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Response to Submissions

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Prepared for:

Cairns Regional Council

Prepared on behalf of:

Bengali Land Pty Ltd as Trustee

Our Reference	J001528
Site	626R Redlynch Intake Road, Redlynch Lot 2 on SP106972
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1.0 Introduction

Gilvear Planning Pty Ltd (Gilvear Planning) is assisting Bengali Land Pty Ltd as Trustee (the Owner and Applicant) with an Application for Development Permit for Reconfiguring a Lot, Preliminary Approval for a Variation Request for a Material Change of Use, and a Preliminary Approval for Reconfiguring a Lot, on land at 626R Redlynch Intake Road, known as Lot 2 on SP106972 (the subject site).

The Application was submitted to Council and declared properly made on 25 March 2024. On 8 April 2024 the Applicant confirmed a change to the Application submission, with minor amendment to remove one land use definition from the list proposed in the variation component of the Application. Councils' Confirmation Notice was issued on 9 April 2024, and referral to the State completed thereafter.

On 26 April 2024, the State declared it would not issue an Information Request for the Application.

By letter dated 3 May 2024, Council issued an Information Request.

The response to Council's Information Request was prepared and submitted to Council on 17 May 2024.

Public Notification for this Application was undertaken from 20 May 2024 to 12 July 2024. As a result of the Amended Application submission not being available on Councils' DA Portal for the first ten (10) days of public notification, the Applicant extended the original Notification period from 3 July 2024 to 12 July 2024. A total of three-hundred and fourteen (314) submissions were received during the public notification period, with 284 outlining objections to the proposal, and 30 showing support. A critical analysis of issues raised in submissions is provided within this Report for Council's reference. This analysis seeks to:

- a. Respond to concerns raised within submissions regarding the legitimacy and lawfulness of the Application as submitted, particularly in terms of the variation to Council's planning scheme as sought;
- b. Consider critically the number and locational characteristics for submissions as lodged;
- c. Provide commentary to respond to issues raised within the submissions, including clarification and refinement to the approvals sought, considering further the nature and scale of adjoining land uses, scope and scale of the uses for which approval is sought and responding to elements of submissions that appear to be incorrect in terms of the explanation of the application as put to Council for assessment; and
- d. Considering and responding to concerns raised regarding potential impacts from the development as proposed, including amenity, character, visual amenity, environmental, flooding and traffic / transport issues.

Proposed conditions have also been prepared for Councils' consideration, to assist in clarifying and confirming the Applicants' response to a number of matters as raised.

2.0 Legislative Context

A number of assertions as to the legality and appropriateness of the application as submitted – in particular, the component of the application seeking to vary the Planning Scheme – were made within submissions as lodged.

The following discussion regarding the ability to make application for and have assessed, an Application seeking to vary planning scheme provisions is provided to reiterate the legislative settings applicable to Councils' assessment of this component, in particular of the subject Application.

Section 50 of the Planning Act 2016 confirms:

50 *Right to make development applications*

- (1) *A person may make a development application, including for a preliminary approval.*
- (2) *However, a development application **may not be made for prohibited development**.*
- (3) *A development application for a preliminary approval **may also include a variation request**.*

(Author emphasis)

The land uses included within the variation request component of the Application are not “prohibited development”.

A “variation request” as referenced within Section 50(3) is defined as follows within Schedule 2 of the Act:

variation request means part of a development application for a preliminary approval for premises that seeks to vary the effect of any local planning instrument in effect for the premises.

Importantly it is noted that the “variation request” as provided for within Section 50(3) of the Act was incorporated within this legislation from inception – that is, the provision remains unaltered as between its inclusion within the *Planning Bill 2015* (No 47 of 2015), through to the Act becoming effective in 2016.

The Explanatory Note to the Bill as presented in 2015 relevantly notes, in terms of provisions within a Variation Approval being the determiner for categories (formerly “levels”) of assessment in lieu of a Planning Scheme (per Section 43 of the then-Bill):

A variation approval may only Act as a categorising instrument in relation to development that is the subject of the approval, or is the natural and ordinary consequence of the development the subject of the approval.

For example, a preliminary approval for a material change of use for a large residential development may include provisions establishing different categories of assessment for material changes of use

encompassed by the approval (i.e. for the development subject of the approval), but may also establish categories of development, categories of assessment and assessment benchmarks for reconfiguring a lot for the development, as well as for operational works for the reconfiguration (both of which are development the natural and ordinary consequence of the material change of use).

In terms of the “right” to make an application including a “variation request”, the Explanatory Note provides in terms of (then) proposed Clause 50:

Clause 50 *entitles a person to make a development application including for a preliminary approval (which may also include a variation request for a variation approval).*

The clause supports a performance-based development assessment system that enables a person to bring forward any proposal and have it tested against the relevant planning instruments. However, a person cannot make a development application for prohibited development (other than in limited circumstances in response to a successful superseded planning scheme request).

(Author emphasis)

The right to make an application to vary the provisions of the Scheme applicable to a site has existed in Queensland’s Planning framework since the mid-late 1990s. The right to change Scheme provisions applicable to a site and / or future development on a site was entitled via the ability of proponents to make an application for “Preliminary Approval to Over-ride” a local planning instrument (per Section 3.1.6 in the repealed *Integrated Planning Act 1997*), or an application for “Preliminary Approval that Affects (or Varies) the local planning instrument” (per Section 242 in the *Sustainable Planning Act 2009*).

Previous to this, the right to alter planning scheme provisions existed via a “re-zoning” pursuant to historic legislation (*Local Government (Planning and Environment) Act 1990*).

It is critical to note that the Application to seek to “vary” categories of assessment in contemporary parlance is a lawful component of the subject Application.

Council’s assessment of this component of the Application is undertaken in accordance with the *Planning Act 2016*, Section 61, which provides that:

- (1) *This section applies to a part of a properly made application that is a variation request.*
- (2) *When assessing the variation request, the assessment manager must consider—*
 - (a) *the result of the assessment of that part of the development application that is not the variation request; and*
 - (b) *the consistency of the variations sought with the rest of the local planning instrument that is sought to be varied; and*

- (c) *the effect the variations would have on submission rights for later development applications, particularly considering the amount and detail of information included in, attached to, or given with the application and available to submitters; and*
 - (d) *any other matter prescribed by regulation.*
- (3) *The assessment manager must decide—*
 - (a) *to approve—*
 - (i) *all or some of the variations sought; or*
 - (ii) *different variations from those sought; or*
 - (b) *to refuse the variations sought.*

In terms of Councils' completion of this assessment, commentary from a number of judgements of the Planning & Environment Court of Queensland will be of assistance in providing guidance as to key matters to be taken into account.

Importantly, as has been noted within a number of Court decisions, including *Ashvan Investments Unit Trust v Brisbane City Council & Ors* [2019] QPEC 16:

[59] ...Policy decisions are implemented through detailed scheme provisions that are expressed in performance based terms. Provisions of this kind, by their very nature, do not envisage a single development option or design. Nor do they prohibit development.

Rather, planning scheme provisions are intended to guide development in a city or region in a way that achieves the will of the community (in land use terms) as determined by the elected officials at a particular point in time.

The will of the community, in land use terms, cannot be forecast with scientific precision. The land use needs of a city, or region, are dynamic.

The statutory assessment and decision making framework under the PA enables considerations of this kind to inform the exercise of the discretion to reach a balanced decision in the public interest about an impact assessable application.

Impact assessable applications, and those with variation requests, are typically more complex compared to 'bound' code assessable proposals. Inconsistency or non-compliance with certain parts of planning schemes, State policies, and other statutory documents are therefore not automatic grounds for refusal of an application.

3.0 Analysis of the Submissions

3.1 Total Submissions

It is assumed that all submissions are “properly made” as per the definition in Schedule 2 of the *Planning Act 2016*.

A total of three-hundred and fourteen (314) submissions were received during the public notification period, with 284 outlining objections to the proposal, and 30 showing support. Submissions were sourced from Councils’ public Development Application database, as they were uploaded. Confirmation as to the ‘last’ submissions having been uploaded was sought from Council, and provided on 25 July 2024.

The 314 total submissions include multiple submissions lodged by 14 submitters.

3.2 Locational Analysis

On review of the addresses provided by submitters, it is noted that 196 were lodged by residents within the Redlynch and Redlynch Valley localities. Of these 196 submissions, 145 individual addresses were identified as the “address” by submitters (meaning multiple submissions were received from a number of households).

Additional commentary regarding submitter locations is provided within Section 5.1.1 below.

3.3 Communications and Public Notification Analysis

The Applicant has sought assistance from Engage CCS in terms of project communications, both prior to and during public notification having been undertaken. Engage CCS continues to assist in monitoring email and web-based communications post-public notification for the project.

Engage CCS have prepared reporting to confirm the process undertaken in terms of public notification, and provide commentary as to this process in the context of social media coverage. This Report is included for reference within **Attachment 1** to this response.

4.0 Issues

Submitters raised a variety of issues, including:

- Concerns regarding uses for which approval is sought;
- Association of the proposed uses with the adjoining land use for extractive industry purposes, and comments regarding the longevity of that use;
- Merit of the proposed development, particularly in the context of stated conflicts with planning instruments.

Some submissions stated that detrimental impacts on property values may occur. It should be noted that Council cannot consider such, or anything else relating to personal circumstances, in the decision-making process as per Section 45(5)(b) of the *Planning Act 2016*.

The following response to key elements raised in submissions as lodged is provided to assist Council in its assessment.

4.1 Approvals Sought

4.1.1 LAND USE AND DESCRIPTION

As is noted within Section 4.0 of the Planning Report accompanying the Application submission:

The proposed development is for:

1. *A Preliminary Approval to vary the planning scheme for Material Change of Use – reducing the level of assessment for land uses from impact to code for Bulk Landscape Supplies, Low Impact Industry, Outdoor Sales, Warehouse, Wholesale Nursery and Transport Depot;*
2. *A Development Permit for a Reconfiguration of a Lot (1 Lot into 2 Lots); and*
3. *A Preliminary Approval for a Reconfiguration of a Lot (1 Lot into 4 Lots).*

Elements (2) and (3) of the Application as submitted for Councils' assessment are designated "Code Assessable", whilst element (1) – the application seeking to vary Councils' planning scheme – is designated "Impact Assessable" by virtue of the Planning Act and associated Regulations.

The application to vary the operation of CairnsPlan 2016 V3.1 is lawful. Additional commentary regarding this component of the Application is provided within Section 2.0.

Importantly, it is noted that the Preliminary Approval sought to vary the operation of the Planning Scheme insofar as Material Changes of Use are concerned, does not seek to re-zone the site; the variation seeks to reduce the level of assessment for six (6) defined land uses, from "Impact Assessable" to "Code Assessable".

Development not listed in the Application (refer Section 4.1.1 in the Planning Report) will continue to have categories of assessment determined as per the Rural Zone Table of Assessment in Councils' Planning Scheme.

