping within building setbacks will ensure appropriate visual privacy is achieved.</p> <p>No acoustic assessment was submitted with the application.</p> <p>It is noted that the external play areas are orientated towards proposed neighbouring residential lots, rather than adjacent open space and commercial zoned land. In accordance with the child care planning guideline the acoustic privacy of the neighbouring residential development should be considered, and acoustic treatments implemented, if required.</p> <p>It is further noted, that the proposed child care centre is located within about 80m of existing cattle yards on the neighbouring property to the east. This is considerably closer than the 200m separation distance recommended in the NSW DPI, <i>Buffer Zones to Reduce Land Use Conflict with Agriculture - An Interim Guideline</i> November 2018, Primefact 1624.</p>

	<p>It is therefore proposed to include a condition of consent requiring that an acoustic assessment be prepared by a suitably qualified acoustic professional to determine both the impact of the child care on adjacent residential lots and the impact of the existing cattle yards on the childcare facility prior to the issue of a construction certificate for the child care facility in order to determine appropriate acoustic treatments and ensure the relevant noise criteria can be met.</p>
3.6 – Noise and Air Pollution	<p>The proposed development is to be located within a predominantly residential subdivision, suitably sited away from external sources of air pollution such as major roads or industrial developments. The play areas have been located away from residential receivers and appropriately screened to reduce the impacts of being located adjacent local roads.</p>
3.7 – Hours of Operation	<p>The proposed hours of operation (7am to 7pm Monday-Friday) are consistent with standard hours of operation for child care facilities, where the predominant land use is residential.</p>
3.8 – Traffic, Parking and Pedestrian Circulation	<p>The proposed child care facility incorporates onsite car parking for set down/pick up and staff in accordance with DCP requirements.</p> <p>A Traffic Impact Assessment submitted with the application has been reviewed by Council's Traffic Engineer and it is considered that the driveway access and traffic movements associated with the proposed child care facility are acceptable subject to conditions of consent. Pedestrian safety is adequately accommodated within the parking area and public domain.</p>
Chapter 4. Applying the National Regulations to Development Proposals	
A - Internal physical environment	<p>The proposal includes 354.3m² unencumbered indoor space, which meets the requirements of the National Regulations for 103 children.</p> <p>The proposal also includes an onsite laundry and hygiene facilities room and; three (3) toilet and hygiene facilities rooms all with direct access from the activity rooms and two (2) with direct access from the outdoor play area.</p> <p>Adequate administrative space is proposed and the premises has been designed to facilitate supervision.</p>

	An emergency and evacuation plan will be required to be prepared prior to occupation of the facility, in accordance with Regulation 97.
B – External physical environment	<p>The proposal includes 736.92m² unencumbered outdoor space, which meets the requirements of the National Regulations for 103 children.</p> <p>External areas incorporate built shade structures to provide sun protection and appropriate barrier fencing for security.</p>
C – Best practice example	<p>The proposed child care facility has been assessed against the matters for consideration in the guideline and are considered to achieve compliance with the relevant requirements.</p> <p>The arrangement of rooms is generally consistent with the best practice example for the optimal layout of single storey standalone developments.</p>
D – National Quality Framework Assessment Checklist	An assessment against the National Quality Framework Assessment Checklist was submitted with the application and demonstrated general compliance with the relevant Regulations.

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.*

These outcomes are delivered by virtue of the subdivision design being:

- Reflective of the strategic intent of the zones and development standards;
- Providing a mix of lot sizes providing for housing diversity and affordability; and
- Responsive to the site's underlying environmental qualities.

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 11**.

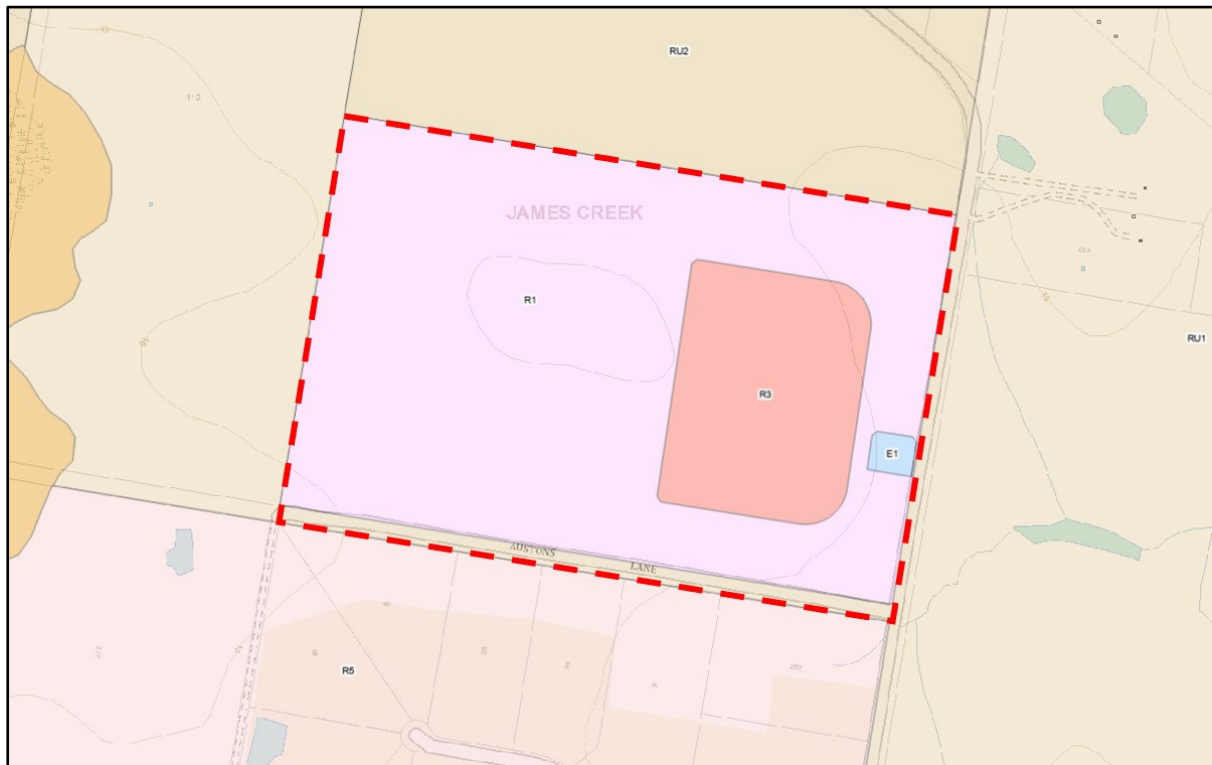


Figure 11 – Land Use Zone map

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.*

E1 Local Centre

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.*
- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*
- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To reinforce and support the central business districts of Maclean, Iluka and Yamba as the commercial centres for those towns.*
- *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, entertainment and community uses within the zone.*
- *To reinforce the neighbourhood centres of Coutts Crossing, Glenreagh, Lawrence and Ulmarra as the locations for commercial premises.*

The childcare is sited on proposed Lot 69, which is zoned part R1 and part R3. Centre-based child care facilities are permissible with consent within both the R1 and R3 zones.

In accordance with Clause 2.6 of the LEP, land may be subdivided, but only with development consent.

The proposal is permissible with consent and 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 2,189m² proposed as a commercial lot in response to the E1 Local 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.

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	Assessment	Comply
Height of Buildings (Cl 4.3)	A maximum 9m building height is prescribed across the site.	The proposed child care building has a building height of approximately 6m above the design level of the proposed lot 69.	Yes

		<p>The height of the proposed building is considered to be appropriate for the proposed residential environment. The proposed development will not result in excessive overshadowing of adjoining lots and no notable disruption of views or privacy is anticipated.</p>	
<p>Acid sulphate soils (CI 7.1)</p>	<p>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.</p>	<p>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.</p> <p>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.</p> <p>A condition has been proposed reflective of this recommendation.</p>	<p>Yes</p>
<p>Earthworks (CI 7.2)</p>	<p>Development consent is required for earthworks on the site.</p>	<p>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 site has been engineered to minimise bulk earthworks through alignment of the road layout and structure following the contours of the site.</p> <p>The site is not an area subject to slope instability. Engineering documentation submitted with the application demonstrates that the proposed</p>	<p>Yes</p>

		development and earthworks will not result in the disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality.	
Essential Services (Cl 7.8)	Development consent is not to be granted unless the consent authority is satisfied that all of the essential services are available.	<p>Stormwater – The development proposes 3 stormwater management areas, with a bio-retention basin located in a drainage reserve at the point of discharge each catchment. The NE and SE basins discharge to James Creek Rd, while the SW basin discharges to Austons Ln. No development is proposed within the NW catchment (Balance Lot 290).</p> <p>Water - Following the rezoning of the subject lot (20/06/2014), an external water main has been extended to service the site by Council. Reticulated water services for the site shall be provided from this water main extension.</p> <p>Sewer - The subject application proposes to provide an internal low pressure sewerage system in accordance with Council's specifications and requirements.</p> <p>Road Access - The nominated road access has been assessed against Austroads Guidelines and SIDRA modelling and provide suitable access/egress to the site.</p> <p>Electricity – The subject site proposes to connect to existing Essential Energy</p>	Yes

		services located along James Creek road.	
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The proposal is considered to be generally consistent 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 contaminated 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 subject site is largely unconstrained and zoned for residential and commercial land use.

In contrast to the previous development application (SUB2021/0042), the subdivision design is less insular and more open to James Creek Road through conversion of residential lots to open space either side of the planned commercial precinct.

A continuous 50m offset to rural land around the north, east and west perimeters also facilitates perimeter lots addressing the external adjoining rural landscape and mitigates potential land use conflict in accordance with NSW DPI recommended

separation distances. The buffers incorporate landscaped open space, access roads, footpaths and stormwater drainage infrastructure.

A 5m wide vegetated buffer is proposed along the southern boundary, which will be dedicated to Council for ongoing maintenance, to provide visual screening and improved amenity to existing large lot residential properties adjacent Austons Lane. The application, as amended, incorporates the two end lots adjacent the southwest and southeast stormwater lots, as additional open space in response to Council's request for further consideration of the Austons Lane interface.

No development has been proposed within the north-west catchment to address concerns regarding stormwater discharge onto neighbouring rural land.

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.

No local character statement or site-specific Development Control Provisions have been pursued and adopted to provide direct guidance and expectations for the development of this site, within its context.

C4 – Streetscape Requirements

The proposed child care centre is located on a corner lot and has been designed in respect of the local road network, addressing all aspects.

Minimum 6m setbacks have been provided ensuring sufficient space is available for landscaping and streetscape amenity.

A maximum 9m building height is applicable to the site. The proposed development is single storey with a maximum proposed height of about 6m.

The architectural design is contemporary, providing variation to the streetscape and does not include any large blank walls. Proposed fencing is compatible with the intended character of the locality and provision has been made for onsite landscaping.

C5 – Building Design Requirements

As detailed in the development application, the subdivision has been designed with the intent of providing for all lots to free drain to the street and the road stormwater network.

Where retaining walls are required to achieve this intent, the design has incorporated the following principles (refer to **Figure 12**):

- A maximum retaining wall height of 1.5m;
- Retaining walls located along back and sides of lots and not the front;
- Larger retaining walls [eg 1.5m] are set back 1.5m from the boundary;
- Any additional level differences is achieved by batters above or below the retaining wall;
- Fences on the lot boundary will be separated from the retaining wall by 1.5m avoiding the potential for a single high blank wall.

Clause C5.2 limits cut and fill to a maximum height of 1.2m. A variation of up to 0.3m is sought by the application. Given the extent of retaining walls over 1.2m is limited

and the measures outlined above limit amenity concerns such as overshadowing associated with a single blank wall, this minor variation can be supported.

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

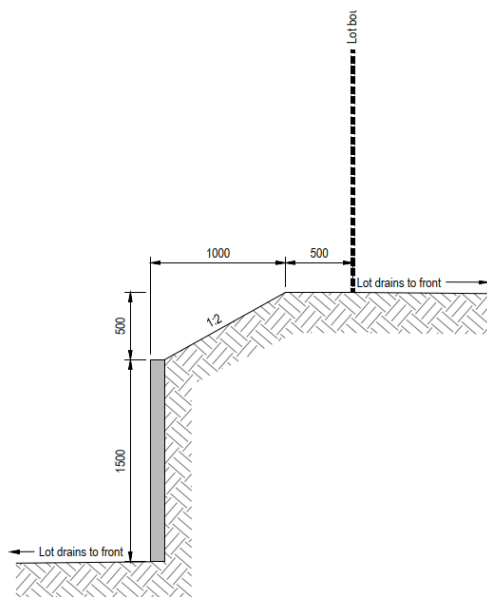


Figure 12 – Retaining Wall Detail (maximum height) (Source: Geolink)

C6 – Consideration of the NSW Coastal Policy and NSW Coastal Design Guidelines

The proposed bulk, scale, size and overall built form design of the child care centre is not anticipated to have any significant detrimental impact on the surrounding amenity and scenic qualities of the coast. The proposed development is considered appropriate to the desired future character of the estate, positioned near the entrance to the estate, adjacent open space and broader rural residential locale

C8 – Different types of residential development

The proposed residential subdivision is situated within the R1 and R3 zones and incorporates 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 generally establish two (2) primary residential character precincts being, a medium density precinct at the site entry and the remainder being suburban residential creating varied price points and future built form for any future community.

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

C9 – Minimum site area for dwelling houses

In accordance with condition C9.1 of the DCP, in the R1 General Residential and R3 Medium Density Residential zones a minimum site area of 400m² for all dwelling houses applies. Within this area it must be possible to fit a rectangle suitable for building measuring 10 metres by 15 metres behind the building line.

The intent of the minimum site area requirement is to ensure that appropriate architectural design standards can be achieved while meeting the requirements. It is further intended to ensure the streetscape and character of the neighbourhood is not detrimentally affected.

The proposed development is seeking a variation to this condition to enable 49 lots within the R3 medium density zone to have a minimum lot size of 358m². This is a variation of 9.5% to the minimum site area control.

Residential typology plans for both single-storey and double-storey built forms on 350m² lots have been submitted with the application to demonstrate that compliance with setbacks, building height, landscaped area requirements, private open space provisions and car parking specified under the DCP can be achieved while maintaining the desired architectural standards.

All lots within the proposed subdivision are capable of accommodating the building envelopes as required by C9. Accordingly, Council supports the inclusion of small lots within the R3 medium density zone to increase lot variation, density and building typology, subject to a restriction on use of land/covenant on the small lots requiring dwellings to be generally in accordance with the architectural drawings, or as otherwise approved by Council.

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 lots in the R3 zone, are supported by indicative designs to confirm suitable opportunity for appropriate primary (and secondary) setbacks to ensure desirable streetscape and private open space outcomes can be achieved.

All lots proposed for dual occupancies within the R1 zone have a minimum site area of 800m² as per the requirements of C10 of the DCPs. No minimum lot size applies for dual occupancies in the R3 zone. It is therefore considered that compliance with C10 of the DCPs is achieved.

C13 – Building Height

A maximum building height of 9m applies to the subject land. The proposed child care building has a height of approximately 6m above the above the design level of the proposed lot 69.

The height of the proposed building is considered to be appropriate for the proposed residential environment. The proposed development will not result in excessive overshadowing of adjoining lots and no notable disruption of views or privacy is anticipated

C16 – Setbacks

Setbacks are required to ensure sufficient separation of buildings, solar access, natural ventilation, privacy, landscaping and an attractive streetscape. The DCP stipulates a minimum 6m front setback and for corner sites, a 3,5m setback to secondary street frontages.

The proposed child care building is setback 6m from the primary and secondary street frontages, consistent with the minimum provisions of C16.

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

It is considered that 45% landscaping area can be achieved on the proposed lots within the R1 zoned land, with a site area >450m². Building typologies have been provided to demonstrate that 35% of landscaping can also be achieved on the proposed lots within the R3 zone, with a site area of >350m². It is therefore considered that compliance with C19 of the DCPs is achieved.

