

Attachment 1 – Detailed Assessment

Assessment:

Assessment of the Extension Application has been carried out pursuant to s87 of the *Planning Act 2016*. Section 87(1) states that ‘when assessing an Extension Application, the Assessment Manager may consider any matter that the Assessment Manager considers relevant, even if the matter was not relevant to assessing the Development Application’. Considering this, the below represents matters Council has had regard to. It is noted that assessment is being undertaken against the current Planning Scheme only and not the Miriam Vale Shire Planning Scheme 2009, which was superseded on 12 October 2015 some 10 years ago.

Central Queensland Regional Plan 2013:

The Minister has identified that the Planning Scheme appropriately advances the Central Queensland Regional Plan 2013. As such, an individual assessment is not required.

Gladstone Regional Council Planning Scheme Version 2:

Assessment of the Extension Application has been undertaken against the relevant assessment benchmarks. Where the Development is considered to generally comply, a statement of compliance has been provided. A further detailed assessment has been undertaken where compliance has been unable to be achieved with one or more of the relevant provisions below.

Assessment Benchmark	Benchmark Compliance	Officer's Assessment
Local Government Infrastructure Plan	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	See detailed assessment below.
Strategic Framework	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	See detailed assessment below.
Acid Sulfate Soils Overlay Code	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Whilst no detail has been provided to the extent of earthworks required or their impacts on the presence of acid sulfate soils, any future development applications made in reliance upon the Development Approval, will require assessment against the Acid Sulfate Soils Overlay at which time, compliance and conditions can be addressed accordingly.
Biodiversity Overlay Code	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	As part of the original application material, the Applicant provided several technical reports addressing Matters of State Environmental Significance and how these would be addressed. The Development Approval includes several conditions relating to avoiding protected species, fauna protection, a rehabilitation management and conservation strategy, the dedication of non-urban land for nature conservation and weed and pest management plans. As such, it is considered that the Development can meet compliance with the code.
Bushfire Hazard Overlay Code	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	See detailed assessment below.
Coastal Hazard Overlay Code	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	See detailed assessment below.

Assessment Benchmark	Benchmark Compliance	Officer's Assessment
Scenic Amenity Overlay Code	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Condition 32 of the Development Approval prescribes several matters that the Applicant must undertake during the life of the Development. In addition, future development applications will be required to comply with the outcomes of the code.
Steep Land Overlay Code	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	See detailed assessment below.
Rural Zone Code	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	See detailed assessment below.
Development Design Code	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Whilst infrastructure and servicing design has not been provided in detail, future development applications for Operational Works will be required. The design and construction of these works will require compliance with the Development Design Code and the Capricorn Municipal Design Guidelines (CMDG). The Development Approval contains conditions to this effect
Landscaping Code	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Whilst no detailed landscaping plans have been provided, development applications for future land uses and stages will require this in accordance with the Landscaping Code per the Preliminary Approval Plan of Development and Code. Conditions 27.1 to 27.4 require a detailed Landscape Master Plan as well as its construction in implementation.

Local Government Infrastructure Plan:

The Local Government Infrastructure Plan forms part of the Planning Scheme with a purpose to:

- 1) Integrate infrastructure planning with the land use planning
- 2) Provide transparency regarding Council's intentions for the provision of trunk infrastructure
- 3) Enable Council to estimate the cost of infrastructure provision to assist its long term financial planning
- 4) Ensure that trunk infrastructure is planned and provided in an efficient and orderly manner, and
- 5) Provide a basis for the imposition of conditions about infrastructure on development approvals.

The Development is located at 6kms (as the crow flies) outside of the Priority Infrastructure Area (PIA) as shown in Figure One. The Development is not close in accessibility for services and is constrained by the natural rugged terrain of the subject site which is fringed with mangroves, supra-tidal salt flats, rocky headland, remnant vegetation and fish habitat areas. The Development will result in a new urban area serviced by a considerable amount of donated assets which ultimately will be dedicated to Council for the long-term maintenance and upgrades.