For the six (6) land uses specifically contemplated within the Application,:

- Bulk Landscape Supplies;
- Low Impact Industry;
- Outdoor Sales;
- Transport Depot;
- Warehouse;
- Wholesale Nursery,

discrete modifications to the zone code (the Rural Zone Code) that would otherwise apply, have been sought to be varied to recognise the development as contemplated, and to take account of the constraints otherwise affecting the land. These modifications are to be given effect via the operation of the Currunda Creek Trades and Services Precinct Development Code, which only applies to those land uses contemplated on the site as listed above.

To ensure there is no confusion as to what is contemplated in terms of future land uses on this site, and the nature of the Preliminary Approval to vary the Scheme as sought (in particular), please find at **Attachment 2** to this Report the Rural Zone Table of Assessment from CairnsPlan V3.1, with changes contemplated by the variation application in particular highlighted. The Applicant seeks Councils' approval for this Table of Assessment in lieu of the previously proposed Table in the Amended Application.

In addition to highlighting the changes to the categories of assessment proposed by the subject Application, the Table of Assessment included within **Attachment 2** seeks to provide additional conditions to the reduced level of assessment applicable to nominated land uses as contemplated, with these conditions responding to matters raised in submissions regarding:

- a. Scale and intensity of potential development;
- b. Building height and setbacks;
- c. Signage and use of off-site signage.

It is also critical to note that the application seeking to vary the operation of the Scheme is limited to that area of the land described in the application material as Proposed Lot 22. Land in the western portion of the site – described as Proposed Lot 21 – is not proposed to be benefited by the change to categories of assessment as proposed. The Applicants intend to continue utilising this area for purposes including primary dwelling, outbuildings and animal keeping / outdoor sport and recreation.

Concerns regarding the potential establishment of 'other' more intensive uses as a result of the proposed development have been considered with additional commentary below. However, further strengthening in purpose statements within the proposed Currunda Creek Trades and Services Precinct Development Code has also been provided for in the revised Code included at **Attachment 3** for consideration.

4.1.2 ADJOINING LAND USE

Further, and / or in addition to the above submissions, it is also notable that the site to the immediate north of the subject land, Lot 9 on RP749301, has been operating as a hard rock quarry since (conservatively) the mid-late 1970's. This is clearly illustrated on photos extracted below, one from prior to Quarrying activity occurring (visibly) on site in 1971, and the earliest image publicly available illustrating commencement of extractive activities on site, in or about 1977.

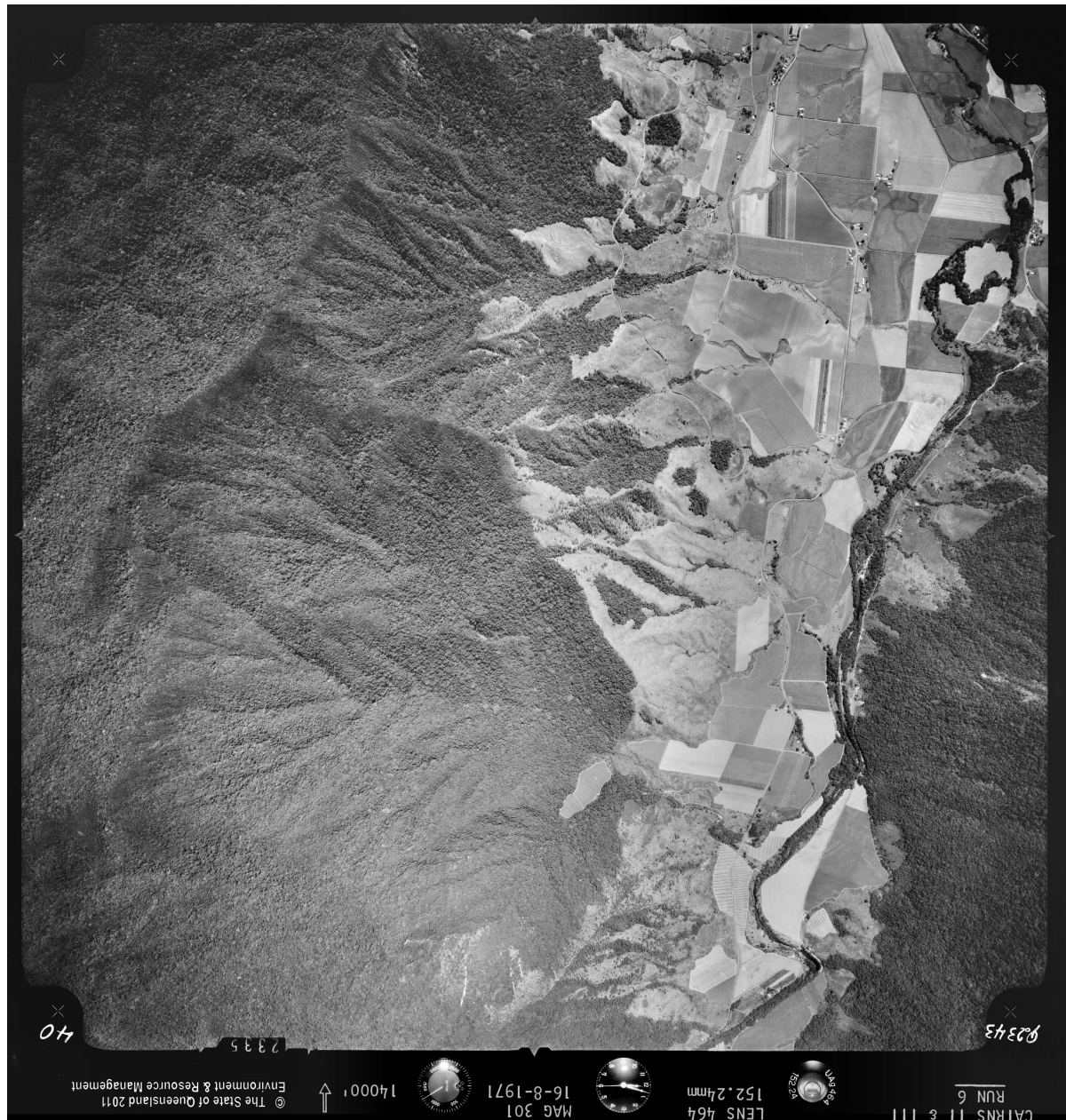


Figure 1: 1971 Image extracted from QImagery (© Queensland Government)



Figure 2: 1977 Image extracted from QImagery (© Queensland Government)

The quarry site (part of which previously encompassed the eastern-most portion of the land the subject of this Application) previously formed part of the Shire of Mulgrave in terms of Local Government management and was not subject to planning scheme control at the time of initial commencement (noting establishment of site works pre-dates the first planning scheme for the Shire of Mulgrave, which was implemented in 1978).

Furthermore, as planning controls for the region advanced, the site was confirmed as being the subject of a Major, Established Quarry in Strategic Plan mapping, on and from the preparation of the Planning Scheme for the balance of the City of Cairns (implemented in 1996). An extract from the applicable Strategic Plan mapping from the 1996 Scheme is provided below:

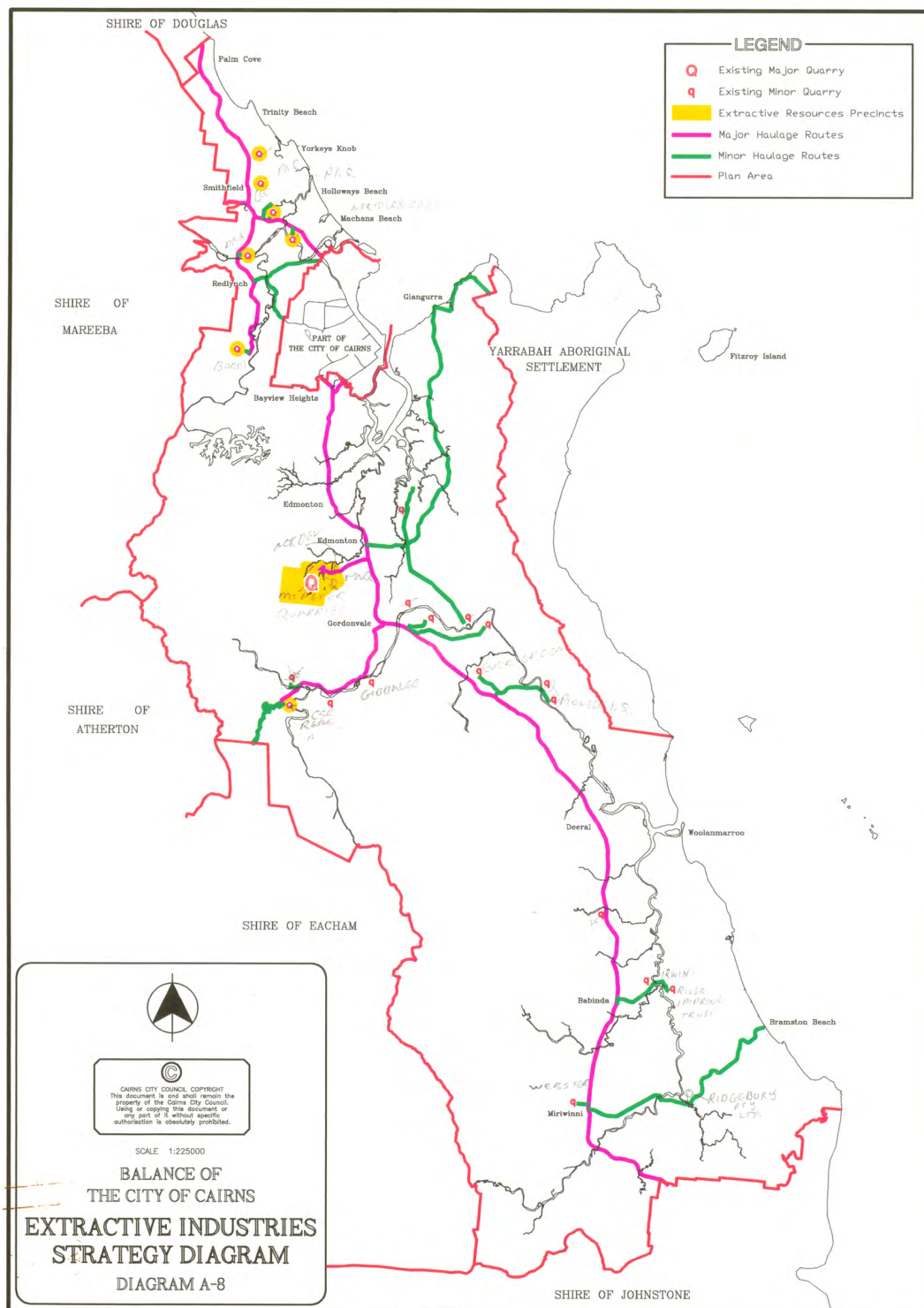


Figure 3: Strategic Framework Mapping – Planning Scheme for the Balance of the City of Cairns 1996 (source: Cairns Regional Council)

This designation was confirmed in the 2006 replacement scheme – CairnsPlan 2006 – with this designation carrying through in CairnsPlan 2009, and subsequent iterations / amendments through to the present Scheme being in force and effect.