A Statement of Landscape Intent has been submitted with the development application detailing the proposed improvements and landscaping for the Village Green, Entry Park and perimeter parks and basins. The plan notes that the northeast park and basin and southwest park and basin are to be landscaped to the requirements of Planning for Bushfire Protection.

Upon review of the application, the NSW Rural Fire Service has recommended conditions of consent, which increase the number of lots needing to be maintained and managed in perpetuity as Inner Protection Areas in accordance with the requirements of Appendix 4 of Planning for Bushfire Protection 2019. This includes the Entry Park, northeast and southeast basins and commercial lot.

It is recommended that a detailed landscaping plan is prepared prior to the commencement of construction to demonstrate compliance with the recommended RSF conditions of consent to ensure:

- tree canopy cover should be less than 15% at maturity;
- trees at maturity should not touch or overhang the dwelling;
- lower limbs should be removed up to a height of 2m above the ground;
- tree canopies should be separated by 2 to 5m;
- preference should be given to smooth-barked and evergreen trees;
- large discontinuities or gaps in vegetation should be provided to slow down or break the progress of fire towards dwellings;
- shrubs should not be located under trees;
- shrubs should not form more than 10% ground cover;
- clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation;
- grass should be kept mowed (as a guide, grass should be kept to no more than 100mm in height); and
- leaves and vegetation debris should be removed.

C24 – Provision of Essential Services

Section C24 provides servicing provision requirements for new development, though Section J is specific to servicing subdivision development. The servicing requirements under Section J are therefore more relevant and addressed further below.

A condition has been recommended to specify that construction of the child care centre cannot commence until the Occupation Certificate is issued for subdivision stage 1A and proposed lot 69 is titled to ensure provision of all essential services.

C24.2 – Supply of Water.

Following the rezoning of the subject lot (20/06/2014), an external water main has been extended to service the site by Council. Reticulated water services for the site shall be provided from this water main extension.

A Deed has been agreed by the developer and Council for the reimbursement of construction costs (refer to Appendix B of the submitted Water and Sewer Servicing Plan prepared by Geolink, 27 November 2023). The Deed identifies that the developer shall reimburse Council, in accordance with the agreed quotation amount, when a Subdivision Certificate is submitted. The quotation amount shall be indexed in accordance with CPI, in accordance with Cl 2.5 of the Deed

It is therefore considered that the proposal is consistent with Clause 24.2 of the DCP.

C24.3 –Disposal and management of sewage.

C24.3 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.

The previous Development Application (SUB2021/0042) proposed an internal gravity sewer network, which was not supported by Council staff. The subject application has revised the sewer service to provide a low pressure sewerage system in accordance with Council's specifications and requirements.

The subject proposal considers an internal low-pressure sewerage system that will discharge into a receiving manhole and be subsequently collected in a new Sewage Pump Station. From the proposed SPS, an approximately 5km long sewer rising main (preliminary designs consider a DN110 PE 100 PN16 SRM, which is subject to approval) is proposed to provide flows to Council's existing sewer pump station in Diamond St, Townsend. The preliminary alignment can be seen in **Figure 13**:

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

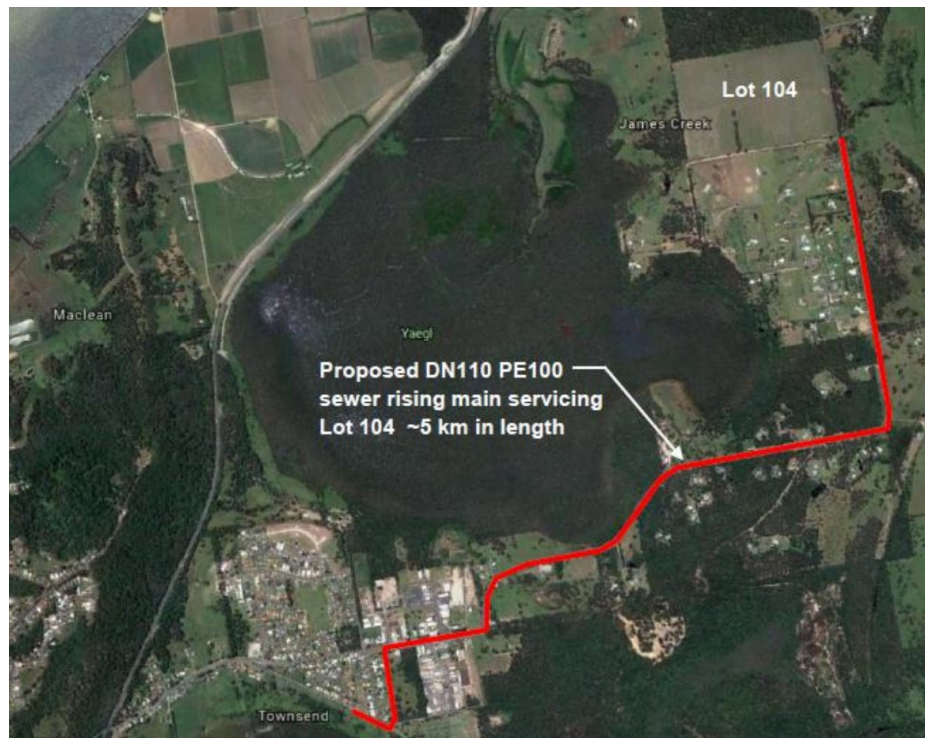


Figure 13 – Indicative Sewer Rising Main Alignment

C24.4 – Supply of Electricity

The subject site proposes to connect to existing Essential Energy services located along James Creek Road.

The proposal was 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.

It is therefore considered that the proposal is consistent with Clause 24.4 of the DCP.

C24.5 – Provision of suitable road access

The proposed development requires both internal infrastructure and external infrastructure upgrades to support the forecast traffic volumes generated. The development is supported by the James Creek Contributions Plan and a Traffic Impact Assessment submitted with the Development Application.

Existing Road Network

All traffic to or from the site will use James Creek Road. James Creek Road is approximately 3.6km in length, joining with Yamba Road to the north and Gardiners Road to the south. The northern-most 1.0km portion of the existing road has recently been sealed by Clarence Valley Council.

James Creek Road is a rural road with variable width, nominally 7.0m from edge of seal to edge of seal. There is no kerbing, and the shoulders are generally 1.0m wide and unsealed. The road pavement is in a generally good condition and line marking is

provided only at the intersection with Gardiners Road and at the recently upgraded intersection with Yamba Road.

Traffic Impact Assessment Assumptions and Traffic Distribution

The Traffic Impact Assessment submitted with the Development Application identifies a forecast traffic generation of 2,620 vehicles / day or 277 trips during the AM/PM peak hour for the residential component of the development. A further 75 vehicles / day or 15 trips in the AM/PM peak is forecast for the commercial lot, while the childcare centre is forecast to generate 145 trips in the AM peak and 83 trips in the PM peak. The calculated rates are consistent with the TfNSW Guide to Traffic Generating Developments guidelines.

A component of the trip generation for the commercial lot and childcare centre is considered to be generated internally and not from outside the development i.e. stopping to get a coffee on the way to work in the morning, thus reducing the combined total daily traffic (AADT) and peak hour to/from the site. This is considered a reasonable assumption given the rural locality of the development.

Factoring the development at completion and internal trip generation to/from the commercial lot and the childcare centre, the forecast traffic volumes generated by the development are taken to be 3,000 vehicles / day or 310 in the AM/PM peak hour, with a 70%/30% split in/out in the PM peak. A breakdown of the forecast traffic distribution to/from the site can be seen below:

Intersection	Q _M (veh/hr)	Q _R (veh/hr)	Q _L (veh/hr)	Min. turn treatment
James Creek Road / The Site	For left turn: 12	147	63	Left turn: BAL
	For right turn: 93			Right turn: BAR
Yamba Road / James Creek Road	For left turn: 530	105	105	Left turn: AUL(s)
	For right turn: 1,065			Right turn: CHR
Gardiners Road / James Creek Road	For left turn: 88	20	80	Left turn: BAL
	For right turn: 195			Right turn: BAR

BAL = Basic left turn, CHL/CHR = Channelised left/right turn, CHR(s) = Short CHR, AUL = Auxiliary left turn

An assumed background annual traffic growth rate of 3.5% for Yamba Rd and 1.5% for Gardiners Rd was applied to existing traffic count data to forecast +10-year background traffic over the network. The traffic distribution assumptions are considered appropriate.

Internal Road Network

The Northern Rivers Local Government Development Design Specification D1: Geometric Road Design (NRDC D1) provides design standards for subdivision roads within the Clarence Valley Council Local Government Area. The design of the proposed layout and road network, including proposed typical cross-sections, longitudinal sections and kerbing has been assessed and determined that a detailed design compliant with the relevant standards is possible.

The proposed lot layout includes a main ring road and several smaller loop roads. The short entry road and the main ring road have proposed road reserves widths between 20 m and 25 m. The remaining roads have proposed road reserves of 18 m and 16 m, the latter only for roads servicing no more than 20 lots each. It is noted that all road reserve widths are above the minimum NRDC requirements for the applicable road type.

Public Transport

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. There is also a bus stop shelter located at the intersection of James Creek Road and Gardiners Road, which services local school bus routes.

On weekdays, there are eight services a day to Grafton via Maclean, Tyndale, Cowper Public School, Ulmarra and South Grafton, and eight a day in the reverse direction. There are also eight services each weekday to Yamba via Palmers Island Public School, West Yamba, Angourie and Wooloweyah, and the same in the reverse direction. Weekends and public holidays offer half the number of services per day.

The Traffic Impact Assessment recommends that the local bus route #380 provide detours through James Creek Road to service the development, however such changes will not occur until such time as there is demand for the service.

The circulating roadway is sufficient to accommodate bus transport, though at this stage it is not known whether future provision of an internal bus stop is required. Prior to the release of the Subdivision Works Certificate for stages 1B, 2, 3 and 4, the developer shall provide correspondence from Busways to confirm whether or not an internal bus stop is desired. Plans shall nominate bus stop locations, should they be required.

Shared Path Network

There is currently no provision for pedestrians and cyclists on James Creek Road or Gardiners Road. The development proposes a 2.0m wide shared path southward along James Creek Road to link the site to Gardiners Road. This is nominated at Stage 3, or after 150 – 200 lots have been released.

Further to shared path services in the immediate vicinity of the site, on-road shared path facilities are nominated on Gardiners Road, within the carriageway length subject to upgrade. This will connect to existing shared path infrastructure within Townsend.

The two proposed lengths of shared path nominated in the application are not linked, and the developer has nominated to provide Council with construction plans for the remaining length of Gardiners Road for future upgrade. A condition requiring construction of the whole length of the shared path in stages has been included due to concerns with pedestrian safety and accessibility to the development site and nearby commercial centres.

Internally, the road network will provide shared path facilities in accordance with the requirements of NRDC Table D1.5.

External Road Upgrades

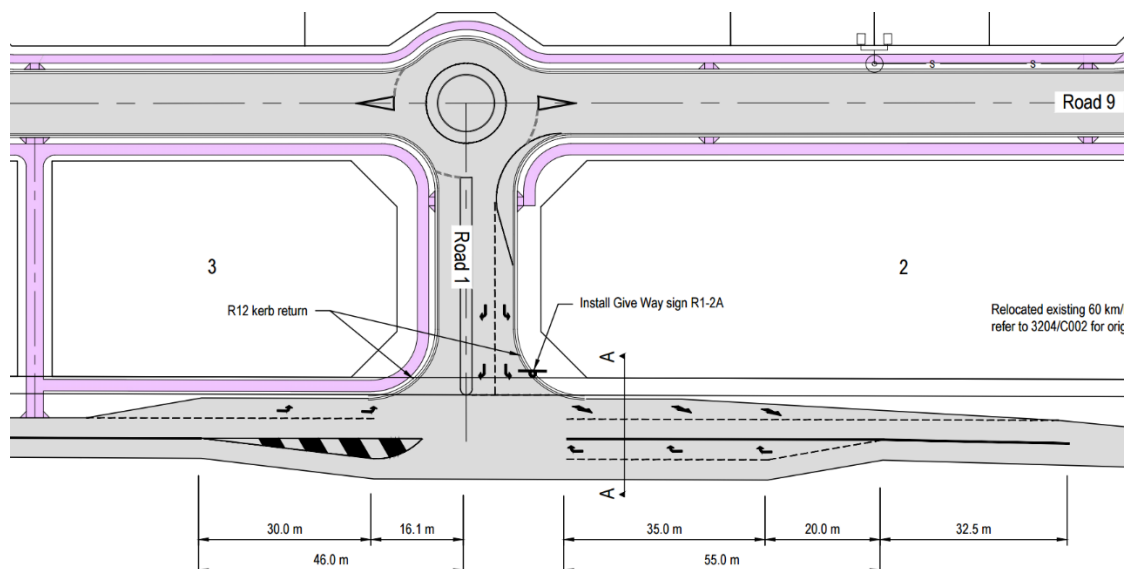
The site has frontage to James Creek Road and accesses the broader road network via Gardiners Road to the south, and Yamba Road to the north. The James Creek Urban Growth Area Road Infrastructure Developer Contributions Plan applies specifically to this site and associated *'residential development, including development of a residential nature, which would result from the creation of additional private lots/dwellings or in the case of non-private residential development, additional*

dwelling, beds or people'. It provides scope for the external upgrades of critical road infrastructure including:

- James Creek Road – upgrade works to seal and widen an unsealed section north of the site (completed in 2019) and widening of approximately 900m near the Gardiners Road intersection.
- Yamba Rd/James Creek Road intersection – Dedicated right turn lane.
- Gardiners Road – Raising to provide 1:20 year flood immunity for a total length of approximately 900m.
- Gardiners Road/James Creek Road intersection – Sealed shoulders and sheltered turn lanes in/out of James Creek Road.

James Creek Road Intersection to the Site

The proposed site access to James Creek Road will require widening of James Creek Road to accommodate auxiliary left turn lanes in and out of the development and a channelised right turn lane. The proposed access to James Creek Road includes a roundabout at the intersection of Road 1, Road 2 and Road 9, with a single lane in and dedicated turning lanes out of the development on Road 1, refer below:



The nominated works have been assessed against Austroads Guidelines and SIDRA modelling and provide suitable access/egress to the site. These works will be required with Stage 1 of the development

James Creek Road / Yamba Road Intersection

The intersection of Yamba Road and James Creek Road currently includes a basic right treatment and a full length auxiliary left turn lane. SIDRA modelling of the existing intersection with existing traffic volumes indicates that a short channelised right lane is already warranted.

The Traffic Impact Assessment provides modelling of the intersection using SIDRA Intersection for the existing (2022) and future (2032) conditions. The modelling indicates that all movements will operate at a Level of Service (LOS) A, except for right turn movements in and out of James Creek Road.

In the existing (2022) scenario, the SIDRA model shows that right turn movements into James Creek Road operate at LOS A but are forecast to reduce to LOS B after 5 years

for the PM case and after 8 years for the AM case. The right turn movements out of James Creek Road onto Yamba Road currently operates at LOS C but expected to reduce to LOS D after 6 years (for both AM and PM models), and to LOS E after 9 years for the AM peak and 10 years for the PM peak - LOS C and D are considered acceptable with estimated delays under 25 seconds and 40 seconds respectively.

The submitted SIDRA modelling indicates right turn movements out of James Creek Road are expected to fall to LOS E in approximately 10 years, depending on the progress of the development and background traffic growth. LOS E is below the Austroads Guidelines recommendations for intersection performance, however modelling for the right-turn movements out of the site suggests a queue time of 40.8s, 0.8s outside of the acceptable LOS D limits.

The Traffic Impact Assessment recommends that the existing intersection geometry is upgraded to provide a Channelised Right turn lane (CHR) as soon as practicable, and within the first six years to accommodate traffic volumes. Consequently, it shall be conditioned that upgrades to the James Creek Road/Yamba Road intersection are completed prior to 2030 or prior to the release of Stage 3 of the development, whichever comes first.

