

DATE OF DETERMINATION	26 August 2024
DATE OF PANEL DECISION	26 August 2024
DATE OF PANEL MEETING	20 August 2024
PANEL MEMBERS	Dianne Leeson (Chair), Stephen Gow, Michael Wright, Ian Tiley and Peter Johnstone
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Public meeting held by teleconference on 20 August 2024, opened at 2.31pm and closed at 5.46pm.

The Panel adjourned to deliberate at 5.02pm but did not reach a decision to be able to return at 5.45pm (as indicated by the Panel Chair) to provide the decision to the public meeting. The public were notified by department staff and the public meeting was closed at 5.46pm.

MATTER DETERMINED

PPSNTH-280 – Clarence Valley – DA2023/0759 – James Creek Road, James Creek – 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) (as described in Schedule 1).

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings listed at item 8 in Schedule 1.

Development application

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was 3:2 in favour, against the decision were Peter Johnstone and Ian Tiley.

REASONS FOR THE DECISION

The Panel determined to approve the application for the reasons outlined in the Council assessment report and those listed below:

1. The proposal is permissible in the R1 General Residential, R3 Medium Density Residential and B1 Neighbourhood Centre (now E1 Local Centre);
2. Although an alternative subdivision pattern within the site could arguably better reflect the site's rural context and better promote landscape-oriented development, the proposed development achieves the strategic objectives and zoning of the land in providing diversity of housing in the Clarence Valley;
3. The proposed development is compliant with the *Clarence Valley Local Environmental Plan 2011* development standards and largely compliant with the *Clarence Valley Development Control Plan*.
4. The site is largely unconstrained and can be made suitable for the proposed development;
5. Adequate provision has been made for stormwater and sewer services and management to support the proposed number of dwellings. These were reasons for refusal of PPSNTH 137 (SUB2021/0042). The proposed stormwater infrastructure exceeds Council's requirements and has been assessed to not have deleterious impact on surrounding areas. A pressurised sewerage system is proposed, in lieu of a gravity fed system, meeting Council's requirements;

6. Road infrastructure upgrades are proposed to address traffic growth, existing stormwater shortcomings, and provide improved safe flood evacuation along Gardiners Road benefitting the wider community. A shared pedestrian and cycle path will link the site along James Creek Road to the intersection with Gardiners Road to the south;
7. The timing of all infrastructure provision has been conditioned to align with development staging and Council's requirements. Additional conditions have been imposed in relation to bus stop infrastructure and provision of services, and the provision of NBN infrastructure;
8. The proposed development better addresses James Creek Road presenting largely as open space consistent with the surrounding rural character, with a commercial precinct accessible to the community;
9. The site layout has been designed to better follow the contours of the site significantly reducing reliance on retaining walls (affecting 21 lots on the low side). The height of retaining walls has been reduced and the requirement for interallotment drainage removed.
10. Buffer zones to adjoining agricultural lands are in accordance with the minimum requirements established under NSW Department of Primary Industry 2018 Primefact, *Buffer Zones to Reduce Land Use Conflict with Agriculture*. The Panel is satisfied that with appropriate fencing and landscaping these buffer zones will assist in management of conflicts and can also serve as open space and stormwater detention areas. Conditions have been imposed to ensure acoustic separation of the childcare centre and the cattle yard east of James Creek Road;
11. The proposed development will generate social and economic benefit through provision of a diversity of housing, childcare and open space, improved flood free access and employment through construction and ongoing operation.
12. In the circumstances of the case including the previous decision to rezone this land for urban use, the proposal, subject to the conditions of consent is considered in the public interest.

Peter Johnstone and Ian Tiley disagreed with the majority decision for the following reasons:

- 4.15(b) The surrounding land is a mixture of farmland with rural residential housing. This development of medium density housing would cause an unacceptable conflict with the surrounding agricultural uses and thus have an undesirable social and economic impact on the surrounding area.
 - The development proposal would create large scale density issues and clustering of people in a rural setting.
 - The incompatibility of existing rural production pursuits, the rural context of the locality, and the proposed 290 lot subdivision
- 4.15(c) although this development is suitable for land zoned R1 and R3, the distance of this medium density housing from necessary infrastructure and the impact on the surrounding RU1, RU2 and R5 zoned land make this site unsuitable for this development. There is unacceptable depletion of the 50 metre buffers in several locations.
- 4.15(d) The 93 written submissions and petition of 265 signatories were in opposition to the development and informed the reasons given herein for rejection. This demonstrates the large scale and legitimate concerns of the local James Creek community.
- 4.15(e) This medium density housing development is out of place in a rural setting and will require extension of council and social infrastructure normally associated with a town. There is potential for an impact on local agricultural land uses which are important to the local economy. The proposal would not provide adequate access to basic social and commercial infrastructure and needs such as shops, food, health care and basic provisions.

CONDITIONS

The Development Application was approved subject to the conditions in the Council Assessment Report with the following amendments.