The site was in 2007 (via repealed SPP2/07), included by the State in its State Planning Policy (applicable at that time) as a Key Resource Area.

Since State Planning Policy recognition of land as “key resource areas” across the site, there are very few examples, exclusive of the Behana Gorge KRA, of sites added to the register as a “key resource area”, and then removed.

At the time that KRA 12 was gazetted in the current State Planning Policy (2013), the KRA Report indicated a remaining life of “in the order of 30 years” indicating that quarry activities would extend beyond 2040. More recent valuation reporting included within the Planning Report submitted with the subject Application indicates that there may be over 90 million tonnes in potentially quarryable resource available. Even if this figure is an overstatement, assuming at least a third of this amount is available, with extraction averaging about 300,000 tonnes per annum (allowing for peaks and troughs depending upon construction activity across the region), it is anticipated the life in the quarry will exceed initial KRA estimates, potentially by upwards of 70 years.

It is also important to note that Applications for quarrying on the site adjacent – to the extent they are included within the Key Resource Area currently mapped - are designated “Code Assessable” pursuant to the current Scheme.

4.1.3 SCOPE AND SCALE – “THIN EDGE OF THE WEDGE”

Submitters raised concerns with any potential approval of the subject development application ‘opening the floodgates’ to more significant development – either in terms of nature of development and / or location of development within the western precinct (proposed Lot 21) of this site.

It is important to note, in terms of the nature of development proposed:

1. A discrete and specific range of land uses – six relatively low impact trades and services style uses – are sought to be code assessable on that part of the site described as proposed Lot 22; and
2. Any ‘additional’ or more intensive uses, including Medium Impact Industry, High Impact Industry, Special Industry or even uses not contemplated within the revised Table of Assessment included for reference within **Attachment 2** to this reporting, will require successful completion of an “Impact Assessable” application to Council. This process includes public notification and an assessment against all relevant Scheme provisions, public notice outputs (submissions) and any other relevant matters; and
3. Any additional subdivision and / or material change of use proposed on that part of the site described as proposed Lot 21 will need to be supported by a “relevant purpose” determination, issued by the State. This determination, also known as a “Section 22A determination” pursuant to the *Vegetation Management Act 199*, is unlikely to be successful without a number of significant factors being overcome. Importantly, unless development proposed falls within a “relevant purpose” as provided for in Section 22A, the State will not, and cannot, consent. Without that consent, no

Application can be lodged with Council for assessment. The “relevant purposes” as presently confirmed within Section 22A are:

- (a) *a project declared to be a coordinated project under the State Development and Public Works Organisation Act 1971, section 26; or*
- (b) *necessary to control non-native plants or declared pests; or*
- (c) *to ensure public safety; or*
- (d) *for relevant infrastructure activities and clearing for the development can not reasonably be avoided or minimised; or*
- (e) *a natural and ordinary consequence of other assessable development for which a development approval was given under the repealed Integrated Planning Act 1997, or a development application was made under that Act, before 16 May 2003; or*
- (f) *for fodder harvesting; or*
- (g) *for managing thickened vegetation; or*
- (h) *for clearing of encroachment; or*
- (i) *for an extractive industry; or*
- (j) *for necessary environmental clearing.*

Whilst this list may seem ‘vague’ and open to interpretation, most if not all of the terms referenced have specific definitions, and a large portion also must only be issued when compliance with a number of pre-conditions can be demonstrated.

It is for these reasons, and others articulated within the Planning Report and Applicant Response to Council’s Information Request previously submitted, that the Applicant asserts it is highly unlikely that more significant uses will establish on site.

Further and / or in the alternative, any more significant (in terms of impact) uses that are to be established on site will trigger requirements for completion of impact assessment processes, which include public notification.

Further, and / or in the alternative, development on proposed Lot 21 is considered highly unlikely to be more intensive than that already present, having regard constraints identified in the Planning Reporting (vegetation and / or hillslopes) and additional commentary provided above.

4.1.4 SUBDIVISION COMPONENT – NUMBER OF LOTS

A number of submitters raised issue with the description of lot numbers in Application material.

It would appear that a previous draft concept for the “Preliminary Approval for Reconfiguration of a Lot” component of the Application was included in technical reporting attached to the Planning Report. Additionally, one of the layouts referenced “21 Lots” rather than the four (4) lots actually shown on that layout.

To ensure there is no confusion, and to explain the basis for the reconfiguration (One (1) lot into Four (4) lots, Drainage Reserve and Road Reserves), the following information is provided:

- The technical information provided in support of the Application – information attached to the original Planning Report, the response to Council’s information request, and this Report – has been prepared utilising accepted methodologies for anticipating “demand” and “yield” in a trades and services setting;
- That is, within a trades and services setting, yield is not ordinarily determined by “lot numbers”. Indeed, this is reflected in historic and contemporary approaches to infrastructure contributions levied by Council (whereby charges are levied on the basis of uses “Gross Floor Area” and / or “Site Area”, rather than lot numbers);
- Importantly, access to services likely ‘demanded’ by a development of this nature has been determined based upon assumptions as to “development area”, noting that for development of this nature, demand is not necessarily or ordinarily linked to number of “lots”.

The technical information upon which the Application is based does not change as a result of lot numbers.

Furthermore, and critically, the Preliminary Approval for Reconfiguration of a Lot component of the Application as submitted to Council only seeks approval for four (4) allotments, road reserve and drainage reserve. This is confirmed a number of times within the Development Application Form, Planning Report, and response to Information Request. Approval for additional lots, and indeed, approval to actually enable ‘creation’ of the four (4) lots presently contemplated, will still require an additional Application process – code assessable – to be undertaken.

The four (4) allotments for which preliminary approval is currently sought are reflective of topographic and site constraints. The number of lots, as stated previously, has not impacted assessments as to employment generation, traffic generation, flooding or any other servicing or ‘impact’ assessments.

The preparation of a concept illustrating 21 potential allotments was intended to inform considerations in advance of any Application being prepared for lodgement, and was preliminary only. The Applicant reiterates that it does not, and did not, seek to misinform or mislead the community in terms of potential scale of the proposed development.

As is clearly stated within the Currunda Creek Trades and Services Precinct Development Code submitted with the original Application, a minimum lot size of 1,000m², consistent with other “low impact industry” zone requirements throughout the Region, is provided for. However – this minimum lot size is not ‘determinative’ in terms of ultimate lot numbers. In fact, a range of factors will influence lot configuration on site in the future,

including road frontages, access, site operator requirements and the impact of access to services and the like.

Additionally, it is critical to note that a “Preliminary Approval” does not permit development to occur. This is confirmed within Section 49(2) of the *Planning Act 2016*, which provides:

*A **preliminary approval** is the part of a decision notice for a development application that—*

- (a) approves the development to the extent stated in the decision notice; but*
- (b) **does not authorise the carrying out of assessable development.***

(Author emphasis)

Importantly, the number of lots shown or referenced on plans within the Application must always be considered in the context of Applicant intent and information as submitted. In this case four (4) lots is referenced in materials and shown (physically) on plans for the most part. Therefore, the Preliminary Approval for Reconfiguration of a Lot only seeks approval for four (4) lots.

Additionally – the Application material must be considered in the context of intent. The Applicant **intended** to seek Preliminary Approval to create four (4) lots only. Even if such an Approval is granted – before any development (reconfiguration) can occur, a Development Permit must be applied for and issued by Council. Further assessment of this component of the Application, within the framework conditioning contemplated by any Preliminary Approval as issued, will be required.

4.2 Merit

4.2.1 ECONOMIC

Attachment 9 to the Planning Report submitted with the subject Application contains an Industrial Needs Assessment, prepared in August 2022 by Location IQ.

Importantly, on completion of this assessment, the authors of the Reporting note that:

“There is a total of 1.05million sq. m (105 hectares) of vacant industrial land throughout Cairns, however, there is no vacant floorspace / land within the Cairns North sector (around the subject site).”

Additionally, it is confirmed that:

*“Under the Cairns Plan 2016 scheme and Cairns SDA [State Development Area] there will be significant future development of high and medium industry impact land in the Cairns South sector. This is anticipated to generate additional employment across the region and, in turn, translate into increased demand for low impact land. While future development of industrial land is concentrated in Edmonton (Cairns South sector), low impact industry land has been **exhausted** in the North and Central Cairns sectors. The subject proposal would assist in satiating part of this existing and future undersupply in the north and in close proximity to the urban and rural residential population of the Redlynch Valley.*

...

The proposed development would result in a range of important economic benefits which will be of direct benefit to the local and broader community...”

Supplementing the Industrial Needs Assessment submitted with the primary Application, the following information was provided to assist Council in its assessment in response to its Information Request, under cover of letter dated 17 May 2024:

Section 3.0 within the Planning Report provides extensive information to explain site characteristics, including:

- *Topography, both of the site and surrounding area;*
- *History of the site, both from a property boundary / tenure perspective, and from a land use perspective;*
- *Current land uses undertaken on the site, including constraints associated with those uses being retained in short or longer term settings;*
- *Surrounding land uses including, importantly, the proximity of the site to the adjoining Quarry, which constraints a unique situation in terms of short, medium and long term land use options for the site;*
- *Ecological context including vegetation and waterways;*
- *Primary productive values, including confirmation that as a result of past Quarrying activities on the site and loss of access to acceptable water supply for irrigation, primary production is no longer a viable land use option;*
- *Landscape values;*
- *Infrastructure servicing considerations, including available access, water and sewerage supply networks, flooding and drainage.*

As is noted within Section 1.0 Introduction in the Planning Report submitted for this Application:

1. *The site contains extensive slopes and remnant vegetation within its western portion;*
2. *The eastern portion of the site, cleared and historically utilised for a variety of purposes, is not mapped as containing good quality agricultural land and the site in its entirety is not mapped as being strategic cropping land;*
3. *The site is located such that access to transport, water, sewerage, stormwater and electrical / telecommunications infrastructure can readily be (or has been) achieved;*
4. *The site is bound to the north by an existing and well established quarry, likely to be operational for many more decades to come, and by an educational facility and conservation zoned areas to the south;*
5. *The site is in the Redlynch Valley area, which includes rural lifestyle and urban residential areas with no local access to employment land for local services, or other non-education or non-commercial/retail purposes.*

Section 4.1.2 in the Planning Report seeks to articulate the merits of the project – in particular, the proposed variation application – and contains information directly relevant in responding to this element of the broader information request.