Gardiners Road

The James Creek S94 Contributions Plan identifies the need to improve flood free access along Gardiners Rd to the 1:20 year flood event. As part of the development, upgrade works along the impacted area of Gardiners Rd (approximately 900m) is proposed, and will be designed to provide access up to the 1% AEP flood level 2123 climate change scenario. These works are proposed in Stage 1B and are conditioned to include additional widening of the carriageway to accommodate an on-road shared path (with suitable delineation from vehicle traffic).

Council traffic data from 2016 indicates a traffic volume of 1320 vehicles/day, while data included in the Traffic Impact Assessment from March 2022 states no less than 2,000 vehicles/day, with an observed AM/PM peak of 150 vehicles/hour. Forecast volumes for the 2032 scenario estimate a daily traffic of 2,000 – 2,500 with a peak hour of 200.

Gardiners Road / James Creek Road Intersection

The existing intersection at the southern end of James Creek Road with Gardiners Road currently provides shortened BAL and BAR turning treatments. This intersection is identified in the James Creek S94 plan, and states that the '*James Creek Road and Gardiners Road intersection is located in the middle of a sweeping bend with limited visibility in both directions. This arrangement is unsatisfactory into the future particularly with the projected 300 additional dwellings as a consequence of development in the plan area*'.

The Traffic Impact Assessment assessed the intersection with SIDRA modelling, which suggests that the existing intersection geometry is adequate to provide efficiency for traffic up to and including the ten-year design horizon. It is noted that the SIDRA modelling considered the intersection to be a typical BAL/BAR, which is not indicative of the existing intersection geometry. It is unlikely; however, that this would influence the intersection performance given the low existing and forecast traffic volumes.

The Traffic Impact Assessment provides comment that a short channelised right turn lane may be deemed appropriate to improve safety at the intersection, but is not

explicitly stated in the submitted reports or plans. It is noted that the Contributions Plan specifies this intersection will require sheltered turn lanes into and out of James Creek Road in addition to widening and likely raising of the intersection to provide 1 in 20-year flood immunity.

No modification works are proposed as part of the development, however upgrades identified in the Contributions plan are costed and contribution to these upgrades is required prior to the release of any Subdivision Certificate for the development.

Austons Lane

Austons Lane is located on the southern boundary of the site and is currently listed as Crown Land. The southwest basin provides flows to the northern swale drain of Austons Lane and nominates downstream scour protection within the laneway. Stormwater from the site is conveyed along the unformed length of Austons Lane to James Creek.

Following consultation with Crown Lands, given that stormwater infrastructure is proposed adjacent the laneway and flows are directed along the Crown Land of Austons Lane to James Creek, landowners consent and ultimately transfer to Council is required. Council's Roads Policy requires that any adopted length of Crown road be of suitable condition prior to acceptance as a Council maintained road.

Correspondence with Civil Services staff indicates that the appropriate standard for this laneway is as a Category 2 road. A 5m land dedication for road reserve is proposed on the southern boundary of the site in Stage 1B of the development and prior to the release of the Subdivision Certificate, Austons Lane shall be upgraded and transferred to Council in accordance with the requirements of the Roads Policy and the design standards for a Category 2 unsealed road.

Construction Traffic

Construction traffic will require the increased presence of heavy vehicles in the area for the duration of the construction of the staged development. Heavy vehicles will mainly be associated with earthworks, road construction materials, drainage and utility pipes, and water tankers for dust suppression.

A Construction Management Plan (CMP) including a Traffic Management Plan (TMP) will be required with each Subdivision Works Certificate and shall be implemented for the full duration of construction on the site. These plans shall consider the construction access to the site, haulage routes, potential impacts to existing pavements, hours of operation, erosion and sediment control and mitigation measures to reduce impacts to the local road network and residents.

A Dilapidation Report will be required prior to each Subdivision Works Certificate which assesses key intersections/turning movements within the local road network haulage route. A road maintenance bond shall be required for these areas to ensure that conditions do not become unsafe for public traffic.

It is therefore considered that the proposal is consistent with Clause 24.5 of the DCP.

C24.6 – Stormwater Management

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.

The site is surrounded by generally low-lying areas and features a hill, for which the crest is located slightly Northwest of the centre of the site. Consequently, the site falls away in all directions from the crest and can generally be defined into four separate catchments, NW, NE, SW & SE. The slopes over the site are typically in the range of 3% - 10%, with the highest point being approximately 21.5m AHD and the lowest point on the site being 4m AHD.

Given that no development is proposed within the northwest catchment (Balance Lot 290), no stormwater management works are proposed in this area. Development elsewhere over the site will see an increase in impervious area, as can be seen in the below breakdown of development (extracted from the submitted Stormwater Management Report):

Catchment	Pre-development area (ha)	Post-development area (ha)
1 (north-west)	4.98	4.98
2 (north-east)	11.37	10.84
3 (south-east)	13.64	13.63
4 (south-west)	3.48	4.02
Total	33.47	33.47

The development proposes 3 stormwater management areas, with a bio-retention basin located in a drainage reserve at the lawful point of discharge of the 3 remaining catchments. The northeast and southeast basins both discharge directly to the existing swale drainage of James Creek Rd, while the southwest catchment discharges to Austons Lane.

Stormwater Quantity

Stormwater management over the site is proposed via rainwater tanks (assumed 4.5kL BASIX tanks per lot), stormwater pipe and pit infrastructure within road reserve areas (no inter-allotment drainage proposed) and the three previously mentioned bio-retention basins.

The design of the bio-retention basins is dual purpose; to provide peak flow attenuation and to provide stormwater quality treatment to meet Council Sustainable Water Control targets for design stormwater events. The detail provided with the Stormwater Management Report indicates that each of the three basins will incorporate both low-flow pipe outlets and a high flow weir.

The basins are sized to attenuate flows to be equal to, or less than modelled peak flows for pre-development scenarios in 5, 10, 20, 50 and 100 ARI storm events. Based on the assumptions provided in the Stormwater Management Report, the modelled peak discharge from each of the catchment areas is at minimum 10% less than the pre-development scenarios.

Examining the existing stormwater infrastructure downstream of the site, the report identifies that the two culverts on James Creek Road are undersized and require upgrading. Given the upstream basins and catchment areas are impacted in Stage 1

of the development, these upgrades shall be completed as part of Stage 1A SWC works.

Stormwater Quality

Each of the three bio-retention basins follows current conventional bio-retention basin design standards, whereby stormwater runoff is proposed to be retained within an extended detention depth (in this case 200mm), which is then infiltrated down through a filter layer of sandy loam soil. Excess water is conveyed from the invert of the filter layer via slotted drainage lines to the discharge point.

The submitted Stormwater Management Report assesses the stormwater quality impacts of the development by modelling the proposed stormwater management of the development against historical rainfall data (in accordance with Clarence Valley Council and MUSIC Modelling Guidelines).

Modelling assumptions are clearly stated and include typical domestic rainwater re-use, soil infiltration characteristics, total road/driveway impervious area and total roof area (300m² for >450m² and 200m² <450m² lots). Based on the bio-retention basin design and the upstream inputs, the stormwater quality impacts of the development can be seen below:

Pollutant	Post-Development Load – without treatment (kg/ yr)	Post-Development Load – with treatment (kg/ yr)	Modelled Load Reduction (%)	Target Load Reduction (%)
Total suspended solids	34,000	3,950	88	85
Total phosphorus	66.7	24.2	64	60
Total nitrogen	481	202	58	45
Gross pollutants	4,410	0	100	90

The modelled stormwater quality outputs exceed Council's Sustainable Water Controls for both quality and quantity. The two eastern basins will be required prior to the release of the Stage 1 Subdivision Certificate, while the southwest basin will be required prior to the release of the Subdivision Certificate for any lots which drain to the catchment area.

It is therefore considered that the proposal is consistent with Clause 24.6 of the DCP.

Part H – Sustainable Water Controls for Residential Zones

As outlined above, a Stormwater Management Plan (Geolink, November 2023) has been submitted to address these items. Consequently, the proposal is considered consistent 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 provide for safe and functional vehicle and pedestrian movement, including accommodating public transport services.

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

A variety of lot sizes have been provided facilitating housing diversity and the ability to provide affordable housing. The lots are generally regular and rectangular in shape. No battle axe blocks are proposed. Furthermore, the subdivision design incorporates 49 lots less than 450m², together with 15 duplex lots (30 homes) and a multi-unit lot (38 homes) for a total of 117 affordable housing sites in accordance with Council's policy. These are mainly located within the R3 zoned area except for some duplex sites. With a total housing product of 334 dwellings this represents 35% of the housing product, subject to future application.

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. As outlined above, proposed development is seeking a variation to this DCP condition C9.1 to enable 49 lots within the R3 medium density zone to have a minimum lots size of 350m². Nevertheless, building typology designs for both single-storey and double-storey dwellings 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.

Contributions Plans

Section 7.11 and 7.12 of the EP&A Act and Section 64 of the *Local Government Act 1993* enables Councils in New South Wales to levy contributions on a development where that development generates an increased demand on Council's services and facilities.

This is intended to ensure that the existing ratepayers are not required to meet the whole cost of providing new infrastructure in the Local Government Area.

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 been considered and included in the recommended draft consent conditions.

(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).

Part 4 Division 1 of the Regulations specific additional matters that consent authorities must consider. These additional matters are not relevant to the proposed development.

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 proposed subdivision is characterised by three (3) primary character precincts being, the services precinct adjacent James Creek Road, medium density precinct at the site entry and the remainder being suburban residential. In contrast to the previous development application (SUB2021/0042), the subdivision design is less insular and more open to James Creek Road through conversion of residential lots to open space either side of the planned commercial precinct. A continuous 50m offset to rural land around the north, east and west perimeters also facilitates perimeter lots addressing the external adjoining rural landscape. No development has been proposed within the north-west catchment to address concerns regarding stormwater discharge onto neighbouring rural land.

It is acknowledged and understood that no local character statement or site specific DCP provisions has been pursued and adopted to provide direct guidance and expectations for the development of this site within its context. Notwithstanding, the proposals characterisation of itself as a village style development is questioned. Rather, the proposal appears to broadly reflect suburban subdivision qualities.

Whilst many of these qualities are sound measures to adequately address the provision of services and improve the potential for housing affordability through efficiency and site suitability for volume home construction, the proposal lacks a refined response to the site's context. Nonetheless, on balance the proposal is:

- largely compliant with the relevant standards and controls;
 - can be supported by all necessary essential services and infrastructure;
 - sited on largely unconstrained residential zoned land; and
 - will make a positive contribution to housing growth and diversity in the Clarence Valley LGA.
- **Access and traffic** – The proposed development requires both internal and external infrastructure to support the forecast traffic volumes generated. Internally, the proposed road reserves and shared path facilities have been designed in accordance with the requirements the minimum NRDC requirements. The development also includes external upgrades of critical road infrastructure being:
 - James Creek Road intersection to the site;
 - Yamba Road/James Creek Road intersection;
 - Gardiners Road flood immunity;
 - Gardiners Road/James Creek Road intersection; and
 - Austons Lane.

- Public Domain –The Village Green “local park” consists of a large circular multipurpose lawn, seating, exercise station and feature playground to create a vibrant space and will provide significant amenity for the new community as well as enhancing the entrance experience. The Entry Parkland is proposed to contain a large open sided community shelter with fixed furniture designed to be a flexible space and complimented by a grassed informal gathering area/amphitheatre, shaded BBQ/rest area, grassed mounding and additional street car parking. Four additional perimeter parks are proposed providing a buffer to adjacent rural land and passive walking opportunities.
- Utilities – Essential Energy has raised no objections to the proposed subdivision, subject to recommended conditions. The nominated road works have been assessed against Austroads Guidelines and SIDRA modelling and provide suitable access/egress to the site. Reticulated water services for the site shall be provided from a new trunk water supply main which was extended to service the site by Council following rezoning of the subject land and the subject application proposes to provide an internal low pressure sewerage system in accordance with Council’s specifications and requirements. Stormwater is to be discharged from stormwater detention basins in the 3 affected catchments via Lawful Points of Discharge to James Creek Road and Austons Lane.
- 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 up to 0.1ha of PCT 3253 vegetation and non-native pastureland. 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 incorporates a number of retaining walls up to 1.5m, and involves cut and fill across the site to support a coordinated earthworks approach and cost efficiencies. On balance, Council considers

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—Council's Strategic Planner reviewed the proposal and raised concerns in relation to proximity of the commercial centre lot and childcare centre to existing cattle yards on the neighbouring property to the east. It is noted that a 200m separation distance is recommended in accordance with the NSW DPI, Buffer Zones to Reduce Land Use Conflict with Agriculture - An Interim Guideline November 2018, Primefact 1624.

In accordance with the childcare planning guideline the acoustic privacy of neighbouring residential development should also be considered. No acoustic assessment was submitted with the application.

Recommended conditions of consent have been provided requiring that an acoustic assessment be prepared by a suitably qualified acoustic professional to determine both the impact of the childcare on adjacent residential lots and the impact of the existing cattle yards on the childcare facility prior to the issue of a construction certificate for the child care facility in order to determine appropriate acoustic treatments and ensure the relevant noise criteria can be met.

- Flooding – The site has ground levels varying from approximately 4.5m to 21.5m AHD, with the site being located above the modelled Q100 and Q100 + climate change events. The PMF model shows minor local impacts on the south-western and eastern boundaries of the site, as well as the access to James Creek Road. 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 the Gardiners Road upgrade works to the 1% AEP flood level 2123 climate change scenario, 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 1B subdivision works.
- Bushfire Hazard – The site is not mapped as Bushfire Prone Land, nonetheless, the NSW Rural Fire Service (RFS) has advised that the site and most of the surround lands accommodate bushfire prone vegetation regardless of the mapping.

Upon review of the Bushfire Assessment Report the RFS raised concern that no perimeter road is provided to the 'Balance Area', Lot 290 and adjacent residential lots and advised Lot 290 is considered unmanaged land. Further concern was raised regarding the management of open space and drainage reserve lots, particularly those lots adjacent to unmanaged vegetation.

Following further consultation, the RFS provided 8 recommended conditions for inclusion in the consent addressing:

- Asset Protection Zones;
 - Construction Standards;
 - Access – Public Roads;
 - Water and Utility Services; and
 - Landscaping.
- Acid Sulfate Soils - 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, Entry Park, neighbourhood centre and childcare centre conveniently collocated at the entrance to the subdivision promotes social interaction between the new development area and the existing Maclean/Gulmarrad community.
- 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, including 49 lots under 400m². The proposed small lots have been tested and are capable of accommodating minimum building envelopes, setbacks, deep soil, open space, car parking and adequate landscaping. 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 on balance the proposal will not 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 subject site is largely unconstrained and suitable for residential subdivision, being:

- predominately cleared of native woody vegetation;
- not mapped as high biodiversity value;
- not directly affected by flooding;
- not mapped as bushfire prone land;
- not listed as historical heritage;
- containing no known Aboriginal cultural heritage; and
- not listed on any contaminated land register.

Reticulated water is available to the site via a trunk water supply main which was extended to service the site by Council following rezoning of the subject land. While the site is not currently serviced by sewer or stormwater infrastructure, it is considered that adequate services can be provided to the site to facilitate a subdivision for residential accommodation.

The proposed subdivision may assist 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.

While the proposals characterisation of itself as a village style development is questioned and considered to more broadly reflect suburban subdivision qualities, many of these qualities are sound measures to adequately address the provision of services and improve the potential for housing affordability through efficiency and site suitability for volume home construction.

In contrast to the previous development application (SUB2021/0042), the subdivision design is less insular and more open to James Creek Road through conversion of residential lots to open space either side of the planned commercial precinct. A continuous 50m offset to rural land around the north, east and west perimeters also facilitates perimeter lots addressing the external adjoining rural landscape.

The proposed layout incorporates public (passive) open space to meet the day to day needs of residents. The proposed layout also includes a commercial lot with a site area of 2,189m² providing a future opportunity for retail, business and community uses to be established within the subdivision.

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

On balance, the proposed development is considered to be in the public interest as it will provide opportunities for various types of residential development creating varied price points and future built form for any future community, without significant adverse environmental impacts.