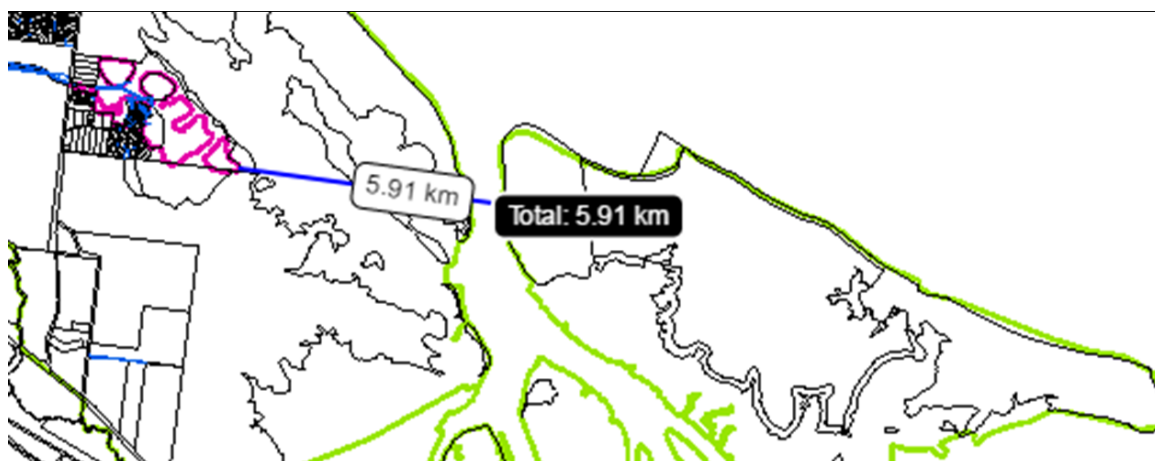


Figure One: Location of Development site outside of PIA

The Applicant has provided no reporting or information on the actual costs of maintaining the infrastructure necessary to enable the Development over the short, medium or long term. Nor the potential issues that may arise depending on the timing and staging of the Development and its associated infrastructure. There are significant costs that will potentially fall to Council and in turn, ratepayers, particularly when it has not been made clear by any of the application material (either initially, or in support of this Extension Application) as when, or even if, the rates base of the Development will adequately cover the infrastructure maintenance in the long term.

In assessing any potential need to create a new urban area outside of the PIA, two large residential estates are currently under construction within the closest urban centres of Tannum Sands and Boyne Island. Both the Sands and Riverstone Rise Estates have preliminary approvals to provide around 4,900 residential lots of which only three hundred lots (approximately) have been plan sealed to date. Given these two large estates which are also Master planned to provide two primary schools and two large retail centres are far from complete, the need to expand Councils current Priority Infrastructure Area has not been demonstrated.

Whilst the Development Approval requires the Applicant to undertake the maintenance of this infrastructure, the Applicant through the existing common material has not provided any economic or sustainability assessments demonstrating the expected rates revenue generated which would ultimately finance all maintenance costs for this future infrastructure. As such, it is considered that the Development will result in an unsustainable financial burden for Council and rate payers as mentioned within the assessment to the Strategic Framework below.

Strategic Framework:

Strategic Framework	Officers Assessment
<p>3.3.1 Gateway to the World – Strategic Outcomes</p> <p>12) Agricultural and rural land uses are a valuable economic and social resource and are conserved and sustained. Fragmentation of this resource is not supported.</p> <p>14) Tourism occurs in mixed use centres and the Gladstone CBD through short term accommodation and in integrated tourist resort complexes and associated facilities on the islands of Heron, Quoin and Lady Elliot. Other smaller scale tourist uses in rural and coastal townships (such as Agnes Water and Seventeen Seventy) and rural places are appropriate where associated with rural and coastal attractions.</p>	<p>12) The Development Approval fragments and diminishes rural zoned land historically used for Animal Keeping (Grazing). The Development will not protect this resource.</p> <p>14) The Development Approval results in a large tourism development on an island not anticipated by the Planning Scheme. The Development is of a scale not considered appropriate given the coastal location of the site.</p> <p>The Development has always been, and continues to be, wholly inconsistent with Council's strategic planning for the local government area.</p>
<p>3.4.1 Community Living – Strategic Outcomes</p> <p>1) New housing is located with ready access to employment and services, providing affordable living options in the region.</p> <p>2) The region's urban footprint as expressed in its new neighbourhoods, urban revitalisation neighbourhoods, mixed use centres and the Gladstone CBD will accommodate the region's population and housing growth over the next 20 years.</p> <p>4) Residential development within the region occurs where it can be demonstrated that there is both overwhelming community and economic need.</p> <p>6) Low density dwelling houses occur in existing suburban neighbourhoods and to a lesser extent rural and coastal places and rural residential areas.</p> <p>7) A diverse range of housing types in new neighbourhoods, urban revitalisation neighbourhoods, mixed use centres and the Gladstone CBD is provided to meet the needs of people who live in, work in and visit the Gladstone region.</p>	<p>1) The Development Approval provides 2,695 residential units of which a maximum of 770 will be available for permanent residential accommodation well outside any established employment services.</p> <p>2) The Development Approval is not located within a new neighbourhood but on an island well outside of the regions urban area.</p> <p>4) Both the common material provided with the original assessment and the current Extension Application has not demonstrated overwhelming community and economic need.</p> <p>6) The Development Approval provides 2,695 residential units in a rural/coastal area not anticipated for this type of development and well outside of the established urban area of Gladstone, Boyne Island/Tannum Sands.</p> <p>7) The Development Approval provides 2,695 residential units in a rural/coastal area well outside of any new neighbourhoods anticipated for urban development.</p> <p>9) The Development Approval allows for 1,925 residential units for tourism/holiday makers which is not aligned with the aspirations of the Strategic Outcome which seeks smaller scale tourism ventures in rural/coastal townships.</p>

Strategic Framework	Officers Assessment
<p>9) Major short term accommodation is concentrated in the Gladstone CBD, urban revitalisation areas and mixed use centres. Smaller scale short term accommodation within rural and coastal townships supports tourism associated with rural and coastal attractions.</p>	<p>The Development has always been, and continues to be, wholly inconsistent with Council's strategic planning for the local government area.</p>
<p>3.5.1 Connecting Our Places – Strategic Outcomes</p> <p>2) Development achieves the efficient use of existing transport and community infrastructure and the timely and equitable delivery of new infrastructure.</p>	<p>2) The Development requires the significant construction of new donated assets which have not been planned for or anticipated by the Planning Scheme. This is discussed in detail as part of the assessment against the Local Government Infrastructure Plan section of this report.</p> <p>The Development does not achieve the efficient use of existing transport and community infrastructure. There is no evidence to show that the new infrastructure will be provided in either a timely or equitable manner.</p>
<p>3.7.1 Our Environment and Heritage – Strategic Outcomes</p> <p>9) Development avoids areas affected by natural hazards where these risks can't be mitigated to an acceptable or tolerable level through development design and location measures. Sensitive uses are located in areas free from natural hazards or where the risks from natural hazards are acceptable.</p>	<p>9) The Development, even through this Extension Application, is yet to provide any technical studies or reporting on the risk of increasing the number of people and property to the island for urban development within areas prone to coastal and bushfire natural hazards. Whilst conditions require the lodgement of these studies, it is not acceptable that the risks have not been understood prior to the issue of the Development Approval.</p>
<p>3.8.1 Our Rural and Coastal Townships and Places – Strategic Outcomes</p> <p>3) The existing footprints of rural and coastal townships support the intended limited residential growth in these areas within the life of this planning scheme. No further expansion to these footprints or increase in density is supported.</p> <p>4) Fragmentation of rural lands in the Rural zone does not occur.</p> <p>6) Non-residential development in rural and coastal townships</p>	<p>3) The Development Approval provides 2,695 residential units in a rural/coastal area not anticipated for urban growth. The Development is in direct conflict with Strategic Outcome 3.</p> <p>4) The Development Approval fragments and diminishes rural zoned land historically used for Animal Keeping (Grazing). The development will not protect this resource. The Development is in direct conflict with Strategic Outcome 4.</p>