Importantly, and as outlined in Section 4.1.2:

- a. *The land is not identified as Strategic Cropping Land. The use of the land for cropping is not likely to be sustainable either commercially or environmentally.*
- b. *The historic use of the eastern portion of the land as part of quarry activities including quarrying of the topsoil and alluvium layers and use of the area for stockpiling of hard rock products has effectively removed rural production values. The historic reconfiguration of the land has fragmented the previously larger rural production parcels which were of sufficient size to provide feasible production capability. The establishment of the quarry and lot reconfiguration has resulted in relatively small parcels of cleared land south of the creek and in the western precinct which will not provide sufficient production capacity to be economically feasible.*
- c. *The change in land use in the Redlynch Valley over the last 40 years has resulted in the land now being remote from rural production infrastructure which is located at the northern end of the valley. Furthermore, reinstatement of rural production activities on the land would likely be incompatible with and have reverse amenity impacts on the urban and rural lifestyle uses that have replaced rural activities.*
- d. *At the time that KRA 12 was gazetted (2013) the KRA Report indicated a remaining life of “in the order of 30 years” indicating that quarry activities would extend beyond 2040. More recent valuation reporting included within the Planning Report indicates that there may be over 90 million tonnes in potentially quarryable resource available. Even if this figure is an overstatement, it is anticipated the life in the quarry will exceed initial KRA estimates, potentially by upwards of 70 years.*
- e. *Based on the extended Quarry life and the impracticality of achieving rural residential use of the land, the proponent considered the land use restrictions imposed by the inclusion of the land in the KRA separation area to determine the highest and best use of the land.*
- f. *Ongoing outdoor sport and recreation activities are not feasible, given significant impacts arising from Covid initially, and later from the cost-of-living crisis reducing capacity for non-essential expenditure in most households, which further eroded an already marginal land use activity (horse agistment and arena / lessons) in terms of viability.*
- g. *Land uses on the property must consider the interface with the adjacent quarry. Compatible uses per guidance material from the State indicates commercial or industrial uses including long-term vehicle parking, storage depot, landscape supply centres, equipment sales and display yard, and warehouse may be appropriate, given they will not significantly or substantially increase numbers of people living, working or congregating adjacent to the quarry.*

It is acknowledged that the site is not located within a visible, well trafficked area. However, it is submitted that the uses contemplated are not likely to require (at smaller intensities contemplated) high passing traffic to generate income. The uses contemplated are more likely to be akin to the range and diversity of uses

seen in the smaller Smithfield Industrial area (off McGregor Road), or in the older parts of Bungalow – low traffic generating, relatively low employment generating, and servicing a specific need / market. High visibility is not required for these uses. Uses in precincts mentioned above include smaller mechanics workshops, storage facilities, specific repair facilities, bulky goods storage, sale and maintenance and the like.

As to the need for the uses contemplated on this site, Section 4.1.2 provides the following to assist in the assessment:

Statistical data obtained from the Australian Bureau of Statistics (ABS), revealed that the medium age of residents living within the Redlynch locality is approximately 37. Families (approximately 2,869 families in total) make up a large portion of the Redlynch population. Data obtained from the 2021 census indicated there was a total of 10,571 people residing in Redlynch, the majority of which (73.9%) hold employment within the labour workforce (i.e. cleaners and laundry workers, construction and mining labourers, factory process workers, farm, forestry and garden workers, food preparation assistants and other labourers).

The ABS regional summary for the Redlynch Statistical Area (which incorporates the localities of Barron, Lake Placid, and Kamerunga) indicates that approximately 25 out of the 124 businesses related to manufacturing and approximately 88 out of the 363 businesses related to transport, postal and/or warehousing, within the Northern sector, are established within the Redlynch Statistical Area (Data by region methodology. In total, there are approximately 524 manufacturing businesses and approximately 1,244 business related to transport, postal and/or warehousing, operating within the Cairns Region. In considering this, the number of industry related businesses located with the Redlynch Statistical Area is considerably low – approximately 4.7% of manufacturing businesses and approximately 7% of businesses relating to transport, postal and/or warehousing. Given that the majority of Redlynch residents have employment within the labour workforce, it can be assumed that most Redlynch residents are required to travel to their place of work.

The uses contemplated on the site have been selected specifically to recognise and provide a sensitive response to adjoining quarry activities; furthermore, these uses incorporate a range of activities that will assist in the relocation of some businesses out of other industrial areas (Portsmith, Bungalow, parts of Stratford / Aeroglen and Manunda / Manoora as examples), which thereby permits alternate and potentially heavier “impact” industries to locate in these areas.

We note the uses in these areas have been significantly impacted by expansion to “mixed use” zonings within the present Scheme, which has created potentially non-anticipated land use outcomes and a significant portion of more conventional “commercial” activities in areas previously utilised for more light and ‘lower’ impact industrial and related activities.

The potential for relocation of some activities, and importantly for the establishment of in particular storage facilities (contractors yards and self-storage) is considered a response to an obvious need. The storage facilities closest to the subject locality (the Redlynch Valley) are north to Smithfield, Barron River / Stratford / Aeroglen, or into Manunda / Manoora. There is no available storage for residential or smaller scale commercial activities in a “self-storage” setting in proximity for Valley residents – of which there are over 10,000.

Furthermore, it is noted that the site is within the development footprint contemplated, flood free (as demonstrated by reporting submitted with the original application). This is a significant benefit, in circumstances where almost all of the alternate zoned industrial areas are subject to inundation to some degree.

As to any limitations on uses proposed on the site by the Variation component of the Application – it is noted that any future uses will be subject to assessment by Council via a Code Assessable Application. This provides opportunity for reasonable and relevant assessments to be undertaken, against Councils' code requirements and the proposed Currunda Creek Trades and Services Precinct Code and permit later assessments as to scale to be undertaken if provided for and / or required.

However, in light of the relatively 'low' traffic volumes passing the site, and visibility of the site in comparison to other locations, it is anticipated that uses to be undertaken on site will be relatively low-scale, low-footprint and low-impact.

It is submitted that the proposed uses will address:

- *the need for **local** employment business opportunities and services to the primary catchment of Redlynch, Redlynch Valley and Brinsmead; and*
- *the broader needs of the existing and future Northern Beaches population given zoned unconstrained land north of the city suitable for such uses is exhausted and all of the future zoned and designated industrial land is to the south of the city; and*
- *the provision of storage facilities for infrequently accessed items will allow inefficient use of existing zoned, accessible and serviced Industrial land to be relieved; and*
- *the proposed development provides an opportunity to “free up” existing industrial lots (and parts of lots) used for storage to be better utilised for higher order uses which will assist in addressing the increasing scarcity of higher order Industrial land for the foreseeable future due to infrastructure and access limitations.*

Further, and in addition to information previously submitted insofar as economic need for the subject proposal, it is submitted that:

- a. Data from the Australian Bureau of Statistics (ABS) has been summarised, with Redlynch compared to nearby suburbs of Smithfield, Trinity Park, Aeroglen, Cairns North, Freshwater, Caravonica, Kamerunga, and Stratford. These suburbs were analysed both on their own and combined to form two 'catchments' – Catchment 1 combined Smithfield and Trinity Park, which together have a population of 10,200; and the remaining suburbs of Aeroglen, Cairns North, Freshwater, Caravonica, Kamerunga, and Stratford forming Catchment 2, for a combined population of 12,224. Redlynch remains its own standalone catchment, with a population of 10,571;
- b. The proposed development is likely to cater to Technicians and Trade Workers, Labourers, and Machinery Operators and Drivers compared to other professions. With approximately a quarter of people in the workforce of Redlynch listed as working within these industries – further referenced as 'relevant employment sectors', it can be determined there is indeed a sufficient working population already within Redlynch to sustain future low impact industrial uses as proposed;
- c. A map showing the identified catchments and the locations of Low- and Medium- Impact Industrial Land is provided for reference at **Attachment 4**;

- d. Approximately a quarter – 24.5% – of the Redlynch workforce is employed within a relevant employment sector, this is consistent with Catchment 1, wherein 27.6% of the workforce is employed within a relevant employment sector, and 23.8% for Catchment 2; and
- e. Table 1 below summarises travel distance from work to place of residence, sourced from the Australian Bureau of Statistics from 2021 Census data, indicating that the vast majority of respondents (3,365) travel 10 – 20km to work each day. A portion of these respondents are likely to benefit from access to storage and low impact industry options within the Redlynch Valley precinct, and / or within the western and north/western suburbs of Cairns more broadly.

Table 1: Redlynch - Distance travelled to work from place of residence - 2021, from 5493 respondents (ABS)

Distance (km)	0 (Work from Home)	<1	1 to <2.5	2.5 to <5	5 to <10	10 to <20	20 to <30	30 to <50	50 to <100	100 to <250	250+
	234 (4.2%)	165 (3%)	190 (3.4%)	221 (3.4%)	832 (15.1%)	3365 (61.2%)	150 (2.75)	27 (0.4%)	63 (1.1%)	12 (0.2%)	238 (4.3%)

In addition, it is noted that access to storage facilities in particular, may be of significant benefit for residents in Redlynch and Redlynch Valley. This assertion is made having regard to the following:

- Redlynch contains 3,335 occupied private dwellings (94.9% of listed dwellings);
- Within these occupied dwellings, 814 (24.4%) have only 1 motor vehicle (excluding motorbikes, motorised scooters, and heavy motor vehicles) registered to the premises;
- 1,579 (47.4%) have 2 motor vehicles registered, and 856 (25.7%) have 3 or more vehicles registered.

Given the high proportion of residents with more than one (1) motor vehicle registered to a premises, and the fact that over a quarter of dwellings have more than three (3) vehicles registered, it is anticipated that access to storage options (particularly given most residences have a standard parking capacity – outside larger rural residential allotments – of two (2) vehicles) is likely to be beneficial.

4.2.2 COMMUNITY

As was noted by His Honour Judge Morzone in *Northern Sands Pty Ltd v Cairns Regional Council* [2023] QPEC 31 (referencing *Isgro v Gold Coast City Council* [2003] QPELR 414), “community need” may be considered having regard to:

“... a range of qualitative factors are involved such as convenience, accessibility, choice, range, depth, competition, price, service, shopper amenity etc; A use is needed if its provision, taking all things into account, will improve the physical well-being of the community, or will on balance improve the services and facilities available in the locality; or will improve the ease, comfort, convenience and efficient lifestyle of the community.”

Importantly, His Honour notes that:

“... the question of need is decided from the perspective of the community and not that of the applicant, commercial competitor or those who make adverse submissions.”

Critically – 4% of total residents (by address) within the Redlynch and Redlynch Valley localities objected to the proposed development. Whilst those who objected, in part, stated they saw no “community need” for the proposed development – the question of “community need” cannot solely be decided from their perspective as adverse submitters.

Having regard the nature of the use contemplated by the proposed development, that being “trades and services” style facilities, it is considered that the “qualitative factors” most relevant in the subject assessment will include:

- Convenience for business owners and staff in accessing facilities ‘close to home’ and / or for trades in particular, close to a significant catchment likely requiring services (plumbing, carpentry, tiling and the like); and
- Accessibility to these facilities, noting the Redlynch and Redlynch Valley precincts have a population greater than 10,000, and there is likely a significant ongoing need for these facilities in terms of management of dwellings and complementary facilities (shops, hotel and the like) in this locality;
- Accessibility to alternate facilities, suitably located and zoned;
- Convenience and comfort factors.