- Amend Condition 9 Section 68 Plumbing & Drainage, by inserting 'approval' in the first sentence after the words 'Childcare Centre'
- Amend Condition 10 Acoustic Assessment, by inserting the words 'and impacts from the existing cattleyards to childcare facility' at the end of the first sentence and amending the condition reason to read as follows:
Condition reason: To minimise potential land use conflicts
- Amend the condition reason of Condition 11 Detailed Landscape Plan, to read as follows:

Condition reason: To demonstrate compliance with Council's DCP and the *Child Care Planning Guideline - Delivering Quality Child Care for NSW (September 2021)*

- Amend Condition 12 Childcare Design Guidelines, to read as follows:

12. Childcare Design Guidelines

Prior to issue of the Construction Certificate, certification that the design of the childcare centre complies with the *Child Care Planning Guideline - Delivering Quality Child Care for NSW (September 2021)* must be submitted to the certifier.

Condition reason: To demonstrate compliance with the *Childcare Planning Guideline*

- Amend the condition reason of Condition 13 Staff Sanitary Facilities, to read as follows:

Condition reason: To ensure adequate sanitary facilities for staff

- Amend the condition reason of Condition 14 Bicycle Parking Spaces, to read as follows:

Condition reason: To ensure suitable onsite bicycle parking is provided

- Amend Condition 35 Bush Fire Emergency Management and Excavation Plan to read as follows:

35. Bush Fire and Flood Emergency Management and Evacuation Plan

- a. 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.
- b. A copy of the Flood Emergency Plan (May 2024) 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

- Amend Condition 47 Infrastructure services – Stage 1A, by inserting the following:

- d. Gardiners Road upgrade plans generally in accordance with approved plan 3204/C132
- e. Gardiners Road shared path plan generally in accordance with approved plan 3204/C131.

- Insert new Condition 49, which reads as follows and renumber the remaining conditions accordingly:

49. **Emergency Access Road**

Prior to release of the Subdivision Works Certificate for Stage 1A, details of the emergency access shall be provided. The plans must show a minimum 4-metre-wide carriageway with suitable sealed or concrete pavement from James Creek Road to the frontage of Road 2. Removable bollards or similar must also be provided to prevent unauthorised vehicle access outside of an emergency with details to be provided to Council (including details demonstrating consultation with emergency services).

Condition reason: To ensure that alternative access and egress is afforded to the development in case of an emergency

- Insert new Condition 54, , which reads as follows and renumber the remaining conditions accordingly:

54. **Public Transport Services**

A public bus service must be available to service the development prior to issue of the Subdivision Works Certificate for Stage 1B or 75% of dwellings being constructed within Stage 1A (whichever occurs first).

Alternatively, the developer must provide a bus service to the site at their cost, until such time as a public bus service is available. Details of a privately provided bus service must be submitted to Council for approval and include the following:

- a. access to and from Maclean, such as by providing connection to existing #380 and #386 services travelling between Grafton and Yamba, or other identified

destinations; and

- b. consultation with Busways and Transport for NSW, including details about service type, frequency, timing and connections to existing services.

Condition reason: To ensure that adequate social infrastructure and services are available to the development

- Amend former Condition 53 (now Condition 55), to read as follows:

55. Public Transport Services

Detailed designs of the proposed public transport facilities, including bus stops, bus shelters and the proposed routes, are to be provided as part of each 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

- Insert new Condition 77, which reads as follows and renumber the remaining conditions accordingly:

77. 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

- Insert new Condition 87, which reads as follows and renumber the remaining conditions accordingly:

87. Construction of Emergency Access

Prior to release of the Subdivision Certificate for Stage 1A, the Emergency Access shall be constructed to a minimum 4-metre-wide carriageway with suitable sealed or concrete pavement from James Creek Road to the frontage of Road 2. Removable bollards or similar must be provided to prevent unauthorised vehicle access outside of an emergency.

Condition reason: To ensure that alternative access and egress is afforded to the development incase of an emergency

- Amend former Condition 84 (now Condition 88) Infrastructure services – Stage 1A, to read as follows:

88. 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.
- c. Gardiners Road upgrade works to the 1% AEP flood level 2123 climate change scenario.

Note: In accordance with Section 2.4.3 and 2.4.4 of the *James Creek Urban Growth Area Road Infrastructure Developer Contributions Plan 2020*, 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