The development is considered consistent with the relevant State and local legislation and generally consistent with the Clarence Valley DCP and relevant contribution plans.

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 subject to recommended conditions being imposed.	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			

Additional consultation – Crown Lands

The application as originally submitted included minor works associated with the southwest basin in the Austons Lane road reserve, owned by Crown Lands. The application has since been amended to ensure all proposed works are fully contained within the subject lot. Nevertheless, it is proposed that stormwater water from the southwest basin will discharge to Austons Lane being a lawful point of discharge. To avoid any doubt, on 2 August 2024, the Minister for Land and Property, as owner of Austons Lane, granted landowner's consent to Planners North for the lodging of a development application and any other associated applications to other authorises for the subject development proposal. The Minister noted that should development consent be granted, the department will commence action to transfer the Crown Road to the control of Clarence Valley Council in accordance with Guidelines—administration of Crown roads

Additional consultation – State Emergency Services

The application was referred to the NSW State Emergency Service (SES) for consideration and comment by Council staff. On 8 March 2024, the NSW SES advised that it does not support the plan to shelter in place during a PMF event given the difficulty accessing the flood-free location, anticipated during of isolation, likely lack of power, water and hygiene facilities. The SES noted that the proposed development site becomes a high flood island in a 5% flood event due to James creek Road becoming inundated to the north and Gardiners Road to the south, with a flood hazard level which is unsafe for vehicles and people. The SES further recommended clarification of the flood modelling and that a detailed flood emergency management plan be prepared.

Further information including a Flood Emergency Plan prepared by Water Engineering Plus was submitted to the SES for further review in May 2024. On 14 May 2024, the SES provided correspondence noting no objection and subject to minor amendments being made to the Flood Emergency Plan.

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 Senior Engineer reviewed the submitted plans and recommended conditions being imposed.</p> <p><u>Traffic, Roads and Access</u></p> <ul style="list-style-type: none"> The proposed development requires both internal and external infrastructure to support the forecast traffic volumes. Infrastructure upgrades are proposed in line with the James Creek Urban Growth Area Road Infrastructure Developer Contributions Plan <p><u>Stormwater</u></p> <ul style="list-style-type: none"> Stormwater management over the site is proposed via rainwater tanks, stormwater pipe and pit infrastructure within road reserve areas (no inter-allotment drainage proposed) and three bio-retention basins. The design of the bio-retention basins is dual purpose; to provide peak flow attenuation and to provide stormwater quality treatment to meet Council Sustainable Water Control targets for design stormwater events. The modelled stormwater quality outputs exceed Council's Sustainable Water Controls for both quality and quantity. <p><u>Water</u></p> <ul style="list-style-type: none"> Reticulated water services for the site shall be provided from an external water main which was extended to service the site by Council following the rezoning of the subject lot. <p><u>Sewer</u></p> <ul style="list-style-type: none"> The proposal incorporates provision of an internal low-pressure sewerage system in accordance with Council's specifications and requirements. <p><u>Flooding</u></p> <ul style="list-style-type: none"> The site being located above the modelled Q100 and Q100 + climate change events. 	Y
Strategic Planning Unit	<p>Council's Strategic Planner reviewed the proposal and raised concerns in relation to the Land Use Conflict Risk Assessment (LUCRA) prepared by Geolink which indicates that residential lots are about 80m from cattle stockyards to the east, however, remains silent in relation to the proposed Childcare Centre and Commercial Land, both of which are (or could</p>	N

	<p>depending on the future use of the commercial land) sensitive receptors.</p> <p>The LUCRA relies on a 50m separation distance between the cattle yards and dwellings, instead of the DPI Agriculture, Buffer Zones to Reduce Land Use Conflict with Agriculture - An Interim Guideline November 2018, Primefact 1624.</p> <p>To ensure adequate amenity is achieved a condition of consent is recommended requiring that an acoustic assessment be prepared by a suitably qualified acoustic professional to determine the impact of the existing cattle yards on the childcare facility prior to the issue of a construction certificate for the child care facility in order to determine appropriate acoustic treatments and ensure the relevant noise criteria can be met. It is considered that appropriate conditions can also be placed on any development application for commercial use to mitigate the potential for land use conflict on the commercial lot.</p>	
Environmental Health	Council's Environmental Health Officer reviewed the submitted plans and recommended conditions being imposed.	Y
Open Spaces	Council's Open Spaces and Facilities Officer reviewed the submitted plans and recommended conditions being imposed	Y
Health & Building Unit	<p>Council's Building Surveyor reviewed the submitted plans and recommended conditions being imposed.</p> <p>It was noted that deemed to satisfy provisions of the National Construction Code require sanitary facilities including accessible sanitary facilities for the staff of the Childcare Centre which are not detailed on the plans. A condition requiring amended plans be provided prior to the issue of a construction certificate for the childcare facility is proposed to address this issue.</p>	Y
Trade Waste Unit	Council's Trade Waste Officer reviewed the submitted plans and recommended conditions being imposed.	Y

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 28 March 2024 until 13 May 2024. 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 93 unique submissions plus 1 petition (265 signatures), objecting to the proposed development in its current form.

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>	62	<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. Discussions with BusWays and TfNSW demonstrate that bus runs are regularly reviewed and when the critical mass arrives to justify a change in the bus route then the site will be included with public transport..</p> <p>A neighbourhood centre provides future opportunity for local shops, health care services, and food and drink outlets that provide services to residents and opportunities for social interaction.</p> <p>The proposed childcare facility will cater for 103 children and is driven by an existing need in the area for childcare services.</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 low pressure sewerage reticulation system to service the site, including sewage pumping stations.</p> <p>Outcome: Council considers 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>	30	<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 1B subdivision works.</p>

		Outcome: Council considers this issue has been satisfactorily addressed.
<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>	4	<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>Given that stormwater infrastructure is proposed adjacent the laneway and flows are directed along Austons Lane to James Creek, following consultation with Crown Lands it was agreed that Austons Lane be transferred to Council. Furthermore, Council's Roads Policy requires that any adopted length of Crown road be of suitable condition prior to acceptance as a Council maintained road.</p> <p>A condition of consent has been recommended requiring that the lane is upgraded to a Category 2 standard.</p> <p>Outcome: Council considers this issue has been satisfactorily addressed.</p>
<p>Stormwater management (quality and quantity) and flooding.</p> <p>Submissions raised concern regarding stormwater management including the impact from runoff on adjoining and adjacent farmland, as well as the ongoing cost to Council of the proposed stormwater basins.</p>	50	<p>The development proposes 3 stormwater management areas, with a bio-retention basin located in a drainage reserve at the point of discharge of the 3 remaining catchments. The northeast and southeast basins both discharge directly to licenced discharge points being the existing swale drainage of James Creek Rd, while the southwest catchment discharges to Austons Lane.</p> <p>Given that no development is proposed within the northwest catchment (Balance Lot 290), no stormwater management works are proposed in this area.</p> <p>The basins are sized to attenuate flows to be equal to, or less than modelled peak flows for pre-development scenarios in 5, 10, 20, 50 and 100 ARI storm events.</p> <p>The modelled stormwater quality outputs exceed Council's Sustainable Water Controls for both quality and quantity.</p> <p>Outcome: Council considers 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</p>	38	<p>A 50m buffer has been provided to adjoining rural land in accordance with the minimum requirements established under NSW Department of Primary Industry 2018 Primefact, <i>Buffer Zones to Reduce Land Use Conflict with Agriculture</i>.</p> <p>While the buffers contain perimeter roads up to half of the buffer area is to be vegetated assisting in the management of spray drift, dust and to some extent, noise and odour.</p>

address the potential conflict.		<p>As noted earlier in this report, the LUCRA does not specifically address the commercial lot or proposed childcare which are located in proximity to cattle yards on the neighbouring property to the east.</p> <p>A condition of consent has been recommended requiring an acoustic assessment be prepared prior to the issue of a construction certificate for the childcare. It is considered that an acoustic assessment can also be conditioned for any future development application associated with the commercial lot.</p> <p>Outcome: Council considers 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>	10	<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>In accordance with the NSW Government's Gateway Determination conditions the site was not included as an Urban Release Area under the LEP nor was the Indicative Concept Plan given any weight through site-specific provisions or planning agreements. No local character statement or site specific DCP provisions have been pursued and adopted to provide direct guidance and expectations for the development of this site within its context.</p> <p>It is noted that the subdivision design now incorporates a 50m separation distance between proposed residential lots and adjacent rural land to the north, east and west, which is more reflective of the rezoning plan.</p> <p>The proposal is considered consistent with the relevant State and local legislation and generally consistent with the Clarence Valley DCP and relevant contribution plans.</p> <p>Outcome: Council considers this issue has been satisfactorily addressed.</p>
<p>Urban design and Local Character.</p> <p>Submissions raised concern about the increased density of the development, non-compliant lot sizes for dwellings, under 400m², inconsistency with the surrounding built environment, provision of open space, pedestrian connectivity, heat island effect, light pollution and lack of affordable housing options.</p>	80	<p>In contrast to the previous development application (SUB2021/0042), the subdivision design is less insular and more open to James Creek Road through conversion of residential lots to open space either side of the planned commercial precinct. A continuous 50m offset to rural land around the north, east and west perimeters also facilitates perimeter lots addressing the external adjoining rural landscape.</p> <p>While density has been increased and minimum lots of 350m² proposed, these attributes are considered reflective of the R3 medium density zone. The small lots have been appropriately tested to ensure the homes to be built on the land will be able to satisfy the Clarence Valley Residential DCP.</p>

		<p>The design is considered largely consistent with the Indicative Concept Plan submitted as part of the Planning Proposal for the rezoning despite the plan being given no weight through site-specific provisions or planning agreements. Furthermore, the proposed urban design is compliant with the Clarence Valley Local Environmental Plan 2011 development standards and largely compliant with the Clarence Valley Development Control Plan.</p> <p>Outcome: Council considers 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>	81	<p>The applicant has provided a Traffic Impact Assessment (TIA) to address the impacts of the traffic generated by the proposal on the surrounding road network, including traffic generated from the proposed childcare facility.</p> <p>The TIA has been reviewed by Council's Traffic Engineer whom confirmed the traffic assumptions are supported and proposed infrastructure has been designed in accordance with the minimum NRDC requirements.</p> <p>Outcome: Council considers 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>	8	<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>Submissions raised concern that the vegetated land north of the development site should be considered as a bushfire hazard.</p>	15	<p>Neither the subject site, nor the land north immediate north of the site is mapped as bushfire prone land. Nevertheless, the application was referred to the NSW Rural Fire Services for review. On 16 May 2022, the NSW Rural Fire Services, advised following their review of the plans and documents for the proposal, that they did not object to the proposal subject to recommended conditions of consent being imposed addressing:</p> <ul style="list-style-type: none"> • Asset Protection Zones; • Construction Standards; • Access – Public Roads; • Water and Utility Services; and • Landscaping. <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>	15	<p>The development application has been publicly exhibited 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>It is noted that the applicant did undertake consultation with immediate neighbours in preparation of the LUCRA.</p> <p>Outcome: Council considers 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>	41	<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>
<p>Previous application refused by NRPP</p> <p>329 lot subdivision previously assessed. New proposal lodged and similar to previous.</p>	31	<p>The reasons for refusal of the previous application SUB2023/0759 have largely been addressed by the current application. In particular, all stormwater is to be discharged via licence discharge points to road reserves; the proposal includes provision of a low pressure sewage system to Council's specifications; a 50m buffer has been provided to adjacent rural land to mitigate potential land use conflict; residential lots have been replaced along James Creek with open space allowing the estate to address James Creek and surrounds; a childcare facility is proposed to increase social benefit; and the timing of contributions/infrastructure upgrades has been resolved.</p> <p>Outcome: Council considers this issue has been satisfactorily addressed.</p>
<p>Owners consent for work on Austons Lane and point of discharge</p> <p>Lawrence's solicitor letter, noting stormwater for the entire site should be addressed for orderly development of land under Section 1.3 of the EP&A Act.</p>	1	<p>The application as originally submitted included minor works associated with the southwest basin in the Austons Lane road reserve, owned by Crown Lands. The application has since been amended to ensure all proposed works are fully contained within the subject lot. Nevertheless, water will discharge to Austons Lane via a lawful point of discharge. To avoid any doubt, Crown Lands has been consulted and has provided landowners consent for the development application.</p> <p>It is intended that Austons Lane be transferred to Council as part of the application. Council's Roads Policy requires that any adopted length of Crown road be of suitable condition prior to acceptance as a Council maintained road.</p>

		<p>A condition has been recommended requiring Auston's Lane is upgraded to a Category 2 road prior to transfer to Council.</p> <p>Outcome: Council considers this issue has been satisfactorily addressed.</p>
<p>Addition of a Childcare centre</p> <p>Impacts from additional traffic movements and a lack of connection to public transport</p>	20	<p>The childcare facility has been incorporated in response to the comments from the planning panel regarding the previous application lacking social benefit and in response to a needs assessment submitted with the application.</p> <p>The Traffic Impact Assessment includes assessment of the additional traffic movements associated with the childcare.</p> <p>The local bus service provider and TfNSW have both confirmed that public transport can be provided once demand is established on the site.</p> <p>The fact that there is not an existing bus service does not preclude a future service and this would be expected to occur to facilitate this development at the appropriate time.</p> <p>Outcome: Council considers this issue has been satisfactorily addressed.</p>
<p>Residual development lot</p> <p>Provision of suitable infrastructure and services to future development on residue land, and development potential of a similar density to proposed development versus R5 Large Lot Residential sized land parcels.</p>	20	<p>No development is proposed on the Residual development lot (lot 290) as part of the development application. Any future development will be subject to a development application. Nevertheless, the proposed subdivision is not considered to preclude future servicing of the residue lot.</p> <p>Outcome: Council considers this issue has been satisfactorily addressed.</p>
<p>Stormwater</p> <p>Using Grafton data for rainfall</p>	16	<p>It is noted that two different stormwater computer simulation models have been developed, each for a specific purpose.</p> <p>The MUSIC model was used to demonstrate compliance with the stormwater treatment targets. The model simulates a five year period using historical rainfall data for Grafton from 1972 to 1976. This is the rainfall data specified by Council to be used in MUSIC model simulations.</p> <p>The DRAINS model was used to demonstrate compliance with the stormwater peak flow attenuation requirements. As is standard practice for hydrologic/hydraulic models that are used to simulate peak flows, this model does not directly use historical rainfall data as an input. Instead, it uses 'design rainfall' and 'design storms' as per the procedures described in the national guideline Australia Rainfall & Runoff.</p>

		Outcome: Council considers this issue has been satisfactorily addressed.
DCP or masterplan for James Creek	4	<p>It is acknowledged and understood that no local character statement or site specific DCP provisions has been pursued and adopted to provide direct guidance and expectations for the development of this site within its context.</p> <p>Nevertheless, the proposed development is largely compliant with the controls provided under the residential section of the Clarence Valley DCP, as well as the LEP and State government requirements.</p> <p>Outcome: Council considers this issue has been satisfactorily addressed.</p>
<p>Suitable provision of sewer – pump station and associated infrastructure</p> <p>Lack of detail to ensure suitable sewer services are provided</p>	20	<p>The previous Development Application (SUB2021/0042) proposed an internal gravity sewer network, which was not supported by Council staff. The subject application has revised the sewer service to provide a low-pressure sewerage system in accordance with Council's specifications and requirements.</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:

- Bushfire hazard mitigation and landscaping compatibility; and
- Land use conflict assessment.

5.1 Bushfire hazard mitigation and landscaping compatibility

NSW Rural Fire Service (RFS) has advised that the site and most of the surround lands accommodate bushfire prone vegetation regardless of the site not being mapped as Bushfire Prone Land.

Upon review of the Bushfire Assessment Report the RFS raised concern that no perimeter road is provided to the 'Balance Area', Lot 290 and adjacent residential lots and advised Lot 290 is considered unmanaged land. Further concern was raised regarding the management of open space and drainage reserve lots, particularly those lots adjacent to unmanaged vegetation.