In terms of “convenience” both for business owners and staff and for potential patrons of trades and services facilities, it is noted that:

- i. Approximately a quarter of Redlynch residents of working age are considered to be working in the trades and services professions;
- ii. A portion of these residents are likely to utilise, if they own smaller businesses, their home as the “base” for business operations, or if this is not the case, must travel at least 10km one way to access a suitably zoned and located alternate ‘base’ for such operations;
- iii. These residents likely then – at least in part – return to the Redlynch locality to undertake the provision of trades / services, given the number of houses within the locality (over 3,300), and the range and age of these houses and other facilities;
- iv. There is likely to be a significant and positive impact in terms of convenience for these residents, as well as a flow-on benefit in terms of their customers who can access these services ‘quicker’ and ‘cheaper’ in the event that the service provider is not having to travel (conservatively) 20+ km to access equipment / stored materials necessary to undertake the project / job in question.

In terms of alternate suitably located and zoned facilities for trades and services style uses, it is critical to note the majority of these are:

- a. Located to the south of the City;
- b. Zoned Mixed Use and / or Industry (Low, Medium or High);
- c. Likely impacted by flood and inundation overlays in the Scheme;
- d. Likely difficult to secure and / or if secured, require time and effort (and expenditure) to access in terms of travel / trip times;

- e. May be more appropriately utilised for heavier industries, if industrial zoned, and / or if zoned “mixed use”, may present challenges in terms of ongoing security and / or appropriateness in land use outcomes (these areas typically convert to non-trades and services activities over time).

Mapping illustrating the proximity to alternate zoned areas was included in the Applicant’s response to Council’s information request, and is again commended to Council in its continued assessment of this Application.

In addition to the above – it is noted that a significant portion of dwellings within the Redlynch locality – broadly speaking – are located on allotments of less than 1,000m² in size. These dwellings are likely to encompass the primary dwelling, a two (2) car lockup garage, and garden areas. For residents of these dwellings, additional vehicles – car/s, bikes, boat/s, caravan/s, camper trailer/s, trailer/s and the like – tend to be parked outside in yards and / or on verges.

“Warehouse” facilities – including self-storage facilities – are proposed as part of the future land use mix contemplated on site by this Application. Residents with multiple vehicles and / or significant goods and equipment (stored on-site or in alternate locations some distance away) are considered highly likely to benefit via provision of suitably designed, contemporary facilities permitting ‘self-storage’ on the subject site.

In terms of the nature and range of land uses selected for the variation component of the Application, it is noted that (as stated in the Applicant’s Response to Councils’ Information Request):

The uses contemplated on the site have been selected specifically to recognise and provide a sensitive response to adjoining quarry activities; furthermore, these uses incorporate a range of activities that will assist in the relocation of some businesses out of other industrial areas (Portsmith, Bungalow, parts of Stratford / Aeroglen and Manunda / Manoora as examples), which thereby permits alternate and potentially heavier “impact” industries to locate in these areas.

We note the uses in these areas have been significantly impacted by expansion to “mixed use” zonings within the present Scheme, which has created potentially non-anticipated land use outcomes and a significant portion of more conventional “commercial” activities in areas previously utilised for more light and ‘lower’ impact industrial and related activities.

The potential for relocation of some activities, and importantly for the establishment of in particular storage facilities (contractors yards and self-storage) is considered a response to an obvious need. The storage facilities closest to the subject locality (the Redlynch Valley) are north to Smithfield, Barron River / Stratford / Aeroglen, or in to Manunda / Manoora. There is no available storage for residential or smaller scale commercial activities in a “self-storage” setting in proximity for Valley residents – of which there are over 10,000.

Furthermore, it is noted that the site is within the development footprint contemplated, flood free (as demonstrated by reporting submitted with the original application). This is a significant benefit, in circumstances where almost all of the alternate zoned industrial areas are subject to inundation to some degree.

As to any limitations on uses proposed on the site by the Variation component of the Application – it is noted that any future uses will be subject to assessment by Council via a Code Assessable Application. This

provides opportunity for reasonable and relevant assessments to be undertaken, against Councils' code requirements and the proposed Currunda Creek Trades and Services Precinct Code and permit later assessments as to scale to be undertaken if provided for and / or required.

However, in light of the relatively 'low' traffic volumes passing the site, and visibility of the site in comparison to other locations, it is anticipated that uses to be undertaken on site will be relatively low-scale, low-footprint and low-impact.

It is submitted that the proposed uses will address:

- *the need for **local** employment business opportunities and services to the primary catchment of Redlynch, Redlynch Valley and Brinsmead; and*
- *the broader needs of the existing and future Northern Beaches population given zoned unconstrained land north of the city suitable for such uses is exhausted and all of the future zoned and designated industrial land is to the south of the city; and*
- *the provision of storage facilities for infrequently accessed items will allow inefficient use of existing zoned, accessible and serviced Industrial land to be relieved; and*
- *the proposed development provides an opportunity to "free up" existing industrial lots (and parts of lots) used for storage to be better utilised for higher order uses which will assist in addressing the increasing scarcity of higher order Industrial land for the foreseeable future due to infrastructure and access limitations.*

4.2.3 PLANNING

His Honour Judge Morzone in *Northern Sands Pty Ltd v Cairns Regional Council* [2023] QPEC 31 (referencing *Isgro v Gold Coast City Council* [2003] QPELR 414) notes that "planning need" may be considered having regard to:

"an assessment of the extent to which the proposed development can be accommodated by existing planning provisions. This necessarily involves an assessment of the existence of competitive approvals and the availability of suitably zoned and/or designated lands to accommodate the proposed development."

As was noted in the Planning Report and Economic Needs assessment submitted with the original application, there are limited opportunities for development of the scale and nature contemplated on this site to be established north of the Cairns CBD.

The residents in Redlynch and the Redlynch Valley are located remote from more significant service business and employment opportunities. Mapping included within Attachment 2 to this response Report illustrates the distance between these areas, and the nearest available, zoned trades and services or industrial precincts. It is also important to note that these precincts (existing – zoned) are typically fully subscribed, with little (if any) available land or buildings available for those wishing to relocate.

The sites present zoning – Rural – is reflective of historic land uses, in an ever-reducing but previously vibrant agricultural sector that existed across the broader valley area. It is submitted that in the context of

current agricultural practices, transport constraints, and the lack of 'good quality' agricultural soils to sustain genuine productive outputs, the zoning is not reflective of 'land use' potential.

Importantly the site is also immediately adjacent to and contained within a KRA-designated hard rock quarry. Alternate residential or rural residential land uses are not possible whilst the quarry is operational, and this is considered likely to remain the case for a substantial period of time, given scarcity of quarry resources, project requirements and transport constraints impacting quarry operations more broadly throughout the region.

5.0 Impacts

Submitters raised various concerns regarding the potential “impacts” arising, in the event the proposed development is approved by Council. These impacts include:

- Impacts on amenity and character for the Redlynch locality and Valley more specifically;
- Visual amenity impacts;
- Detrimental impacts on the ecology of the site and area more broadly;
- Negative impacts arising from future land use operations;
- Flooding and runoff impacts;
- Traffic and road infrastructure factors – vehicle size, numbers and off-site impacts.

The Applicant has considered these matters, obtained additional technical advice to respond to same where required, and provides the following response for Councils’ consideration.

5.1 Amenity

5.1.1 LOCALITY AND CURRENT AMENITY

There are a number of elements to consider insofar as “amenity” impacts – potential or perceived – that may arise as a result of the proposed development are concerned. Within this sub-section, we have sought to focus on general “amenity” impacts, dealing separately with visual amenity below.

Despite the term “amenity” being utilised extensively within the current Scheme (CairnsPlan 2016 V3.1), the term is not specifically “defined” nor is an expectation as to how it should be interpreted realistically expanded upon or referenced within the Scheme.

Section 1.3 in the Scheme provides that in terms of interpreting terms used within the Scheme:

- (1) A term used in the planning scheme has the meaning assigned to that term by one of the following:**
 - (a) the Planning Act 2016 (the Act);**
 - (b) the Planning Regulation 2017 (the Regulation), other than the regulated requirements;**
 - (c) the definitions in Schedule 1 of the planning scheme;**
 - (d) the Acts Interpretation Act 1954; or**
 - (e) the ordinary meaning where that term is not defined in any of the above.**
- (2) In the event a term has been assigned a meaning in more than one of the instruments listed in sub-section 1.3.1(1), the meaning contained in the instrument highest on the list will prevail.**

In circumstances where “amenity” is not defined within the Scheme, the Act or its Regulation, nor is it defined in the *Acts Interpretation Act 1954*, then “the ordinary meaning” of the term applies.

How, then, is “amenity” to be defined when contemplating potential impacts upon same in a development assessment context in the Cairns Region?

In terms of the concept of ‘amenity’ in a planning context, the Court in *Harris v Scenic Rim Regional Council* [2014] QPEC 16 noted that (in that case notwithstanding a definition for “amenity” having been provided within the Scheme applicable):

The concept of the amenity of a neighbourhood is wide and flexible. Some aspects of amenity are practical and tangible. Examples include traffic generation, noise, nuisance, appearance, and the way of life in the neighbourhood. Other aspects of amenity are intangible and subjective. They include the standard or class of the neighbourhood and the reasonable expectations of a neighbourhood: Broad v Brisbane City Council (1986) 2 Qd R 317 at 320. Amenity may embrace the effect of a place on the senses and the resident’s perception of the neighbourhood. Knowing the use to which a particular site is, or may be, put may affect a resident’s perception of amenity: Broad v Brisbane City Council at 326; Novak v Woodville City Corporation (1990) 70 LGRA 233 at 236; Telstra Corp Ltd v Hornsby Shire Council (2006) 67 NSWLR 256; (2006) 146 LGERA 10 at [190].

The reasonable expectations of residents of the neighbourhood are informed by the current planning controls in the planning scheme: Gorman v Brisbane City Council [2004] QPELR 29 at 32 [18]; Acland Pastoral Co Pty Ltd v Rosalie Shire Council [2008] QPELR 324 at 348-349 [40]; Gillion Pty Ltd v Scenic Rim Regional Council [2013] QPEC 15 at [159], [160]. Residents must be taken to expect that land in the locality will be put to one of the uses to which that land may be put as of right and may be put to one of the uses permitted with the consent of the local authority under the planning scheme: Bell v Noosa Shire Council [1983] QPLR 311 at 313; Crane v Brisbane City Council [2004] QPELR 1 at 7 [48].

(Author emphasis)

Importantly, it is critical to consider uses currently occurring on the site, and / or those that may occur without requiring public notification and ‘impact’ assessment, under Councils’ current Scheme. This requires a re-confirmation as to categories of assessment applicable pursuant to the Planning Act and Regulation, and Scheme, and a critical review of Councils’ Rural Zone Table of Assessment.

It is also important to consider the nature of the current ‘amenity’ through Redlynch and Redlynch Valley, to assist in assessment as to genuine potential for detrimental impacts.

The following information is provided to assist Council in its consideration of submissions objecting to the proposed development on the basis of negative amenity and character impacts.