Strategic Framework	Officers Assessment
supports local level service needs with the exception of small scale tourism activities. Development supporting urban scale needs is not supported.	6) The Development Approval is to establish a large urban community in a rural/coastal area not anticipated for development. This is in direct conflict to Strategic Outcome 6.

Bushfire Hazard Overlay Code:

Purpose Statement	Officers Assessment
<p>(1) The purpose of the Bushfire hazard overlay code is to ensure that:</p> <p>(a) The risks to life, property, community, economic activity and the environment during uncontrolled bushfire events are minimised.</p> <p>(b) Development does not increase the potential for bushfire damage or risk on-site or to other property.</p>	<p>The Development, even through this Extension Application, is yet to provide any technical studies or reporting on the risk of increasing the number of people and property to the island for urban development within the bushfire hazard area. Whilst there are conditions requiring the development and implementation of a Bushfire Management Plan, it is not acceptable that these risks are understood and responded to later. The Development intends for a population of approximately 3,900 people, consisting of approximately 2,700 tourists on an isolated island at risk of bushfire. The Development in its current form does not comply with the purpose of the Bushfire Overlay Code.</p>

Coastal Hazard Overlay Code:

Purpose Statement	Officers Assessment
<p>(1) The purpose of the Coastal hazard overlay code is to:</p> <p>(a) Protect or enhance naturally occurring coastal processes while still providing opportunities for appropriate coastal-dependant development²</p> <p>(b) Avoid or mitigate the risks to people and property and minimise the socio-economic costs of coastal hazard impacts from permanent and temporary inundation associated with sea level rise, coastal erosion and storm tide¹ inundation.</p> <p>(c) Ensure integration of climate change factors in the assessment of coastal hazard impacts on development and to achieve an acceptable or tolerable level of risk to</p>	<p>As part of the original assessment, the Applicant undertook a study to define the Erosion Prone Area. That resulted in conditions which restricted all works outside of the defined area, other than construction of the bridge, public boat ramp, service infrastructure, pedestrian access to the beaches and lifesaving structures. Whilst this is acceptable with respect to restricting development outside of the Erosion Prone Area, no detail has been provided with respect to Stormtide Inundation and conditions requiring further assessment are included within the Development Approval. The Development intends a population of approximately 3,900 people, consisting of approximately 2,700 tourists on an isolated island at risk of coastal hazards of which Stormtide Inundation has not been addressed. This is not acceptable and the Development in its current form does not comply with the purpose of the Coastal Hazard Overlay Code.</p>

Purpose Statement	Officers Assessment
<p>enhance the community's resilience to present day and future coastal hazards.</p> <p>(d) Ensure public access to and from the use of coastal and riverine foreshores is maintained or enhanced.</p>	

Steep Land Overlay Code:

Purpose Statement	Officers Assessment
<p>(1) The purpose of the Steep land overlay code is to ensure:</p> <p>(a) The safety of people, property and hazardous materials are protected from landslide hazard risk.</p> <p>(b) The potential for environmental degradation is minimised.</p>	<p>As part of the original application material, the Applicant stated that limited development would take place on areas within the Overlay. This is not the case, especially towards the West of the site. The Applicant also did not provide any technical study or reporting to demonstrate compliance with the Code. Due to the size and scale of the Development, it is not acceptable that such risks are not understood nor are there suitable conditions to remedy this other than future comply with the Code for subsequent applications. The Development in its current form does not comply with the purpose of the Steep Land Overlay Code.</p>