- Amend former Condition 87 (now Condition 91) Dedication of land for Road Widening – Stage 1B, by inserting 'The landscape buffer is to be planted and provided in accordance with the approved Landscape Plan.' after the first sentence.
- Amend former Condition 90 (now Condition 94) Prohibition of Access – Austons Lane, by inserting the word 'relevant' in the second sentence prior to 'Subdivision Certificate'.
- Amend former Condition 91 (now Condition 95) Prohibition of Access – James Creek Road, by inserting the word 'relevant' in the second sentence prior to 'Subdivision Certificate'.
- Amend former Condition 92 (now Condition 96) Restriction-as-to-user for Stormwater Management, by replacing the word 'the' with 'each' in the first sentence prior to 'Subdivision Certificate'.
- Amend former Condition 95 (now Condition 99) Provision of Services, by replacing the word 'the' with 'each' in the first sentence prior to 'Subdivision Certificate'.
- Amend former Condition 96 (now Condition 100) Certification of Services, by replacing the word 'the' with 'each' in the first sentence prior to 'Subdivision Certificate'.
- Amend former Condition 100 (now Condition 104) Section 88B Instrument, by replacing the word 'the' with 'each' prior to 'Subdivision Certificate'.
- Amend former Condition 101 (now Condition 105) Completion of landscape works, by inserting the word 'relevant' prior to 'Subdivision Certificate'.
- Amend former Condition 102 (now Condition 106) Easement for Interallotment Drainage, by replacing the word 'the' with 'each relevant' in the first sentence prior to 'Subdivision Certificate'.
- Amend former Condition 103 (now Condition 107) Light of Public Places, by replacing the word 'the' with 'each' in the first sentence prior to 'Subdivision Certificate'.
- Amend former Condition 104 (now Condition 108) Revegetation of Site, by replacing the word 'the' with 'each' in the first sentence prior to 'Subdivision Certificate'.
- Amend former Condition 106 (now Condition 110) Pressure Sewer Installation, by replacing the word 'the' with 'each' in the first sentence prior to 'Subdivision Certificate'.



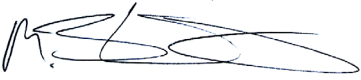
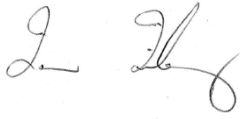

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from all those wishing to address the Panel. The Panel notes that issues of concern included:

- Impact on services
- Lack of flood free access from Townsend along Gardiners Road
- Access to Austons Lane
- Stormwater management (quality and quantity) and flooding
- Impacts on adjoining rural land uses/lack of buffers
- Inconsistency of development with Planning Proposal and adopted Council policies
- Urban design and local character
- Traffic, transport and access
- Lack of Aboriginal Cultural Heritage Assessment/consideration

- Bushfire hazard
- Lack of Public consultation
- Biodiversity
- Previous application refused by NRPP
- Owners consent for work on Austons Lane and point of discharge
- Addition of a Childcare Centre
- Residual development lot
- Stormwater
- DCP or masterplan for James Creek
- Suitable provision of sewer pump station and associated infrastructure

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report and that no new issues requiring assessment were raised during the public meeting. The Panel notes that in addressing these issues, appropriate conditions have been imposed.

PANEL MEMBERS	
 Dianne Leeson (Chair)	 Stephen Gow
 Michael Wright	 Ian Tiley
 Peter Johnstone	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSNTH-280 – Clarence Valley – DA2023/0759
2	PROPOSED DEVELOPMENT	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)
3	STREET ADDRESS	James Creek Road, James Creek
4	APPLICANT/OWNER	MPD Investments Pty Ltd C/- Place Design Group Kahuna No 1 Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <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 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Residential Zones Development Control Plan 2011 and Business Zones Development Control Plan 2011 Planning agreements: Nil Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</i> Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council Assessment Report: 7 August 2024 Written submissions during public exhibition: 93, 1 petition (265 signatures) Total number of unique submissions received by way of objection: 93, 1 petition (265 signatures) Verbal submissions at the public meeting: <ul style="list-style-type: none"> Lorri Brown, Glenn Brown, Debrah Novak, Kate Kilpatrick, Carolyn Cameron, Sharyn Farlow, Chris Muldoon, Helen Robertson, Annette Gardner, Peter Gardner, Patrick Bowen, Kiera Fahey, Melissa Lawrence, Dean Lawrence, Allan Adamson, Mick Covell, Frank Hellwig, Melissa Hellwig, Andrew Grayson, Liz Densley Council assessment officer – Murray Lane Council's Planning Consultant – Rachel Heath On behalf of the applicant – Peter Bell
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing: 22 May 2024 <ul style="list-style-type: none"> <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Ian Tiley and Peter Johnstone <u>Council assessment staff</u>: James Hamilton, Murray Lane, Adam Cameron and Carlo Favetta <u>Council's Planning Consultant</u>: Rachel Heath

		<ul style="list-style-type: none">○ <u>Department staff:</u> Carolyn Hunt and Lisa Ellis● Final briefing to discuss Council’s recommendation: 20 August 2024<ul style="list-style-type: none">○ <u>Panel members:</u> Dianne Leeson (Chair), Stephen Gow, Michael Wright, Ian Tiley, and Peter Johnstone○ <u>Council assessment staff:</u> Carmen Landers, Murray Lane, Ben Bancroft, Adam Cameron○ <u>Council’s Planning Consultant:</u> Rachel Heath○ <u>Department staff:</u> Carolyn Hunt and Lisa Ellis
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report