A Statement of Landscape Intent has been submitted with the development application detailing the proposed improvements and landscaping for the Village Green, Entry Park and perimeter parks and basins. The plan notes that the northeast park and basin and southwest park and basin are to be landscaped to the requirements of Planning for Bushfire Protection.

In response, NSW Rural Fire Service has recommended conditions of consent, which increase the number of lots needing to be maintained and managed in perpetuity as Inner Protection Areas in accordance with the requirements of Appendix 4 of Planning for Bushfire Protection 2019. This includes the Entry Park, northeast and southeast basins and

commercial lot. It is also recommended that an easement is placed on title over the residue lot or lot 290 to ensure an asset protection zone is provided and maintained to the benefit of the adjoining residential lots.

The NSW Rural Fire Service has recommended conditions of consent have been incorporated into Attachment 1.

It is further recommended that a detailed landscaping plan is prepared prior to the commencement of construction to demonstrate compliance with the recommended RSF conditions of consent to ensure:

- tree canopy cover should be less than 15% at maturity;
- trees at maturity should not touch or overhang the dwelling;
- lower limbs should be removed up to a height of 2m above the ground;
- tree canopies should be separated by 2 to 5m;
- preference should be given to smooth-barked and evergreen trees;
- large discontinuities or gaps in vegetation should be provided to slow down or break the progress of fire towards dwellings;
- shrubs should not be located under trees;
- shrubs should not form more than 10% ground cover;
- clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation;
- grass should be kept mowed (as a guide, grass should be kept to no more than 100mm in height); and
- leaves and vegetation debris should be removed.

5.2 Land Use Conflict

Council's Strategic Planner reviewed the proposal and raised concerns in relation to the Land Use Conflict Risk Assessment (LUCRA) prepare by Geolink which indicates that residential lots are about 80m from cattle stockyards to the east, however, remains silent in relation to the proposed Childcare Centre and Commercial Land, both of which are (or could depending on the future use of the commercial land) sensitive receptors.

The LUCRA relies on a 50m separation distance between the cattle yards and dwellings that is prescribed in the Lismore DCP as a guide, instead of the DPI Agriculture, Buffer Zones to Reduce Land Use Conflict with Agriculture - An Interim Guideline November 2018, Primefact 1624 (The Guideline) and then incorrectly states that the 200m distance suggested in the Handbook relates to "more commercial or intensively used yards".

While it is not known what consideration Lismore Council made when it settled on 50m in its DCP, there is a good reason for the 200m distance prescribed in the Guideline/Handbook and the Codes SEPP.

The LUCRA makes the point that the 200m distance prescribed in the Codes SEPP, is not a recommended separation distance as such, but an approval pathway trigger. While this is correct, there is a reason the SEPP refers to 200 meters and not 50 meters. Section 2.32B (d) of the Codes SEPP requires that a development (stock yards) must be located at least 200m from any dwelling that is located on land on the opposite side of a road that separates the landholding on which the development is located, in order for it to be an exempt development.

In this instance the distance is 80 meters, or less in the case of the proposed childcare centre and commercial development.

To ensure adequate amenity is achieved a condition of consent is recommended requiring that an acoustic assessment be prepared by a suitably qualified acoustic professional to determine the impact of the existing cattle yards on the childcare facility prior to the issue of a construction certificate for the child care facility in order to determine appropriate acoustic treatments and ensure the relevant noise criteria can be met. It is considered that appropriate conditions can also be placed on any development application for commercial use to mitigate the potential for land use conflict on the commercial lot.

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 on balance the application can be supported.

It is considered that the key issues as outlined in can be resolved satisfactorily through amendments to the proposal and/or in the recommended draft conditions at **Attachment A**.

7. RECOMMENDATION

That the Development Application DA2023/0759 for a 290 lot staged residential subdivision and associated infrastructure works at James Creek Road, James Creek be APPROVED pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of approval attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Draft Conditions of Consent
- Attachment B: Council Advice Notes

Attachment A: Draft Conditions of Consent and Council Advice Note

Conditions

General

1. Development must be carried out in accordance with the following approved plans and documents, except where the conditions of this consent expressly require otherwise.

Approved plans

Plan No	Revision number	Plan Title	Drawn by	Date of plan
3204/C110	E	Staging Plan	GeoLink Pty Ltd	16/8/2024
3204/C111	F	Lot Layout and Lot Areas	GeoLink Pty Ltd	12/7/2024
3204/C112	E	Lot Layout and Lot Dimensions	GeoLink Pty Ltd	12/7/2024
3204/C121	E	Design Layouts Sheet 1 of 5	GeoLink Pty Ltd	12/7/2024
3204/C122	E	Design Layouts Sheet 2 of 5	GeoLink Pty Ltd	12/7/2024
3204/C123	E	Design Layouts Sheet 3 of 5	GeoLink Pty Ltd	12/7/2024
3204/C124	E	Design Layouts Sheet 4 of 5	GeoLink Pty Ltd	12/7/2024
3204/C125	E	Design Layouts Sheet 5 of 5	GeoLink Pty Ltd	12/7/2024
3204/C127	D	James Creek Road Intersection Detail and Typical Road Section	Geolink Pty Ltd	3/05/2024
3204/C130	D	External Intersection Details James Creek Road/Yamba Road	Geolink Pty Ltd	3/05/2024
3204/C131	D	External Path Network and Typical Section	Geolink Pty Ltd	3/05/2024
3204/C132	D	Gardiners Road / Concept Upgrade for Flood Immunity	Geolink Pty Ltd	3/05/2024
3204/C170	D	Sewerage Rising Main	Geolink Pty Ltd	3/05/2024
8	Issue A-21 Nov 23	2 – Architectural Drawings 2 – Plan-Site	Rust Architecture Design	Nov23
9	Issue A-21 Nov 23	2 – Architectural Drawings 3-Plan-External Layout	Rust Architecture Design	Nov23
10	Issue A-21 Nov 23	2 – Architectural Drawings 4-Plan-Internal Layout	Rust Architecture Design	Nov23
11	Issue A-	2 – Architectural	Rust	Nov23

	21 Nov 23	Drawings 5-Elevation-North	Architecture Design	
12	Issue A- 21 Nov 23	2 – Architectural Drawings 6-Elevation-South	Rust Architecture Design	Nov23
13	Issue A- 21 Nov 23	2 – Architectural Drawings 7-Elevation-West	Rust Architecture Design	Nov23
14	Issue A- 21 Nov 23	2 – Architectural Drawings 8-Elevation-East	Rust Architecture Design	Nov23

Approved documents

Document title	Version number	Prepared by	Date of document
Bushfire Hazard Assessment	1	GeoLink Pty Ltd	8 July 2024
Master Plan and Building Typologies Report	-	Rust Architecture Design	November 2023
Stormwater Management Report	8	GeoLink Pty Ltd	24 November 2023
The Village at James Creek – Flood Emergency Plan	3	Water Engineering Plus Pty Ltd	17 May 2024
Landscape Intent Plan	J	Place Design Group	12 July 2024

In the event of any inconsistency with the approved plans and documents and a condition of this consent, the condition prevails.

Condition reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development

2. Staging Plan

Any alterations/amendments to the approved Staging Plan must be approved by the General Manager.

Condition reason: To ensure the development is carried out in accordance with the staging plan

3. Liquid Trade Waste

Commercial activities that propose to generate liquid trade waste are required to comply with Council's Liquid Trade Waste Policy and the NSW DPIE Liquid Trade Waste Management Guidelines 2021.

Condition reason: To ensure compliance with Council's Trade Waste Policy

4. Bushfire attack level

Staged developments must provide temporary Asset Protection Zones within adjacent stages that have not commenced where there is no perimeter road until that stage has commenced construction. The Asset Protection Zone must be maintained as an Inner

Protection Area (IPA) for a distance of 23 metres in accordance with the requirements of Appendix 4 of Planning for Bush Fire Protection 2019.

When establishing and maintaining an inner protection area, the following requirements apply:

- a. tree canopy cover should be less than 15% at maturity;
- b. trees at maturity should not touch or overhang the dwelling;
- c. lower limbs should be removed up to a height of 2m above the ground;
- d. tree canopies should be separated by 2 to 5m;
- e. preference should be given to smooth-barked and evergreen trees;
- f. large discontinuities or gaps in vegetation should be provided to slow down or break the progress of fire towards dwellings;
- g. shrubs should not be located under trees;
- h. shrubs should not form more than 10% ground cover;
- i. clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation;
- j. grass should be kept mowed (as a guide, grass should be kept to no more than 100mm in height); and
- k. leaves and vegetation debris should be removed

Condition reason: To comply with Planning for Bushfire Protection 2019

5. Public Access Roads

Public Access roads must comply with Table 5.3b of 'Planning for Bush Fire Protection 2019'

Condition reason: To minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.

6. Water and Utility Services

The provision of water, electricity and gas must comply with the following in accordance with Table 5.3c of Planning for Bush Fire Protection 2019:

- a. reticulated water is to be provided to the development;
- b. fire hydrant, spacing, design and sizing complies with the relevant clauses of Australian Standard AS2419.1:2021;
- c. hydrants are not located within any road carriageway;
- d. reticulated water supply to urban subdivisions uses a ring main system for areas with perimeter roads;
- e. fire hydrant flows and pressures comply with the relevant clauses of AS 2419.1:2021;
- f. all above-ground water service pipes are metal, including and up to any taps;
- g. where practicable, electrical transmission lines are underground;
- h. where overhead, electrical transmission lines are proposed as follows:
 - i. lines are installed with short pole spacing (30m), unless crossing gullies, gorges or riparian areas; and
 - ii. no part of a tree is closer to a power line than the distance set out in accordance with the specifications in ISSC3 Guideline for Managing Vegetation Near Powerlines
- i. reticulated or bottled gas is installed and maintained in accordance with AS/NZS 1596:2014 The storage - and handling of LP Gas, the requirements of relevant authorities, and metal piping is used;

- j. all fixed gas cylinders are kept clear of all flammable materials to a distance of 10m and shielded on the hazard side;
- k. connections to and from gas cylinders are metal; polymer sheathed flexible gas supply lines are not - used; and
- l. above-ground gas service pipes are metal, including and up to any outlets

Condition reason: To provide adequate services of water for the protection of dwellings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a dwelling.

7. **Landscaping**

Landscaping is to be designed and managed to minimise flame contact and radiant heat to dwellings, and the potential for wind-driven embers to cause ignitions by complying with the following.

- a. landscaping is in accordance with Appendix 4 of Planning for Bush Fire Protection 2019; and
- b. fencing is constructed in accordance with the following:
 - i. fences in bush fire prone areas should be made of either hardwood or non-combustible material.
 - ii. in circumstances where the fence is within 6m of a dwelling or associated with a dwelling constructed to BAL-29, the fence must be made of non-combustible material only.

Condition reason: To provide adequate services of water for the protection of dwellings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a dwelling.

Building Work (Childcare Centre)

Before Issue of a Construction Certificate

8. **Section 7.12 Contributions**

Payment to Council of the contributions pursuant to Section 7.12 of the Environmental Planning and Assessment Act 1979 and the Clarence Valley Contributions Plan 2011:

\$25,000.00 GLS94ACVCOthResAcco

This amount is based on the following calculation:

This amount is based on the following calculation:

- a. Proposed cost of carrying out the development is more than \$200,000 = value of development x 0.01
- b. The value of development stated in the application was \$2,500,000.00

The contributions are to be paid to Council prior to release of the Construction Certificate for the Childcare Centre. All contribution plans are available for inspection on Council's website.

In the event of any subsequent amendment to the approved Development Plans, the calculated contribution amounts may vary, and if so will become the

contribution payable. A true estimate of the value of development must be provided when application is made for the Construction Certificate.

Condition reason: To Comply with Council's Contributions Plan

9. **Section 68 Sanitary Plumbing & Drainage**

Prior to issue of a Construction Certificate for the Childcare Centre under Section 68 of the Local Government Act 1993 shall be obtained from Council for any proposed sewerage work, water plumbing and stormwater work. This application can be lodged via the NSW Planning Portal or at Council's office.

Condition reason: To Comply with the provisions of the Local Government Act 1993

10. **Acoustic Assessment**

Prior to issue of a Construction Certificate for the Childcare Centre, an Acoustic Assessment must be prepared to consider noise impacts from the childcare centre on adjoining properties. Any noise mitigation measures must be implemented and addressed as part of the Construction Certificate.

Condition reason: To comply with Planning for Bushfire Protection 2019

11. **Detailed Landscape Plan**

A landscape plan, prepared by a person competent in the field is to be submitted to Council for approval prior to the issue of a Construction Certificate for the Childcare Centre. The plan shall indicate the mature height, location, quantity and species of all plantings and shall provide details of soil conditions, the planting method and maintenance program.

Condition reason: To demonstrate compliance with Council's DCP and the Childcare Design Code

12. **Childcare Design Guidelines**

Prior to issue of the Construction Certificate, certification that the design of the childcare centre complies with the Childcare Design Code must be submitted to the certifier.

Condition reason: To demonstrate compliance with the Childcare Design Code

13. **Staff Sanitary Facilities**

The construction certificate plans shall detail sanitary facilities including accessible sanitary facilities for the staff of the Childcare Centre within the existing footprint of the building unless otherwise justified in accordance with the National Construction Code.

Condition reason: To demonstrate compliance with the Childcare Design Code

14. **Bicycle Parking Spaces**

Prior to issue of the Construction Certificate for the Childcare Centre, updated plans must be provided to include provision for bicycle parking on the site.

Condition reason: To ensure sanitary facilities for the staff's personal hygiene are adequately considered.

15. **Car parking details**

Before the issue of the Construction Certificate for the Childcare Centre, written evidence prepared by a suitably qualified engineer must be obtained that demonstrates, to the certifier's satisfaction, the plans for parking facilities comply with the relevant parts of AS 2890.1 Parking Facilities – Off-Street Carparking and Parking and Vehicular

Access Controls of council's relevant development control plan (in force as at the date of determination of this consent).

The adequacy of parking, car parks, driveways and vehicular accesses for the development is to be demonstrated by the submission of standard scale plans with manoeuvring paths shown in accordance with AS2890. This must clearly demonstrate that the parking area will function as intended. The parking area plans are to be submitted and approved by Council or accredited private certifier.

Condition reason: To ensure parking facilities are designed in accordance with the Australian Standard and council's DCP

16. Preparation of construction and fit out plans for food and drink premises

Prior to issue of a Construction Certificate for the Childcare Centre, plans demonstrating the design and construction of the kitchen and preparation areas comply with the following must be provided:

- Food Act 2003;
- Australia and New Zealand Food Standards Code 3.2.2: Food Safety Practices and General Requirements; and
- Australia and New Zealand Food Standards Code 3.2.3: Food Premises and Equipment

Condition reason: To ensure detailed construction and fit out plans are submitted which comply with the relevant standards

17. Staging – Childcare Centre

Prior to issue of the Construction Certificate for the Childcare Centre, proposed Lot 69 must be created and registered by title.

Condition reason: To ensure the development is carried out in accordance with the staging plan

18. Prevention of glare nuisance

The roof covering of the Childcare Centre is to be of a colour or finish which does not produce glare which adversely affects the amenity of nearby properties. Details of how this to be achieved are to be shown on the Construction Certificate plans.

Condition reason: To ensure that the roof material does not produce a glare nuisance to nearby properties

19. Bushfire attack level

The site is located adjacent to a vegetation formation determined as Forest. New construction of the Childcare Centre must comply with section 3 and section 5 (BAL 12.5) Australian Standard AS3959-2018 'Construction of dwellings in bushfire-prone areas' or the relevant requirements of the National Association of Steel Framed Housing Standard (2021) - Steel Framed Construction in Bushfire Areas. New construction must also comply with the construction requirements in Section 7.5 of 'Planning for Bush Fire Protection 2019' with full details of how this is to be achieved being shown on the plans/specifications submitted with the Construction Certificate documentation.