Rural Code:

Purpose Statement	Officers Assessment
<p>(1) The purpose of the Rural zone code is to:</p> <p>(a) Ensure appropriately sized lots, being predominantly very large lots, display rural and landscape character and provide for a wide range of rural uses including cropping, intensive horticulture, intensive animal industries, animal husbandry, grazing, animal keeping and other primary production activities.</p> <p>(b) Provide opportunities for non-rural uses that are compatible with agricultural and rural activities, and the landscape character of the rural area where they do not compromise the long-term use of the land for rural purposes.</p>	<p>(a) The Development Approval will result in a new urban community with 2,695 residential units with a maximum of 770 available for permanent residential accommodation along with a population of approximately 3,900 people, consisting of approximately 2,700 tourists (anticipated maximum capacity). The Development will not retain the existing large lot, will remove the rural landscape and character and will introduce urban land uses.</p> <p>(b) The Development Approval is for an urban development which does compromise the long-term use of the land for rural purposes.</p> <p>(c) The Development does not protect or manage the sites capacity for primary production and extractive industry in designated areas.</p> <p>(d) The Development is an urban development which adversely impacts the ability to continue rural uses on the site.</p>

Purpose Statement	Officers Assessment
<p>(c) Protect or manage significant natural features, resources, and processes, including the capacity for primary production and extractive industry in designated areas.</p> <p>(d) Ensure rural uses are not adversely impacted by inappropriate land uses and development.</p>	<p>By virtue of the noncompliances above, the Development is unable to comply with the Rural Zone Code and conditions are unable to remedy this noncompliance.</p>

Matters Raised in recent Case Law:

Matter	Officers Assessment
<p>The consistency of the approval, including its conditions, with the current laws and policies applying to the development, including, for example, the amount and type of infrastructure contributions, or charges payable.</p>	<p>Per the above assessment, the Development Approval continues to be wholly inconsistent with the Planning Scheme.</p> <p>The conditions imposed by the Coordinator General, in many instances, deferred what Council considers critical technical assessments, to a later point in time. Council's practice is to consider the assessment of natural hazards, as part of the original assessment.</p> <p>In terms of the amount and type of infrastructure contributions/works, the extent, location, timing and ultimate ratepayer burden of new infrastructure works remains completely unknown. In terms of charges payable, due to the structure of the Development Approval, opportunities would exist when the Development is activated, to levy charges.</p>
<p>The community's current awareness of the development approval.</p>	<p>It is understood that the Development obtained community attention at the time it was initially conceived in 2006 (some 19 years ago). Public awareness at the time the Development Approval was issued in 2018.</p> <p>Where the significant project declaration has lapsed, and the leases have lapsed, and in circumstances where no effort has been made to advance the Development – other than by way of this Extension Application, it would be reasonable to assume that the awareness of the development continues to decrease.</p>
<p>Whether, if the request were refused:</p> <p>i) Further rights to make a submission may be available for a</p>	<p>The Development Approval is entirely inconsistent with the current Planning Scheme and refusal of this Extension Application does not remove any submission rights for later</p>