The character of the Valley has evolved over the progressive transition of Redlynch Valley from a cane farming community with relatively few residents to the urban (Redlynch and Redlynch Valley) and rural lifestyle precincts (Currunda Downs, Sunshine Acres, The Rocks, Runnymede Avenue, and Crystal

Cascades). This transition has occurred over a period of approximately 30 - 40 years, as illustrated from aerial images extracted below.



Figure 4: 1979 Image extracted from QImagery illustrating Redlynch and the Valley (© Queensland Government)



Figure 5: 1990 Image extracted from QImagery showing northern portion of the Valley and Redlynch (© Queensland Government)

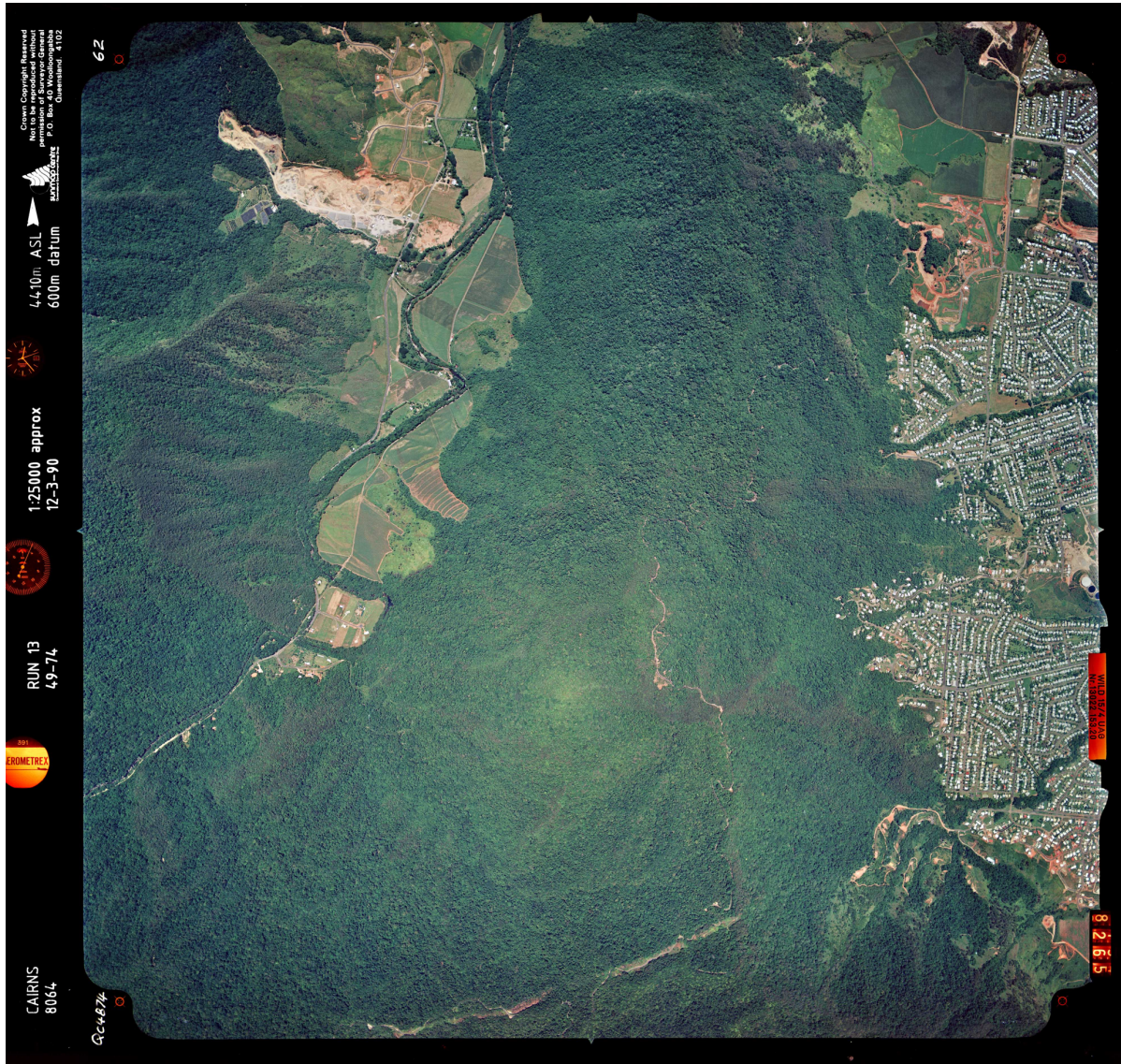


Figure 6: 1990 Image extracted from QImagery showing southern portion of the Valley (© Queensland Government)

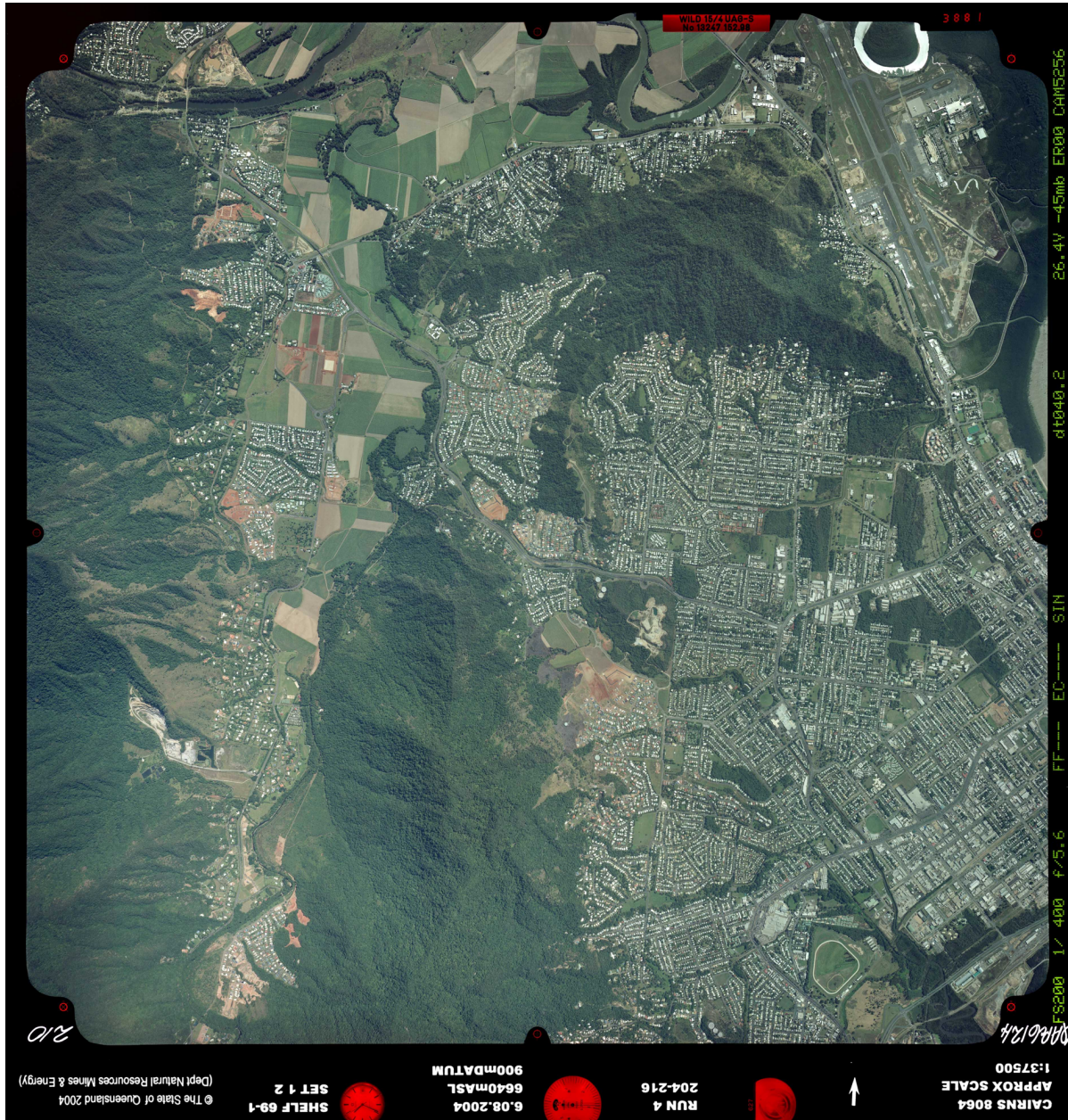


Figure 7: 2004 Image extracted from QImagery showing northern portion of the Valley and Redlynch (© Queensland Government)



Figure 8: 2004 Image extracted from QImagery showing southern portion of the Valley (© Queensland Government)



Figure 9: 2017 Image extracted from QImagery showing northern portion of the Valley and Redlynch (© Queensland Government)



Figure 10: 2017 Image extracted from QImagery showing southern portion of the Valley (© Queensland Government)

The Redlynch and Redlynch Valley locality are made up of a number of distinct and discrete precincts, accessed off a central spine road (generally), and for the most part being 'internally' focussed.

That is, the character of the Valley as one travels south from Redlynch 'proper' (from the Hotel and / or shopping centre) transitions from a relatively 'intense', conventional residential lot-dominated, school and / or retail focussed community, through to a forested 'tunnel', from which a number of intersections / accesses are provided.

There may be 'glimpses' from this 'tunnel' through to hillslopes to the west or to the east, but the dominant 'character' is one of a heavily / densely vegetated tunnel.

There are a number of distinct precincts within the Redlynch and Redlynch Valley localities that are considered to be the 'locality' relevant for purposes of a consideration as to amenity in the context of the subject application. These precincts are described in Table 2 below:

Table 2: Redlynch and Redlynch Valley Precincts

Precinct Number	Description	Number of Lots less than 1,012m²	Number of Lots greater than 1,012m² but less than 2ha	Other lots (under CMS, greater than 2ha)	Total number of Lots
1	Harley Street east and south through to schools precinct including Kenfrost initial development	1,911	336	279	2,526
2	Lots south of Jenkins Access, west of Redlynch Intake Road through to Arthur Lyons Drive and including The Rocks east of Redlynch Intake Road, south of the caravan park (land opposite and slightly south of the subject site has been included within this precinct but is described separately in commentary below)		195		195
3	Redlynch Valley Estate, rural residential precinct off Mary Parker Drive and east of Redlynch Intake Road, south of the subject land, through to Crystal Cascades	770	308	1	1,078
4	The Subject Site, land to the north utilised for Extractive Industry purposes, and the Northern Outlook Facility			3	
TOTAL		2,681	839	283	3,799

Plans illustrating these precincts are included for reference within **Attachment 5** to this Report. Please note lot numbers above are estimates based upon available information, sourced from public datasets.

Importantly, of all of the allotments in the Valley south of Tognolinis' corner and the subject site, only five (5) have frontage to Redlynch Intake Road. Of this number, three (3) are benefited by screen planting (understood to have been required as a result of conditioning imposed on historic approvals).

Other precincts, excepting Precinct 4 as described above, and the lot south-east of the subject land included within Precinct 2, are all "internally focussed". That is – they are accessed via an intersection with Redlynch Intake Road. They typically run through to a cul-de-sac termination or a number of these terminations, and as a result of Redlynch Intake Road historically being a "state controlled road", these subdivisions incorporated buffer mounds. These are mounds of earth, planted to ensure screening. The requirement was typically imposed by Main Roads, in addition to confirmation that no lots were to access the (former) state controlled road directly.