Condition reason: To comply with Planning for Bushfire Protection 2019

Before Building Commences

20. **Notice of intention to commence work**
Prior to work commencing on a development the applicant must give notice to Council of their intention to commence work. Such notice shall be submitted to Council at least two (2) days before work commences.
Condition reason: To comply with legislative requirements
21. **Issue of Construction Certificate**
No Construction is to be commenced until a Construction Certificate has been issued.
Condition reason: To ensure that the works comply with the state's building regulations
22. **Signs on site**
A sign must be erected in a prominent position on any site on which building work or demolition work is being carried out:
a Showing the name, address, and telephone number of the principal certifier for the work, and
b Showing the name of the principal contractor (if any) for any building work and telephone number on which that person may be contacted outside working hours, and
c Stating that unauthorised entry to the work site is prohibited.
Any such sign is to be maintained while the building work or demolition work is being carried out but must be removed when the work has been completed.
NOTE: this does not apply in relation to building work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
Condition reason: Prescribed condition EP&A Regulation, clauses 98A (2) and (3)
23. **Toilet Facilities**
Toilet Facilities are to be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be:
a A standard flushing toilet, connected to a public sewer, or
b An approved temporary chemical closet.
The provision of toilet facilities in accordance with this condition must be completed before any other work is commenced.
Condition reason: To provide onsite facilities in accordance with work health and safety requirements

During Building Work

24. **Working Construction Hours**
Working hours on construction or demolition shall be limited to the following:
i 7.00am to 6.00pm Monday to Friday
ii 8.00am to 1.00pm Saturdays
iii No work permitted on Sundays and public holidays
Condition reason: To protect the amenity of the surrounding area
25. **Site Safety Management**
Building equipment and/or materials shall be contained wholly within the site and not be stored or operated on the footpath or roadway unless specific written approval has been obtained from Council beforehand.
All excavations and back filling associated with the erection and demolition of a building must be executed safely and in accordance with appropriate professional standards and must be properly guarded and protected to prevent them from being dangerous to life

or property.

Condition reason: To ensure site management measures are implemented during the carrying out of site work

26. **Procedure for critical stage inspections**

While building work is being carried out, the work must not continue after each critical stage inspection unless the principal certifier is satisfied the work may proceed in accordance with this consent and the relevant Construction Certificate.

Condition reason: To require approval to proceed with building work following each critical stage inspection

27. **Waste enclosure**

A suitable enclosure shall be provided on site, during construction, for depositing waste materials that could become wind blown. Waste materials shall be disposed of to an approved recycling service or waste depot. No burning of waste materials shall occur.

Condition reason: To ensure waste material is appropriately disposed of

28. **Approved Plans Onsite**

A copy of the approved and certified plans, specifications and documents incorporating the conditions of approval and certification shall be kept on the site at all times and shall be readily available for perusal by an officer of Council or the Private Certifier.

Condition reason: To provide certainty on the terms of approval and approved plans

29. **Shoring and Adequacy of Adjoining Property**

If the development involves excavation that extends below the level of the base of the footings of a building, structure or work on adjoining land (including any structure or work within a road or rail corridor), the person having the benefit of the development consent must, at the person's own expense:

- a. Protect and support the building, structure or work from possible damage from the excavation, and
- b. Where necessary, underpin the building, structure or work to prevent any such damage.

This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

Condition reason: Prescribed condition – EP&A Regulation clause 98E

30. **Discovery of relics and Aboriginal objects**

While site work is being carried out, if a person reasonably suspects a relic of Aboriginal object is discovered:

- a the work in the area of the discovery must cease immediately;
- b the following must be notified
 - i) for a relic - the Heritage Council; or
 - ii) for an Aboriginal object - the person who is the authority for the protection of Aboriginal objects and Aboriginal places in New South Wales under the *National Parks and Wildlife Act 1974*, section 85.

Site work may recommence at a time confirmed in writing by:

- a for a relic - the Heritage Council; or
- b for an Aboriginal object - the person who is the authority for the protection of Aboriginal objects and Aboriginal places in New South Wales under the *National Parks and Wildlife Act 1974*, section 85.

Condition reason: To ensure the protection of objects of potential significance during works

Before Issue of an Occupation Certificate

31. **Occupation Certificate**
The development is not to be occupied or used until such time as an Occupation Certificate has been issued.
Condition reason: To ensure the safety of the occupants
32. **Completion of landscape works**
All landscaping works are to be completed in accordance with the approved plan prior to the Occupation Certificate/Subdivision Certificate being issued.
Condition reason: To ensure that the development is adequately landscaped
33. **Construction of Carparks and Access**
Car parking, driveways, manoeuvring and access areas must be constructed, sealed, line marked and drained in accordance with the approved plan prior to issue of the Occupation Certificate.
Condition reason: To ensure that vehicular access and parking are provided in accordance with Council's Engineering Specifications for Development
34. **Environmental Health Inspection**
Prior to issuing the Occupation Certificate and on completion of fit out, an inspection is to be arranged with Council's Environmental Health Officer for final approval.
Condition reason: To ensure compliance with approved plans prior to operation
35. **Bush Fire Emergency Management and Excavation Plan**
A Bush Fire Emergency Management and Evacuation Plan shall be prepared in accordance with table 6.8d of Planning for Bushfire Protection 2019. A copy of the Bush Fire Emergency Management and Evacuation Plan shall be provided to the Local Emergency Management Committee prior to the issue of an Occupation Certificate for the Childcare Centre.
Condition reason: To comply with Planning for Bushfire Protection 2019

Occupation and Ongoing Use

36. **Food Premises Registration**
The proprietor of the Child Care Centre shall provide appropriate notification to Council prior to commencement of operations by submitting Council's Food Premises Registration Form available at [Clarence valley council website](#).
Condition reason: To enable council to ensure compliance with the consent when the business is operating
37. **Food Safety Supervisor**
The food premise must have a NSW Food Authority Food Safety Supervisor employed in advance of trade. The list of registered training organisations that provide the certificate is available on the [NSW Food Authority web page](#).
Condition reason: To ensure the premises complies with the relevant health legislation and standards

38. **Operating Hours**
During ongoing use of the premises, the hours of operation of the childcare centre are restricted to 7am-7pm Monday to Friday.
Condition reason: To ensure the premises complies with the relevant health legislation and standards

Subdivision Work

Before Issue of a Subdivision Works Certificate

39. **Construction Site Management Plan**
Before the issue of a subdivision works certificate, a construction site management plan must be prepared, and provided to Council. The plan must include the following matters:
- a The location and materials for protective fencing and hoardings on the perimeter of the site;
 - b Provisions for public safety;
 - c Pedestrian and vehicular site access points and construction activity zones;
 - d Details of construction traffic management including:
 - i) Proposed truck movements to and from the site;
 - ii) Estimated frequency of truck movements; and
 - iii) Measures to ensure pedestrian safety near the site;
 - e Details of bulk earthworks to be carried out;
 - f The location of site storage areas and sheds;
 - g The equipment used to carry out works;
 - h The location of a garbage container with a tight-fitting lid;
 - i Dust, noise and vibration control measures;
 - j The location of temporary toilets;

A copy of the construction site management plan must be kept on-site at all times while work is being carried out.

Condition reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction

40. **Design Certification Report**
A completed 'Design Certification Report' with supporting documentation, in accordance with the requirements of the Northern Rivers Local Government Development Design and Construction Manual must be submitted to Council and/or accredited private certifier with the submission of the Subdivision Works Certificate application.
Condition reason: To ensure that adequate infrastructure and services are provided in accordance with Council's Engineering Specifications for Development

41. **Erosion and sediment control plan**
Before the issue of a subdivision works certificate, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to Council:
- a Council's relevant development control plan,
 - b the guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction' (the Blue Book) (as amended from time to time), and

- c the 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

Condition reason: To ensure no substance other than rainwater enters the stormwater system and waterways

42. **Commencement of Works**

No construction including removal of vegetation and topsoil is to be commenced until a Subdivision Works Certificate has been issued.

Condition reason: To ensure all approvals are obtained prior to works commencing

43. **Crown Road Transfer**

Prior to issue of the applicable Subdivision Works Certificate for Stage 1B, transfer of Austons Lane (crown road) to Council is required. The applicant will be required to provide to Council:

- a A cheque for the application fee made out to the relevant government department.
- b Council's administration fee in accordance with the fees and charges at the time of the application.
- c A plan showing the extent of the road to be transferred.
- d A bond to the value of 130% of the cost of the road works.

Condition reason: To comply with legislative requirements

44. **Water Reticulation Design Plan**

Water Reticulation Design Plan must be submitted for approval with the application for each Subdivision Works Certificate to extend Council's reticulated water network to service the development in accordance with the requirements and specifications of the Clarence Valley Council Sewer & Water Connection Policy and the Northern Rivers Local Government Development Design and Construction Manual.

Connection to the public water reticulation system requires the approval of Council under the NSW Local Government Act.

Any upgrade to the existing water service to the property will be subject to the costs outlined in Council's list of fees and charges.

Condition reason: To comply with Council's Sewer and Water Development Services Plan

45. **Sewerage Reticulation Design Plan**

A Sewerage Reticulation Design Plan must be submitted for approval with the application for each Subdivision Works Certificate to extend Council's reticulated sewerage network to service the development in accordance with the requirements and specifications of the Clarence Valley Council Sewer and Water Connection Policy and the Northern Rivers Local Government Development Design and Construction Manual.

Connection to the public sewerage reticulation system requires the approval of Council under the NSW Local Government Act.

Any upgrade to the existing sewerage service to the property will be subject to the costs outlined in Council's list of fees and charges.

Condition reason: To comply with Council's Sewer and Water Development Services Plan

46. **Road Network Design Plan**

A Road Network Design Plan must be submitted for approval with the application for each Subdivision Works Certificate.

Works to and on public road reserve requires the approval of Council or other Roads Authority under the *NSW Roads Act 1993*.

Condition reason: To ensure that adequate infrastructure and services are provided in accordance with Council's Engineering Specifications for Development

47. **Infrastructure services - Stage 1A**

The following must be prepared in consultation with Council and submitted for approval with the application of the Stage 1A Subdivision Works Certificate:

- a. James Creek Road/Yamba Road intersection design plan generally in accordance with approved plan 3204/C130.
- b. James Creek Road/Road 1 intersection including any necessary culvert upgrades generally in accordance with approved plan 3204/C127.
- c. Pressure Sewer Main plan, from the existing Diamond Street (Townsend) Sewer Pump Station to the site generally in accordance with approved plan 3204/C170.

Condition reason: To ensure that adequate infrastructure and services are provided in accordance with Council's Engineering Specifications for Development

48. **Infrastructure services - Stage 1B**

The following must be prepared in consultation with Council and submitted for approval with the application of the Stage 1B Subdivision Works Certificate:

- a. Shared path plan detailing connection from the site to the Gardiners Road/James Creek Road intersection generally in accordance with approved plan 3204/C131
- b. Gardiners Road upgrade plans generally in accordance with approved plan 3204/C132
- c. Gardiners Road shared path plan generally in accordance with approved plan 3204/C131
- d. Austons Lane upgrade plans in accordance with Council's Category 2 unsealed road standards. Plans shall nominate upgrades to provide a minimum 100mm granular pavement with 4-metre-wide carriageway and passing bays at a maximum of 200 metre intervals. Plans shall also nominate sealing of the Austons Lane/James Creek Road intersection.
- e. Shared path plan detailing connection from the James Creek Road shared path as shown in approved plan 3204/C131 to Jubilee Street, Townsend as generally shown in approved plan 3204/C132.

Condition reason: To ensure that adequate infrastructure and services are provided in accordance with Council's Engineering Specifications for Development

49. **Water Sensitive Urban Design**

Where proposed, Water Sensitive Urban Design (WSUD) systems are to be included in a detailed Design, Construction, Inspection, Testing, Establishment and Staging Management Plan and submitted with the Subdivision Works Certificate application for approval by Council. Road reservation widths are to be in accordance with the Northern Rivers Local Government Development Design and Construction Manual plus additional width to contain proposed WSUD components as approved by Council.

Condition reason: To ensure drainage works are provided in accordance with Council's Engineering Specifications for Development

50. **Road Pavement Designs**

Preliminary road pavement designs, in accordance with the Northern Rivers Local Government Development Design and Construction Manual, must be submitted to Council as part of the Subdivision Works Certificate approval. The asphaltic concrete wearing surface must be a minimum 30mm (residential light to medium traffic) and

40mm (industrial, heavy residential and collector roads) compacted depth. Final pavement design will be subject to in-situ CBR tests.
Stabilised pavement and concrete road pavement suitable for the intended design loadings may be used subject to submission of alternative designs for the approval of Council.

Condition reason: To ensure that adequate infrastructure and services are provided in accordance with Council's Engineering Specifications for Development

51. **Stormwater Drainage**

Prior to the issue of any Subdivision Works Certificate for Stage 1A engineering calculations must be provided which clearly indicate:

- a any necessary upgrade of existing stormwater drainage cross-culverts and affected services/utilities
- b the capacity of table/swale drains, the maximum flow velocities and their resistance to scour.

Table/Swale drains within the road reservation must be designed to protect the road pavement from infiltration of surface water. This could be achieved by either a configuration that locates the water surface level from minor storm flows below the subgrade level, or other methods of protection acceptable to Council.

Batters on table/swale drains must be suitable for mowing by domestic mowers which will generally require a batter with a maximum grade of 1 in 6 unless approved by Council. The width of road reservations must account for any batters and an area suitable for pedestrians at least 2.5 metres wide at all road frontages where there is a water main, and at least 2 metres at all road frontages where there is no water main.

Condition reason: To ensure drainage works are provided in accordance with Council's Engineering Specifications for Development

52. **Bike and Pedestrian Facilities**

The applicant is required to prepare a detailed design of Bike and Pedestrian facilities within the development site and connecting onto the existing network as part of each Subdivision Works Certificate application. The design must be in accordance with the Northern Rivers Local Government Development Design and Construction Manual, Clarence Valley Council - Bike Plan and Pedestrian Access and Mobility Plan (PAMP), AS1428 and AS2890 (where relevant) and sheets 1 – 5 of the approved Design Layout plan.

Condition reason: To ensure that adequate infrastructure and services are provided in accordance with Council's Engineering Specifications for Development

53. **Public Transport Facilities**

Prior to the issue of the Subdivision Works Certificate for Stages 1B, 2, 3 and 4, correspondence from the local bus company shall be sought regarding demand for public transport and provided to Council.

If required, detailed designs of the proposed facilities, including bus stops, bus shelters and the proposed routes, are to be provided as part of the Subdivision Works Certificate application. These designs are to include manoeuvring diagrams to show that the buses will be able to move safely through the subdivision in accordance with the Northern Rivers Local Government Development Design and Construction Manual. Any reasonable requirements of the bus company are to be considered in the design and placement of these facilities for each stage.

Condition reason: To ensure that adequate infrastructure and services are provided in

accordance with Council's Engineering Specifications for Development

54. **Stormwater Management Plan**

All stormwater falling on the property is to be collected within the property and discharged in accordance with the approved Stormwater Management Plan, relevant parts of the applicable Clarence Valley Council Development Control Plans and Northern Rivers Local Government Development Design and Construction Manual (NRDC).

A stage specific Stormwater Management plan and design details of the drainage system and point of discharge must be submitted for approval by Council and/or accredited private certifier prior to issue of the Subdivision Works Certificate for each stage. Connection to the public drainage system requires the approval of Council under the NSW Local Government Act.

Condition reason: To ensure drainage works are provided in accordance with Council's Engineering Specifications for Development

55. **Earthworks Management Plan**

Detailed plans of earthworks including an Earthworks Management Plan must be submitted to Council or accredited private certifier for assessment and approval prior to the issue of a Subdivision Works Certificate for each and every stage.

The Earthworks Management Plan is to be prepared in accordance with Council's guidelines.