Matter	Officers Assessment
<p>further development application; and</p> <p>ii) the likely extent to which those rights may be exercised.</p>	<p>applications made with respect to the land.</p>
<p>The views of any Concurrence Agency for the approval given.</p>	<p>Views of any Concurrence Agency have not been provided with the common material. As detailed above, where the Development Approval was issued following the amended referral/public notification process under the <i>State Development and Public Works Organisation Act 1971</i>, but the significant project declaration has since lapsed, the need to involve Concurrence Agencies in terms of this Extension Application has not been considered by the Applicant.</p>
<p>A creditable and adequate explanation for not starting development within the statutory currency period.</p>	<p>Whilst it is appreciated that obtaining a new Significant Development Lease is a complex matter, the Applicant could have prepared and lodged other related applications such as Operational works or a new heads of agreement to demonstrate a genuine progression of the Development which has not occurred.</p>
<p>Significant onsite works have been started and related approvals have been obtained.</p>	<p>No related approvals have been sought or obtained. There has been no effort made by the Applicant to advance the Development, in the eyes of the Council. No works have commenced on site.</p>
<p>There is a demonstrated town planning, community and economic need for the proposal.</p>	<p>Neither the original application material nor the material provided as part of this Extension Application has demonstrated any town planning, community or economic need exists for the Development. There is no evidence of any need at all, for the Development.</p>
<p>Whether the development has substantially started and if not, whether there is a credible and adequate explanation for not starting the development authorised by the approval.</p>	<p>No effort has been made to secure related approvals to enable the commencement of the Development. Accordingly - it has not substantially started nor has there been an adequate explanation for this delay as mentioned above.</p>

Reasons for Refusal

Based upon the assessment above, the reasons for refusal are as follows:

- 1) No creditable or adequate explanation for not starting the Development within the statutory currency period, has been provided. Nor are there compelling reasons given to justify the extension sought.
- 2) The Extension Application for the Development should be refused having regard to the statutory instrument in effect at the time both the original application was made, and subsequently – now the Extension Application was made, and particularly the following provisions of the Gladstone Regional Council Planning Scheme (Version 2):
 - a) Strategic Framework: Strategic Outcomes 3.3.1(12) and (14), 3.4.1(1), (2), (4), (6), (7) and (9), 3.5.1(2), 3.7.1(9) and 3.8.1(3), (4) and (6)
 - b) Failing to comply with the Rural Zone Code and its purpose
 - c) Failing to comply with the Bushfire Overlay Code and its purpose
 - d) Failing to comply with the Coastal Hazard Overlay Code and its purpose, and
 - e) Failing to comply with the Steep Land Overlay Code and its purpose
 - f) The Local Government Infrastructure Plan: the Development Approval is completely inconsistent with the Local Government Infrastructure Plan. An approval of the Extension Application would entrench the inconsistent infrastructure requirements of the Development, which remain outside of the priority infrastructure area and completely out of sequence.
- 3) The land the subject of the Development Approval was and remains within the Rural Zone under the relevant statutory instruments. The Development is wholly inconsistent with the intentions of the Rural Zone.
- 4) Where the Development is no longer a prescribed project, no effort has been made to confirm whether the Extension Application ought to be the subject of separate referrals to the State, or the subject of public notification. In addition, or in the alternative, where the Development is no longer a prescribed project, an extension to its currency period should be refused and the Development instead should be the subject of a fresh application, following the development and assessment framework set under the *Planning Act 2016*. That would enable fresh community participation and a consideration by the State of the Development, now that its status as a prescribed project has changed.
- 5) The tenure arrangements for the land the subject of the Extension Request, are currently under assessment with the Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development, and as such a final tenure arrangement is uncertain.
- 6) The constraints and values of the land, and the parameters of the development have not, at any stage, including as part of the Extension Application, been adequately characterised in respect of:
 - a) The bushfire risk on the land

- b) The coastal hazard risks (including the impacts of climate change and sea level rise) of the land
 - c) The current ecological features and habitat values of the land, and
 - d) The topographical constraints and steep land characteristics of the land, and associated safety risks and construction impacts.
- 7) The Development Approval stems from a project initially conceived nearly 19 years ago. It is time damaged and does not represent a planning outcome for the land, or the Gladstone region, which accords with either the purpose of the *Planning Act 2016* or the relevant statutory planning instruments.
- 8) An approval of the Extension Application would entrench and exacerbate a poor planning and infrastructure outcome for the land.
- 9) There is no need for the development the subject of the Extension Application, and need has not been demonstrated to justify an approval of the Extension Application. There is no need to expand the PIA or increase further urban development to the south of the Region.