For the majority of the transition from the school precinct through to Crystal Cascades, there is minimum (if any) interface with views through to or into residential or rural residential properties directly.

North of the Rocks Road intersection, there are some views across cane paddocks to forested hillslopes, and the equestrian facility, but south of Rocks Road, the views become “enclosed” within a vegetated tunnel.

The views through the ‘tunnel’ end at the subject site, for a distance of approximately 200m, after which they again ‘close’ for the majority (exclusive of road intersections) of the travel through to Crystal Cascades.

Importantly, the ‘amenity’ of the precinct within which the subject land is located is unusual; views to and through the site are dominated by a significant equestrian arena (large open shed of greater than 2,500m² in size, and 8m in height), and relocatable buildings utilised for purposes in association with equestrian activities. There are a number of sheds across the remaining cleared and level portion of the site, through to the escalation in slope (toward the rear of the site). There is a range of planting toward the southern frontage along the road reserve on this site.

The subject site is bisected by a visible vegetation line, running along Currunda Creek as it cuts through the site. Beyond this vegetation line, and across the access road through to the rear portion of the site, there are significant views across to Lamb Range.

The lot across Redlynch Intake Road, south-east of the subject land, is heavily screened. The land directly across from the subject site contains a very visible residential dwelling, and a number of containers and relocatable structures which dominate views for passing motorists / pedestrians / cyclists in this location.

Immediately to the north of the subject site, the quarry operations are extensively screened on northern, southern and eastern boundaries. A significant vegetated buffer along the road frontage is well established and forms a key portion of the ‘tunnel’ for travellers on their way further south (to the Valley or Cascades).

Having regard to the nature of the Redlynch and Redlynch Valley areas, the clear and easily identifiable ‘precincts’ within this area, the dominant vegetated tunnel north and south of the subject land, and the nature of the ‘amenity’ and uses in the Precinct within which the subject site is located, it is submitted that:

- a. The proposal to introduce a consistent, or similar, planted buffer arrangement, likely incorporating mounding in its southern extent, along Redlynch Intake Road, will result in a screen that is consistent with the broader “amenity” and aspect along the road and in the area more broadly north and south of the site; and
- b. In terms of “amenity”, landowners / occupants directly across the road from the subject site will unlikely be in a position to see any uses on the site, once established; and
- c. The ‘amenity’ of the precinct within which the site is located is not the same as for other precincts within Redlynch or Redlynch Valley. That is – it is not a rural residential or residential precinct, internally focussed with a number of dwellings on individual allotments. This precinct, and the amenity of the precinct, are very different – incorporating uses ranging from heavy extractive industry, agistment and equestrian activities including grazing and complementary residential and associated uses, through to outdoor sport and recreation / community uses (in the Northern Outlook facility located up-slope of the area proposed for development).

There is no doubt that the 'amenity' of this precinct will change in the event development is undertaken; however, as is explored further in commentary below, there are a range of development outcomes already permitted that would also change the 'amenity' of this precinct, were they to progress.

Is the change to the amenity of the value likely to arise from this development a 'negative'? Given the screening proposed, and the outcomes of visual impact assessments undertaken (described below), it is submitted that the change is unlikely to be negative, insofar as those likely to be affected are concerned.

It is considered unlikely that potential negative impacts – including visual, noise, smell, vehicular movements and the like – cannot be successfully managed or mitigated. Land uses contemplated have been specifically selected to ensure management in a conventional sense will lead to an outcome whereby residents in other precincts north and south of the site are largely unaware and certainly unaffected by the development.

5.1.2 CAIRNSPLAN 2016 V3.1 – POTENTIAL LAND USES UNDER RURAL ZONING

Categories of assessment for development in Queensland is determined via a review of the Planning Act 2016, the Planning Regulation 2017 and Councils' planning schemes.

Determinations as to categories of assessment by policy makers (State and Council) are carefully considered and must be consistent not just with community expectations at the time of Scheme drafting, but also capable of potential change / refinement over time. This requires an acknowledgement that changing aspirations, land use activity mix and / or technology, and / or general societal changes may influence what a community 'requires'. This is discussed further below.

However, it is important to note that in making these decisions, the first determination must be whether development is "exempt" and not requiring assessment or approval at all, or whether it is to be "assessable". Development may be declared "exempt" as a result of State decree (within legislation or regulation), or as a result of Councils' determination that development does not require any control under its Scheme.

Any development declared "assessable" must be allocated a "category of assessment".

"Categories of assessment" are:

1. Accepted development, with or without conditions and with or without requirements, which (subject to compliance with conditions and / or requirements strictly) will not require Council approval to be obtained before commencement;
2. Code assessable development, with or without conditions, which requires an application to and approval by Council before commencement. Code assessable development does not require public notification and is not 'Impact Assessed'. Provided code requirements are complied with, approval can be granted by Council, with or without conditions attaching. Development cannot commence until conditions attached are complied with. Importantly – codes against which assessment is undertaken provide for "performance outcomes" and also may provide one or more "acceptable outcomes". "Acceptable outcomes" are one way to achieve compliance with the related "performance outcome". Other options to achieve compliance with nominated "performance outcomes" or equivalent are permitted, and it is critical to note that under the ' performance-based

system' within which we operate in Queensland, non-compliance with any one "acceptable outcome" or even potentially "performance outcome" does not automatically mean a refusal for that proposed development is to follow.

3. "Impact Assessable" development is development requiring public notification, and assessment against all relevant provisions within the Scheme, as well as various other 'relevant matters', including:
 - a planning need
 - the current relevance of the assessment benchmarks in light of changed circumstances
 - whether assessment benchmarks or other prescribed matters were based on material errors.¹

As was noted by the Court in the decision of *Parmac Investments Pty Ltd v Brisbane City Council & Ors*²:

[26c] It is also self-evident given planning schemes are reflective of a point in time, and are performance based. A performance-based planning scheme does not, by its very nature, envisage a single development option or design; rather it presents a series of development parameters that are to be considered and demonstrated by a proposal. Further, they do not purport to provide for every form of development that may be required to meet the legitimate expectations of the community.

It is therefore critical to acknowledge that planning scheme provisions, including categories of assessment and forms of development contemplated, are reflective of a "point in time". The current CairnsPlan was developed over a period of years, becoming 'effective' in 2016. Eight (8) years on, the Scheme has been amended a number of times, however, is submitted to not reflect all of the current community aspirations and requirements for our contemporary region. This situation is not unusual, and the Planning Act and associated regulatory requirements contemplate a need for ongoing 'review' and opportunity for alternate development to be considered via both the standard "impact assessable" development process, and the variation process.

Within CairnsPlan 2016 V3.1, The following uses are permitted in the Rural Zone as Accepted subject to Requirements:

- Animal Husbandry (such as cattle studs, livestock grazing, non-feedlot dairying);
- Cropping (such as sugar cane cultivation);
- Dwelling House;
- Environment Facility (such as a nature-based tourist attraction);
- Home based business;
- Roadside stall;
- Rural Industry (such as a packing shed).

¹ Per Section 45(5)(b) of the Planning Act 2016

² [2018] QPEC 32

These uses are likely, if / when undertaken, to generate (to a lesser or larger degree depending on the use proposed) noise, smell, traffic and other amenity impacts (actual, potential or perceived). However, Council has made a policy decision that these activities are consistent with the reasonable community expectations and aspirations for activities within a Rural Zone.

Importantly, significant built form outcomes can potentially be achieved if these activities occur.

Buildings of up to 11m in height are permitted per Acceptable Outcome 1.1 in the Rural Zone Code. Furthermore, buildings need only be setback 6.0m from Redlynch Intake Road, and the same distance from side and rear boundaries.

The following uses are Code Assessable in the Rural Zone, requiring no public notification process:

- Animal Keeping;
- Aquaculture (such as a crocodile farm, pond farms);
- Caretaker's Accommodation;
- Cropping where Forestry for Wood Production noncompliant with Schedule 13 of the Planning Regulation;
- Emergency Services;
- Intensive Horticulture;
- Rural Workers' Accommodation;
- Telecommunications Facility (telecommunications tower).

Again, as the above uses could be established on Rural-zoned land without the need for an Impact Assessable application, it may be appropriate to highlight potential amenity impacts on surrounding residents that may arise if any such use was proposed, such as noise and dust from processing crops, traffic generation from wood production trucks, or visual amenity impact from a telecommunications tower.

Some submitters appear to have misunderstood or have been misinformed on the scale and intensity of the proposal.

To reiterate, it is proposed to:

- Permit a range of land uses to be undertaken on lots created by further subdivision;
- These uses include Bulk Landscape Supplies, Outdoor Sales, Warehouse, and Outdoor Sales, Low Impact Industry uses such as motor vehicle repairs or fitting and turning workshops;
- Subdivide the land to retain the western portion for existing activities; and
- Subdivide Lot 22 to create lots for the aforementioned trades and services style uses;
- Vary the Planning Scheme to reduce the Category of Assessment for the aforementioned uses from Impact to Code.

If the Application is approved, Council will impose conditions which any further / downstream approval must also comply with, such as limiting of hours of operation for industrial businesses, requiring a 'no worsening' effect on surrounding properties, requiring screen planting of trees to mitigate potential visual amenity impacts, among other conditions.

5.2 Character

5.2.1 CONTEXT

The Redlynch Valley locality contains a number of readily identifiable, discrete 'precincts'. The character of the Valley, for residents and visitors who enter, is, south of the education precinct, dominated by a vegetated 'corridor' with glimpses of the surrounding valley hillsides.

A more detailed description of the amenity and character of the Redlynch and Redlynch Valley locality is provided within Section 5.1.1 above.

Mapping included for reference with **Attachment 5** illustrates the extent of precincts as referenced.

Following review of the submissions as lodged with Council and the addresses of principal submitters as advised, we note that

Table 3: Redlynch, Redlynch Valley and Other Precincts for purposes of Submission Address Review

Precinct Number	Description	Number of Submissions	Number of Addresses
1	Harley Street east and south through to schools precinct including Kenfrost initial development	36	22
2	Lots south of Jenkins Access, west of Redlynch Intake Road through to Arthur Lyons Drive and including The Rocks east of Redlynch Intake Road, south of the caravan park	45	33
3	Redlynch Valley Estate, rural residential precinct off Mary Parker Drive and east of Redlynch Intake Road, south of the subject land, through to Crystal Cascades (land opposite and slightly south of the subject site has been included within this precinct but is described separately in commentary below)	159	106
4	The Subject Site, land to the north utilised for Extractive Industry purposes, and the Northern Outlook Facility	1	1
5	Unknown Address but believed to live in Redlynch Valley (Following review of General Address provided (no number or specific location and / or review of Submission Content and Assertions made)	28	19
6	Outside Redlynch and Redlynch Valley	45	37
TOTAL		314	218

It is noted that for Precinct 1, where there is a preponderance in terms of smaller lots, of the total 2,526 lots in this precinct, less than 1% of residents of those lots (looking at objections from each address without considering 'multiple' submissions from a single address). This indicates very low levels of overall "concern" with this project in this Precinct.