Condition reason: To ensure compliance with relevant Australian Standards

56. **Verification of Civil Engineering Works**

Prior to issue of a Subdivision Works Certificate, a practising qualified engineer experienced in structural design and soil mechanics is required to verify the civil engineering works:

- a including earthwork batters and retaining walls, have been designed to be structurally adequate.
- b will not be affected by landslip either above or below the works.
- c will not be affected by subsidence either above or below the works.
- d includes adequate drainage to ensure the stability of the development

Condition reason: To ensure compliance with relevant Australian Standards

57. **Amended Landscape Plan**

Before issue of any Subdivision Certificate, an amended Landscape Plan must be submitted demonstrating compliance with the Planning for Bushfire Protection Guidelines and the NSW Rural Fire Service letter dated 1 August 2024. Council must be satisfied all landscape and tree-works have been completed in accordance with approved plans and documents and any relevant conditions of this consent.

Condition reason: To ensure the approved landscaping works have been completed in accordance with the approved landscaping plan(s)

58. **Open Space Reserve Embellishments**

A plan showing the location and type of embellishments to be constructed within the open space reserves is to be provided to Council for approval prior to issue of the subdivision works certificate for Stage 1A. The furniture/structures are to be of a type approved by Council.

Condition reason: To require details of measures that will protect the public during site works and construction

Before Subdivision Work Commences

59. **Erosion and sediment controls in place**

Before any site work commences, Council, must be satisfied the erosion and sediment controls in the erosion and sediment control plan are in place. These controls must remain in place until any bare earth has been restabilised in accordance with the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time).

Condition reason: To ensure sediment laden runoff and site debris do not impact local stormwater systems and waterways

60. **Signs on site**

A sign must be erected in a prominent position on any site on which building work or demolition work is being carried out:

- a Showing the name, address, and telephone number of the principal certifier for the work, and
- b Showing the name of the principal contractor (if any) for any building work and telephone number on which that person may be contacted outside working hours, and
- c Stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work or demolition work is being carried out but must be removed when the work has been completed.

NOTE: this does not apply in relation to building work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.

Condition reason: Prescribed condition EP&A Regulation, clauses 98A (2) and (3)

61. **Issue of Subdivision Works Certificate**

No Construction is to be commenced until a Subdivision Works Certificate has been issued.

Condition reason: To ensure that the works comply with the state's building regulations

62. **Notice of intention to commence work**

Prior to work commencing on a development the applicant must give notice to Council of their intention to commence work. Such notice shall be submitted to Council at least two (2) days before work commences.

Condition reason: To comply with legislative requirements

63. **Construction of Infrastructure and Services**

Construction of required infrastructure and services is to be in accordance with the applicable Clarence Valley Council Development Control Plans Austroads, AS2890, Northern Rivers Local Government Development Design and Construction Manual and WSAA Guidelines.

Condition reason: To ensure that adequate infrastructure and services are provided in accordance with Council's Engineering Specifications for Development

64. **Inspection Testing Plan**

Prior to commencement of works an Inspection Testing Plan must be submitted to Council for approval. The supervising engineer or registered surveyor must arrange for the hold/witness point inspections and accompany Council and/or accredited Private Certifier on the inspection unless alternative arrangements are made. Hold Point,

Witness Point, On / Off Maintenance and/or Practical Completion inspections involving public infrastructure must be attended by Council officers.

Condition reason: To ensure works are completed to an appropriate standard and documented

65. **Traffic Control Plan**

A Traffic Control Plan (TCP) must be prepared and submitted to Council showing how vehicle and pedestrian traffic will be safely managed within the work site and road reserve. This plan must be prepared by a person authorised by the Transport for New South Wales to prepare TCP's and must be endorsed by Council prior to the occupation of the road reserve and commencement of work.

Condition reason: To require details of measures that will protect the public during site works and construction

66. **Construction Environmental Management Plan**

The contractor engaged to undertake the construction works shall provide a Construction Environmental Management Plan (CEMP) to Council, a minimum of seven days prior to commencing any works. The CEMP shall be prepared in accordance with Council's factsheet and submitted to the Development Engineer at the following email address council@clarence.nsw.gov.au.

The CEMP shall set out the construction approach for the works and should seek to minimise disruption to the local community.

The CEMP shall be approved by Council prior to works commencing on site.

Condition reason: To ensure that the surrounding environment is not detrimentally affected as a result of the development

67. **Pavement Condition Report**

A pavement condition report is to be provided for the nominated haul route of heavy vehicles within the local road network. The report must be completed by a suitably qualified engineer and/or Geotechnical Testing Authority, and is to be submitted to Council prior to commencement of works. The analysis in the report is to consider the impact of heavy vehicle and construction traffic and recommend measures to be taken to maintain the existing pavement condition during the construction phase of the development.

Payment of a bond is required to ensure maintenance of Gardeners Road, James Creek Road and Yamba Road, in the amount of \$100,000, prior to commencement of any works. Should the pavement condition become unsafe Council may provide maintenance without notice to the applicant. Note: Council will endeavour to contact the applicant whenever Council considers maintenance is required.

Condition reason: To ensure that the surrounding environment is not detrimentally affected as a result of the development

68. **Acid Sulfate Soils Management Report**

An Acid Sulfate Soils Management Report must be prepared prior to commencement of the subdivision works.

Condition reason: To ensure any disturbance or likely adverse impact on Acid Sulphate Soils is properly assessed and managed

During Subdivision Work

69. **Benkelman beam testing**

Benkelman beam testing of the constructed road pavement will be required. The testing is to be undertaken by a National Australian Testing Authority registered authority with accreditation for using the Benkelman beam in accordance with RMS Test Method T160.

Condition reason: To ensure that vehicular access and parking are provided in accordance with Council's Engineering Specifications for Development

70. **Fill earthworks**

Any fill earthworks to be undertaken on the site must be carried out in accordance with the placement and compaction of fill described in AS 3798, Level 1 inspection and testing and Northern Rivers Local Government Development Design and Construction Manual.

Condition reason: To ensure compliance with relevant Australian Standards

71. **Working Construction Hours**

Working hours on construction or demolition shall be limited to the following:

- i 7.00am to 6.00pm Monday to Friday
- ii 8.00am to 1.00pm Saturdays
- iii No work permitted on Sundays and public holidays

Condition reason: To protect the amenity of the surrounding area

72. **Approved Plans Onsite**

A copy of the approved and certified plans, specifications and documents incorporating the conditions of approval and certification shall be kept on the site at all times and shall be readily available for perusal by an officer of Council or the Private Certifier.

Condition reason: To provide certainty on the terms of approval and approved plans

73. **Implementation of the site management plans**

While site work is being carried out:

- a. the measures required by the construction site management plan and the erosion and sediment control plan (plans) must be implemented at all times, and
- b. a copy of these plans must be kept on site at all times and made available to council officers upon request.

Condition reason: To ensure site management measures are implemented during the carrying out of site work

74. **Water Services (single dwelling/lot)**

A separate property service shall be provided for each dwelling/lot.

Condition reason: To comply with Council's Sewer and Water Development Services Plan

Before Issue of a Subdivision Certificate

75. **Section 7.11 Contributions**

Payment to Council of the contributions pursuant to Section 7.11 of the Environmental Planning and Assessment Act:

Clarence Valley Contribution Plan 2011 Open Space/Recreation Facilities

Rate per dwelling House or Lot

Coastal \$4,472.70 x 278 = \$1,243,410.60 GL S94CVCOSCoastal

Clarence Valley Contributions Plan 2011 Community Facilities

Rate per dwelling House or Lot

Maclean surrounds \$4,472.70 x 278 = \$1,243,410.60 GL S94CVCCFMaclean

Clarence Valley Contributions Plan 2011 Plan of Management

Rate per Dwelling/Lot \$85.65 x 278 = \$23,810.70 GL S94CVCPoMDwell

James Creek Urban Growth Area Road Infrastructure Developer Contributions Plan 2020

- a Residential Lot/Dwelling House
\$7,208.35 x 204 lots = \$1,470,503.40 GL S94RdWksJamesCr
- b Medium and High Density Residential (per lot/dwelling)
\$4,713.15 x 74 lots = \$348,773.10 GL S94RdWksJamesCr

N.B.

The contribution(s) as assessed will apply for 12 months from the date of this approval. Contributions not received by Council within 12 months of the date of this notice **will be adjusted** in accordance with the adopted Schedule of Fees and Charges current at the time of payment.

The contributions are to be paid to Council prior to issue of the Subdivision Certificate for each relevant stage.

In the event of any subsequent amendment to the approved Development Plans, the calculated contribution amounts may vary and if so will become the contribution payable.

All contribution plans are available for inspection on Council's website

www.clarence.nsw.gov.au.

Condition reason: To comply with Council's Contributions Plans

76. **Completion of landscape and tree works**

Before the issue of each Subdivision Certificate, Council must be satisfied all landscape and tree-works have been completed in accordance with approved plans and documents and any relevant conditions of this consent.

Condition reason: To ensure the approved landscaping works have been completed in accordance with the approved landscaping plan(s)

77. **Preservation of survey marks**

Before the issue of each subdivision certificate, documentation must be submitted by a registered surveyor to Council which demonstrates that:

- a no existing survey mark(s) have been removed, damaged, destroyed, obliterated or defaced, or
- b any survey mark(s) that were damaged, destroyed, obliterated or defaced have been re-established in accordance with the Surveyor General's Direction No. 11 - Preservation of Survey Infrastructure.

Condition reason: To protect the state's survey infrastructure

78. **Certification of constructed Civil Works**

Certification of constructed Civil Works by the supervising engineer and/or registered surveyor is required prior to public infrastructure being accepted "on maintenance" and/or "practical completion" being granted for private property works.

Condition reason: To ensure works are completed to an appropriate standard and documented

79. **Certificate of Compliance**
A Certificate of Compliance for Water and or Sewer works must be obtained from Council prior to release of the Subdivision Certificate or issue of the Building Occupation Certificate, for each and every stage of the development. This may require payment of a fee.
Condition reason: To comply with Council's Sewer and Water Development Services Plan
80. **Provision of Water and/or Sewer Reticulation**
Prior to issue of the Subdivision Certificate, the applicant is to provide water supply and/or sewerage reticulation infrastructure to service all lots in the subdivision/the development, in accordance with the requirements and specifications of the Clarence Valley Council Sewer & Water Connection Policy and Northern Rivers Local Government Development Design and Construction Manual.
Condition reason: To comply with Council's Sewer and Water Development Services Plan
81. **Easement for Sewerage**
The granting of an easement for sewerage purposes, over the Council's sewer mains within any lots in the subdivision prior to issue of the Subdivision Certificate.
a Where the sewer is less than 1.5 metres depth, the easement width shall be 3.0 metres, except that for sewers which are less than 0.75 metres depth and serving only one residential lot, the easement width may be reduced to 1.5 metres,
b Where the sewer is between 1.5 metres and 3.0 metres depth, the easement width shall be 5.0 metres,
c Where the sewer is greater than 3.0 metres depth, the easement width shall be determined by Council following an assessment of maintenance access requirements;
Unless specific approval or direction is given by Council to an alternative easement width having regard to the particular circumstances of the development and the sewer infrastructure.
The easement shall be located centrally about a line drawn between manholes to an accuracy of 0.15 metres by a registered surveyor and supported by an engineering survey plan showing the dimensions between the sewer line and the extremity of the easement at each point where the easement dissects the boundary of the subdivided lot or lots or any change of direction.
Condition reason: To comply with Council's Sewer and Water Development Services Plan
82. **Street Name Signs**
Prior to release of each Subdivision Certificate, street name signs are to be provided to all intersections in accordance with Council's specifications. The name of the proposed road(s) will require written approval from Council.
Condition reason: To ensure that vehicular access and parking are provided in accordance with Council's Engineering Specifications for Development
83. **Dedication of land for Road Widening – Stage 1A**
Prior to issue of the Subdivision Certificate the Stage 1A, dedication, free of cost to Council, of 3m along the sites frontage to James Creek Road as road reserve shall be provided to ensure the sufficient future road reserve width.
Condition reason: To ensure that adequate infrastructure and services are provided in accordance with Council's Engineering Specifications for Development

84. **Infrastructure services - Stage 1A**

Prior to the issue of the Subdivision Certificate for Stage 1A, the following external infrastructure must be completed by the developer in accordance with the approved Subdivision Works Certificate plans:

- a. James Creek Road/Road 1 intersection including any necessary culvert upgrades.
- b. Pressure Sewer Main, from the existing Diamond Street (Townsend) Sewer Pump Station to the site.

Condition reason: To ensure that adequate infrastructure and services are provided in accordance with Council's Engineering Specifications for Development

85. **Infrastructure services - Stage 1B**

Prior to the issue of the Subdivision Certificate for Stage 1B, the following external infrastructure must be completed by the developer in accordance with the approved Subdivision Works Certificate plans:

- a. Shared path from the site to the Gardiners Road/James Creek Road intersection.
- b. Gardiners Road upgrade works to the 1% AEP flood level 2123 climate change scenario
- c. Austons Lane upgrade to Council's Category 2 unsealed road standards, including sealing of the Austons Lane/James Creek Road intersection.

Note: In accordance with the James Creek Contributions Plan, the developer may request Council to enter into a Planning Agreement for the works-in-kind for Council's share of the raising of Gardiners Road to the Q20 flood level.

Condition reason: To ensure that adequate infrastructure and services are provided in accordance with Council's Engineering Specifications for Development

86. **Infrastructure services - Stage 3**

Prior to the issue of the Subdivision Certificate for Stage 3, the following external infrastructure must be completed in accordance with the approved Subdivision Works Certificate plans:

- a. Shared path from the James Creek Road/Gardiners Road intersection as shown in approved plan 3204/C131 to Jubilee Street, Townsend as generally shown in approved plan 3204/C132.

Condition reason: To ensure that adequate infrastructure and services are provided in accordance with Council's Engineering Specifications for Development

87. **Dedication of land for Road Widening – Stage 1B**

Prior to issue of the Subdivision Certificate the Stage 1B, dedication, free of cost to Council, of 5m along the site's frontage to Austons Lane as road reserve shall be provided to provide suitable landscape buffer to the development.

Condition reason: To ensure that adequate infrastructure and services are provided in accordance with Council's Engineering Specifications for Development

88. **Provision of infrastructure**

Prior to the release of the Subdivision Certificate for Stage 3 or the total lots released exceeding 150 the upgrade works to James Creek Road/Yamba Road intersection shall be completed in accordance with the requirements of the James Creek Urban Growth Area Road Infrastructure Developer Contributions Plan 2020.

Should the developer construct the required intersection as works-in-kind, a Planning Agreement could be offered to be entered into as per Section 2.4.3 and 2.4.4 of the James Creek Urban Growth Area Road Infrastructure Developer Contributions Plan 2020.

Condition reason: To ensure that adequate infrastructure and services are provided in accordance with Council's Engineering Specifications for Development

89. **Construction of footpaths**

Prior to issue of the Subdivision Certificate, all concrete or paved footpaths are to be constructed in accordance with the applicable Subdivision Works Certificate.

Condition reason: To ensure that adequate infrastructure and services are provided in accordance with Council's Engineering Specifications for Development

90. **Prohibition of Access – Austons Lane**

Access from Lots 83 – 94, Lots 178 – 185 and Lots 228 – 235 to Austons Lane is prohibited without the consent in writing of the Council. A restriction is to be placed on the title of each lot created to reflect this restriction prior to issue of the Subdivision Certificate.

Condition reason: To ensure that vehicular access and parking are provided in accordance with Council's Engineering Specifications for Development

91. **Prohibition of Access – James Creek Road**

Access from Lot 3 to James Creek Road is prohibited without the consent in writing of the Council. A restriction is to be placed on the title of the lot created to reflect this restriction prior to issue of the Subdivision Certificate.

Condition reason: To ensure that vehicular access and parking are provided in accordance with Council's Engineering Specifications for Development

92. **Restriction-as-to-user for Stormwater Management**

Prior to issue of the Subdivision Certificate a Restriction-as-to-User encumbrance for stormwater management (no less than 4,500L BASIX tank capacity) on the land title of all new allotments is required to ensure future building development compliance.

Condition reason: To ensure drainage works are provided in accordance with Council's Engineering Specifications for Development

93. **Asset Register Works Return**

Prior to the release of any Subdivision Certificate, which dedicates additional infrastructure to Council, a completed asset register works return must be submitted to Council. The return is to be in the format approved by Council.

Condition reason: To ensure works are completed to an appropriate standard and documented

94. **Work-As-Executed Plans**

In accordance with the Northern Rivers Local Government Development Design and Construction Manual and prior to the release of each Subdivision Certificate, the applicant must provide Work as Executed Plans (WAE) for all works and certification from the supervising professional engineer or registered surveyor, that the works have been constructed in accordance with the approved plans and specifications.

For the construction of Water Sensitive Urban Design systems the WAE shall include detailed records of the materials used, inspection and testing.

Condition reason: To ensure works are completed to an appropriate standard and documented

95. **Provision of Services**
Prior to the issue of the Subdivision Certificate telecommunications (including provision for NBN services where applicable), low voltage electricity and street lighting services must be provided to all lots within the subdivision in accordance with the requirements and specifications of the relevant service authorities, Australian Standards, the relevant parts of the applicable Clarence Valley Council Development Control Plans and NRDC.
Condition reason: To ensure that the development is serviced appropriately
96. **Certification of Services**
Prior to the issue of the Subdivision Certificate, Council will require satisfactory evidence that all requirements of the relevant telecommunications and power authorities have been complied with and all required contributions have been lodged.
Condition reason: To ensure that the development is serviced appropriately
97. **Certification of Services**
Prior to the issue of any Subdivision Certificate, certification is to be provided to Council by a registered surveyor, confirming that all infrastructure (including services, Water Sensitive Urban Design components, pipelines, road batters, access ways and drainage paths) are contained within the respective lots or easements or common property for the lands to be subdivided.
Condition reason: To ensure works are completed to an appropriate standard and documented
98. **Right-of-Carriageway**
Prior to issue of any Subdivision Certificate, where internal access passes through lots other than those being developed, a right of way for access must be created, or lots consolidated to ensure legal access is provided to each lot.
Condition reason: To ensure that vehicular access is provided in accordance with Council's Engineering Specifications for Development
99. **Maintenance Bond**
Prior to release of any Subdivision Certificate, where the total value of works to become Council infrastructure is greater than \$10,000, a maintenance bond is required for 5% of the contract value for works that will become Council infrastructure or \$2,500 whichever is greater. This is required in each stage of the development
All work is subject to a maintenance period of six (6) months from the date of Practical Completion as certified by Council or accredited private certifier.
The maintenance period may be extended due to material or construction work compliance reasons or should the application for a Subdivision Certificate be delayed beyond the maintenance period. The maintenance period for Water Sensitive Urban Design components shall be until no less than 80% of dwellings have completed construction within the relevant stage.
At the end of the Maintenance Period an 'Off Maintenance' inspection must be held with Council or accredited private certifier to confirm the compliance and performance of the constructed works, in accordance with the Northern Rivers Local Government Development Design and Construction Manual (NRDC).
Where constructed works to become public infrastructure have been controlled by private certifier Council must attend the 'Off Maintenance' inspection. The documentation, compliance and performance of the constructed works must be in accordance with NRDC for Council to accept responsibility for the infrastructure.
The Council will hold each Subdivision Certificate or a bond in accordance with Council's fees and charges for constructed public infrastructure works until such time as Council

accept the works 'Off Maintenance'.

Condition reason: To ensure works are completed to an appropriate standard and documented

100. **Section 88B Instrument**

The submission of the 88B Instrument, and one copy thereof, to Council prior to the release of the Subdivision Certificate.

Condition reason: To comply with the Conveyancing Act 1919

101. **Completion of landscape works**

All landscaping works are to be completed in accordance with the approved plan prior to the Occupation Certificate/Subdivision Certificate being issued.

Condition reason: To ensure that the development is adequately landscaped

102. **Easements for Interallotment Drainage**

Prior to issue of the Subdivision Certificate an easement is to be created to provide for conveyance of existing/proposed inter-allotment drainage through the subject land. The easements shall be provided as follows:

Where there is no Council infrastructure contributing to the drainage scheme the easements shall be in favour of the properties requiring the benefit and not Council.

Where there is water draining off roads, Council land or Council drainage infrastructure in the upstream drainage system then the easement must benefit Council only. This easement must be an easement in gross.

Where there is water draining off roads, Council land or Council drainage infrastructure in the upstream drainage system and there are properties draining directly to the drainage system then the easement must benefit Council and these properties.

Easement widths must be in accordance with the Northern Rivers Local Government Development Design and Construction Manual.

The right to release vary or modify the easement is to be assigned to Clarence Valley Council where Council has a benefit.

Condition reason: To ensure drainage works are provided in accordance with Council's Engineering Specifications for Development

103. **Lighting of Public Places**

Prior to release of the Subdivision Certificate, the pedestrian pathways / cycleways / within the development footprint shall be lit to the minimum standard of Australian Standard AS 1158 (Public Lighting Code) and the NSW Police 'Safer By Design' guidelines.

Condition reason: To ensure that adequate infrastructure and services are provided in accordance with Council's Engineering Specifications for Development

104. **Revegetation of Site**

Prior to issue of the Subdivision Certificate all disturbed areas shall be stabilised and revegetated. Turf, seeding or other approved method shall be undertaken in conjunction with or immediately following completion of works.

Condition reason: To ensure no substance other than rainwater enters the stormwater system and waterways

105. **Repair of infrastructure**

Repair of infrastructure before the issue of any subdivision certificate:

- a any public infrastructure damaged as a result of the carrying out of work approved under this consent (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concreting vehicles) must be fully repaired to the written satisfaction of council, and at no cost to council, or

- b if the works in (a) are not carried out to council's satisfaction, council may carry out the works required and the costs of any such works must be paid as directed by council and in the first instance will be paid using the security deposit required to be paid under this consent.

Condition reason: To ensure any damage to public infrastructure is rectified

106. **Pressure Sewer Installation**

Prior to issue of the Subdivision Certificate, the developer must either:

- a. Pay Council for the supply and installation of the on-site pressure sewer unit & house service in accordance with Council's Adopted Fees & Charges, as applicable at the date the application for a Subdivision Certificate is received. The fee for 2024/25 is \$16,559.00 per additional lot; or
- b. Enter into a bond agreement with Council for the amount required by (a) above, in accordance with Council's Pressure Sewer Policy. This bond may be released, wholly or in stages, only after each new lot has been connected to the pressure sewer network. Connection may occur by either by a private certified contractor, or by arrangement for Council to undertake the work. Requirements for pressure sewerage system installation and operation are outlined in Council's Pressure Sewer Policy; or
- c. Install Council-accredited pressure sewer units on each additional lot, in accordance with Council's Pressure Sewer Policy, and pay a fee of \$3,813 (subject to annual CPI indexation) to Council for future installation of the Electrical Control Panel and the installation and commissioning of the pump core. Council will provide the future infrastructure to each lot, at no additional cost to the developer, prior to dwelling/s occupation. After reinforcement is in positions and before pouring of any in-situ reinforced concrete building element

If proceeding under 1(c), the developer may either purchase Council-accredited pressure sewer units directly from suppliers or access Clarence Valley Council's period supply contract rates (via payment to Council) for the appropriate pressure sewer unit based on the equivalent tenement/s (ET) for the property. The cost of the Council-accredited pressure sewer unit under the period supply contract will depend on the type of unit required. The Council-accredited pressure sewer unit and the rates current at the date of this consent are:

- Aquatec Fluid Systems Simplex Unit - \$4,235.00 (inc GST)
- Enviro One Services Simplex Unit - \$4,146.15 (inc GST)
- Duplex and Triplex Units - Price on application

Under the period supply contract, rates may be varied every three (3) months. Should a developer choose to access the period supply contract rates, they will need to contact Council's Water Cycle Section to confirm price.

The period will include the supply of a poly pressure tank, boundary kit and poly discharge property line and these components will need to be installed by the developer at their cost. Installation must comply with the Pressure Sewer Code of Australia; this installation may also require an inspection from a Council officer. The pressure sewer tank location must be approved by Council at Construction Certificate stage to ensure proper drainage from a future dwelling. The fees under 1(c) includes installation and commissioning of the pump core, electrical control panel, underground electrical cables, and conduits.

The developer of future dwelling/s on each lot must contact Council's Water Cycle Section to request installation a minimum of 6 weeks before a frame inspection is required to ensure a suitable time frame is provided for the installation of the electrical wiring.

Condition reason: To comply with Council's Sewer and Water Development Services Plan

107. **Open Space Reserves**

Prior to the dedication of open space reserves to Council, the embellishments (park furniture) are to be constructed in accordance with the approved plan to Council's satisfaction.

Condition reason: To comply with Planning for Bushfire Protection 2019

108. **Perimeter Fence**

A 1.8m high mesh perimeter fence is to be provided along the west and north boundaries of the site and a 'good neighbour' fence provided along the south boundary in accordance with plan 3.9 of the Statement of Landscape Intent (Place Design Group, Revision J, 12 July 2024) prior to release of the Subdivision Certificate for Stage 1A.

Condition reason: To reduce land use conflicts

109. **Bollards/gate prohibiting access to Lot 290**

Bollards or a gate preventing unrestricted vehicular access to Lot 290 from Road 9 (following the release of Stage 3) and Road 2 (following the release of Stage 4) is required until approval of any future application for development of that site.

Condition reason: To reduce unrestricted vehicle access and potential anti social behaviour

110. **Restriction on use – Dwelling Typologies**

A restriction on the use of land over Lots 9-12, 30-37, 39, 40, 44-51, 53-58, 60-67, 99, 100, 102-109 and 120-123 must be created on the section 88B instrument that the dwellings must comply with the Master Plan and Building Typologies Report prepared by RAD Architects dated November 2023, or as otherwise approved by Council through the lodgement of a Development Application.

Condition reason: To ensure quality design outcomes for small lots

111. **Inner Protection Area - Lots 2, 3, 5 - 235, 237 - 289**

Prior to the issue of a subdivision certificate, and in perpetuity noting the development is staged - Road reserves and Lots 2, 3, 5 - 235, 237 - 289 must be maintained as an Inner Protection Area (IPA) in accordance with the requirements of Appendix 4 of Planning for Bush Fire Protection 2019.

When establishing and maintaining an inner protection area, the following requirements apply:

- a. tree canopy cover should be less than 15% at maturity;
- b. trees at maturity should not touch or overhang the dwelling;
- c. lower limbs should be removed up to a height of 2m above the ground;
- d. tree canopies should be separated by 2 to 5m;
- e. preference should be given to smooth-barked and evergreen trees;
- f. large discontinuities or gaps in vegetation should be provided to slow down or break the progress of fire towards dwellings;
- g. shrubs should not be located under trees;
- h. shrubs should not form more than 10% ground cover;
- i. clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation;
- j. grass should be kept mowed (as a guide, grass should be kept to no more than 100mm in height); and
- k. leaves and vegetation debris should be removed.

Condition reason: To comply with Planning for Bushfire Protection 2019

112. **Inner Protection Area – Lot 1, 4 and 236**

Prior to the issue of a subdivision certificate, and in perpetuity, Lots 1, 4 and 236 from the top of the bund/bank from the basin must be maintained as an Inner Protection Area (IPA) in accordance with the requirements of Appendix 4 of Planning for Bush Fire Protection 2019.

When establishing and maintaining an inner protection area, the following requirements apply:

- a. tree canopy cover should be less than 15% at maturity;
- b. trees at maturity should not touch or overhang the dwelling;
- c. lower limbs should be removed up to a height of 2m above the ground;
- d. tree canopies should be separated by 2 to 5m;
- e. preference should be given to smooth-barked and evergreen trees;
- f. large discontinuities or gaps in vegetation should be provided to slow down or break the progress of fire towards dwellings;
- g. shrubs should not be located under trees
- h. shrubs should not form more than 10% ground cover;
- i. clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation;
- j. grass should be kept mowed (as a guide, grass should be kept to no more than 100mm in height); and
- k. leaves and vegetation debris should be removed.

Condition reason: To comply with Planning for Bushfire Protection 2019

113. Easements for Asset Protection Zone

Prior to the issue of the subdivision certificate for lots 216-226 and 279-289 inclusive, section 88B easements under the 'Conveyancing Act 1919' are to be created. The easement is to burden Lot 290 to the benefit of Lots 216 - 226 inclusive and 279 - 289 inclusive. The easement is required for the construction and maintenance in perpetuity of a 23 metre wide Asset Protection Zone along the boundary of the burdened Lot and the benefitted Lots. The easement is to be maintained to an Inner Protection Area standard.

When establishing and maintaining an inner protection area, the following requirements apply:

- a. tree canopy cover should be less than 15% at maturity;
- b. trees at maturity should not touch or overhang the dwelling;
- c. lower limbs should be removed up to a height of 2m above the ground;
- d. tree canopies should be separated by 2 to 5m;
- e. preference should be given to smooth-barked and evergreen trees;
- f. large discontinuities or gaps in vegetation should be provided to slow down or break the progress of fire towards dwellings;
- g. shrubs should not be located under trees;
- h. shrubs should not form more than 10% ground cover;
- i. clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation;
- j. grass should be kept mowed (as a guide, grass should be kept to no more than 100mm in height); and
- k. leaves and vegetation debris should be removed.

The name of the authority empowered to release, vary or modify any instrument must be Council.

Condition reason: To ensure the required Asset Protection Zones for the future dwellings located on the Lots benefitted can comply with Planning for Bush Fire Protection

Ongoing Use

No conditions have been applied to this section.

Attachment B: Council Advice Notes

Condition of consent: advisory notes

In addition to the conditions of the development consent, the following advisory notes may be relevant for a person involved in carrying out the development approved under the consent and should be read in conjunction with the Notice of Determination

The advisory notes do not form part of the development consent. However, they provide information on how the obligation to lawfully carry out the approved development can be met.

General Advice – Consent

Section 64 Contributions

To obtain a Certificate of Compliance for water and or sewer works, Council requires completion of any works on Council's water or sewer infrastructure specified as a condition of the consent and payment of contributions in accordance with Section 64 of the *Local Government Act 1993*, which applies Section 306 of the *Water Management Act 2000*. The application form for a Certificate of Compliance is available on Council's website.

The headworks charges at 2024/25 financial year rates are:

Water Headworks \$5,799 per additional ET

Sewer Headworks \$14,182 per additional ET

The below table is provided for the future assessment of demand generated by the various zoning/lot types within the development:

Category	Standard Unit	Values	
		Water ET	Sewer ET
R1 Zone residential (>450m ²)	Lot	1	1
R3 Zone small lot (<450m ²) – 3 bedroom or more	Dwelling	0.8	1
Commercial Centre	Lot	1	1
Childcare Centre	Lot	1	1

The contribution(s), as assessed, will hold for a period of 12 months from the date of this approval. Contributions not received by Council within 12 months of the date of this determination will be indexed in accordance with Consumer Price Index (CPI) current at the time of payment.

Where any works are required on Council's water or sewer infrastructure, as a condition of this consent, they must be completed in accordance with the conditions of consent prior to the release of the certificate of compliance.

Subdivision Certificate Application

A Subdivision Certificate fee is charged for the endorsement of subdivision plans. Fees for the 2024/25 financial year are \$282.70 plus \$33.30 per additional lot (minimum \$282.70). An additional fee of \$128.40 is payable if the Subdivision Certificate requires the signing of an 88B instrument by Council.

High Consumption Non-residential Water and Sewer Charges

This childcare centre and commercial centre will be subject to high consumption non-residential charges for water and sewer in lieu of Section 64 Headworks Contributions. Current 2024/25 rates are as follows:

Area	2024/25 Consumption Charge (\$/kL)	High Consumption Charge (\$/kL)
Water - All areas	\$ 2.95	\$ 8.30 ¹
Sewer - Maclean, Townsend, Ilarwill, Lawrence, Iluka & Yamba	\$ 4.02	\$ 7.98 ²
Sewer - Sewer - Grafton, Junction Hill & Coutts Crossing	\$ 4.02	\$ 6.24
¹ Applies to that component of water consumption above 1.233kL/day		
² Applies to that component of sewage generation above 0.74kL/day		