Within Precinct 2, with a total of 195 lots that would typically be described as "rural residential" (less than 2ha in size), a total of 45 objections were received from 33 addresses. This represents 16.9% of "residents" (in terms of households – removing duplicates from single household addresses). These numbers indicate

generally low levels of concern with the project in the precinct, noting the public notice period was extended and undertaken over 2 months.

For Precinct 3, which is 1,078 lots including approximately $\frac{3}{4}$ being more conventional residential lots, objectors excluding multiples from a single address represent less than 10% of the total number of lots – again, indicating low levels of concern relative to lot numbers across the Precinct.

It is also noted that Councils' assessment must have regard to Submissions as lodged, as they form part of the "common material" for the Application. But overall assessments as to potential or perceived 'impacts' arising from the project must contemplate broader views, inclusive of but not limited to those expressed within Submissions.

5.2.2 POTENTIAL OR PERCEIVED IMPACTS

Submitters raised concerns within a number of submissions that the development would negatively impact the "character" of the Valley more broadly speaking. Comments included:

"The proposed development is totally out of step with the area, which has been predominantly agricultural and housing."

"An industrial estate within the rural residential context of Redlynch...."

"Rural residential areas typically prioritize low-density housing and a semi-rural lifestyle. Introducing industrial activities could disrupt this character, affecting residents' quality of life and potentially degrading the natural environment."

As is noted in preceding sections, the "character" of Redlynch and the Redlynch Valley more specifically has been dramatically altered over time.

Importantly, the "character" of the precinct within which the site is located is not "rural residential"; the site, and land to the north, south and west, are not zoned for nor used for "rural residential" purposes.

The "Precincts" as illustrated do vary – encompassing rural residential, conventional residential, open space, education and retail uses dependent upon location.

The potential or perceived impacts that may arise from the subject development will be minimal in these circumstances, particularly in circumstances where visual screening, land use management conditioning, and 'constraints' on the form and nature of future uses and development activity more broadly can be suitably and sensibly managed by Council.

Importantly – any decision on this Application, if including any Approval with Conditions, will 'attach' to the land, and will form part of any future Application assessment, additional to normal assessment benchmarks and requirements, including if an "impact assessment" is required for uses not presently contemplated. If an "impact assessable" application is lodged (which is not anticipated at this point), it is important to note that public notice and full 'impact' assessments will need to be undertaken again.

5.3 Visual Amenity

Objectors raised concerns with the ability of the development to be adequately “screened” to ensure visual amenity aspects across the Redlynch and Redlynch Valley locality are maintained. In fact, objectors asserted that visual amenity across this locality would be significantly and detrimentally impacted as a result of the proposed development.

Following completion of the public notification period, the Applicant engaged GGI Landscape Architects to undertake a Visual Assessment for the development in this locality, which resulted in preparation of a Visual Assessment Report dated 8 August 2024, included for reference within **Attachment 6** to this Report.

This assessment by GGI takes account and describes, with images, the character of the site and locality within which the site is situated. View sheds toward the site, from the north, south and east are described; views towards the site from local ‘high’ points, publicly accessible, are described and photographs included; visual influences are described and photo montages including built form (potential) prepared.

In terms of visibility of the site from external publicly accessible view points, GGI confirm that “the site was not visible from any of the locations”, which relevantly are:

- Top of Mount William Close looking south;
- End of Arthur Lyons Drive looking south;
- Top of Mackerras Street looking west;
- Top of Lum Jim Street looking west;
- End of Watervale Close looking north.

Importantly, the photo montages included within the assessment confirm that 3 – 5years post-planting, vegetation is sufficient to screen up to 100% of the development from passing traffic and nearby residents’ views. To ensure that this planting is appropriately undertaken, the assessment also includes a landscape concept plan and species list, which the Applicant seeks to have conditioned as a requirement to be undertaken in advance of any substantive development being complete.

Furthermore, the assessment includes an analysis to complement the visual montages, provided within Section H to the assessment. This analysis considers vegetation height relative to building heights, and considers mounding versus no mounding on site.

Importantly, additional landscape buffering is proposed along the southern boundary of the site, on the drainage easement alignment, to screen buildings located proximate to that boundary from Redlynch Intake Road. Again, the Applicant is comfortable seeking conditioning to ensure this outcome in any approval granted.

On completion of this assessment, the Applicant submits that potential visual impacts can be suitably mitigated, with that mitigation being reasonably attainable, and secured by imposition of condition on approvals sought.

5.4 Environmental – Ecology

Effects of the proposed development on environmental values have been anticipated and noted within the Environmental Report prepared by Biotropica provided with the Application submission. The Report confirms, and it is stressed that, no regulated vegetation is to be reduced as a result of this proposal; and that the balance of the site has negligible environmental value, with no significant barriers to development anticipated.

It is noted that the watercourse bisecting the site, whilst having a high water quality, is substantially degraded, with significant incursion via pest species along its alignment within the proposed development site.

Furthermore, any potential impacts (negative) arising in terms of the environmental features on the site or on surrounding sites, are significantly offset via the rehabilitation proposed along the waterway corridor alignment. This results in a “net environmental benefit” in terms of outcomes for the site, both in terms of flora and fauna, and in terms of public amenity, given this area will be transferred to ‘public’ tenure and available for public access.

Following completion of the public notification period, the Applicant engaged 4 Elements Consulting to complete a review of previous analysis for the site, and a further site assessment informed by a site review, to ensure that ecological factors were appropriately considered.

The results of this engagement are included for reference at **Attachment 7**, entitled *Ecological Constraints Assessment – Material Change of Use – Lot 2 on SP106972*. 4 Elements Consulting has confirmed that:

- Insofar as potential direct impacts of the proposal are concerned:
 - *“The proposal does not require the removal of any remnant vegetation. The proposal will avoid all areas important to threatened fauna which potentially occur within the site. All clearing is within highly disturbed regrowth vegetation.”* Furthermore, reporting notes in terms of mitigation in this regard that *“avoidance of the highest quality vegetation along Currunda Creek is a key mitigation strategy for the proposal. The proposal has sought to avoid impacts to high quality vegetation present within the riparian corridor for this waterway. This was confirmed during field survey....”*
 - *“Two (2) disturbed vegetation communities were recorded within the project site... Both of these mapped areas are considered to be likely to conform to the TEC determination for Lowland Tropical Lowland Rainforest of the Wet Tropics.”* Insofar as mitigation of the potential impacts on this matter is concerned, reporting notes that *“Avoidance of these areas is a key consideration of the proposal. The proposal seeks to impact up to ~0.4ha that potential [sic] conform to the TEC and provide revegetation of 1.1ha of suitable habitat in addition to managing the existing areas not impacted by weed cover. This will see an overall increase the cover of this TEC over time. The proposal will also see a long term stabilisation of the Currunda Creek riparian corridor which will improve significantly over time without continual disturbance through routine property maintenance etc. and unsealed access tracks.”*

- *“the project site contains (3) confirmed threatened flora species....”* Importantly however *“The proposal will entirely avoid”* two of those species, in addition to retaining and improving vegetation outcomes along the creek corridor, which will likely *“see an improvement to the habitat for these species allowing dispersal further to the east closer to Freshwater Creek.”* In terms of another of the threatened species, which is present within part of the site contemplated for development, *“A comprehensive protected plant survey is required”* under the Nature Conservation Act (Qld), and no commonwealth listed flora are to be impacted.
- *“The proposal does require the removal of mostly disturbed regrowth vegetation. No significant hollow bearing trees will be impacted as a result of the proposal.”* Mitigation of potential impacts involves *“the presence of a fauna spotter / catcher during vegetation clearing operations”* to prevent direct mortality, with this being a standard and accepted approach to management of a site during vegetation clearing / trimming activities.
- Indirect impacts arising from the proposal, including weed invasion, noise and vibration, edge effects and fragmentation, pollution, alteration to hydrological regimes and erosion and sedimentation can be avoided, managed or mitigated via conventional construction management approaches capable of conditioning, as outlined within Table 8 in the reporting completed.
- A connectivity and patch size assessment is required to further assess and determine the extent of Threatened Ecological Communities per the EPBC Act on site;
- Any clearing within 100m of a protected plant per the Nature Conservation Act (Qld) will require an impact management plan to be approved by the State;
- Referral to the Commonwealth per the EPBC Act is likely required as a result of the site containing habitat for the Southern Cassowary, acknowledging that the project ultimately seeks to improve the outlook for forest dependent species via the revegetation proposed on Currunda Creek.

It is noted that:

1. Approval processes pursuant to the Nature Conservation Act (Qld) will likely be ‘noted’ on any decision of Council in respect of this Application, in circumstances where the obligations under this legislation are separate from Planning Act and approval processes; and
2. Similarly, assessment, referral and any approval processes required per the Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth) will likely be ‘noted’ on any decision of Council, as they are separate processes, needing to be completed in advance of construction commencement.

5.5 Environmental – Future Land Use Impacts

Objectors raised concerns with risk of environmental harm and / or negative amenity impacts arising as a result of future land uses on Proposed Lot 22. The following information is provided on behalf of the Applicant in response to these concerns:

5.5.1 ASSESSMENT PROCESS AND METHODOLOGY

Land uses proposed on Proposed Lot 21 are as outlined below:

- Bulk Landscape Supplies;
- Low Impact Industry;
- Outdoor Sales;
- Transport Depot;
- Warehouse;
- Wholesale Nursery.

These uses are presently – per the Rural Zone table of assessment in CairnsPlan V3.1 – “impact assessable”, and subject to ‘impact assessment’ including public notification pursuant to the Planning Act 2016, associated Regulations and Rules.

As this Application has included an “impact assessment” for these uses, the variation to the Planning Scheme seeks to reduce the category of assessment for future applications for these uses – which are required to be undertaken **before Building Approval for buildings’ within which the uses are undertaken is issued and / or for activities not involving building works, before the use commences** – to “code assessable”.

The request for reduction in category of assessment to “code assessable” for these specific uses reflects the completion of an “impact assessment” process as part of the current application assessment. As stated previously, any uses not already benefited with a “code assessment” categorisation in the Rural Zone, or those uses specifically provided for (including with limitations) by this Application (if approved) will need to undertake an “impact assessment” process separately and in advance of commencement. This will provide an opportunity for public notice and community submission if alternate uses are contemplated.

“Code assessable” development considers a project against nominated ‘assessment benchmarks’ within the Scheme and as provided for in any “variation” to that Scheme applicable. In this case, the variation sought, and Scheme operation that will remain in effect for the site, will involve assessment of future land use activities on site against assessment benchmarks as outlined in codes below:

- Currunda Creek Trades and Services Development Code;
- Airport Environs Overlay Code (if applicable);
- Bushfire Hazard Overlay Code (if applicable);
- Hillslopes Overlay Code (if applicable);
- Landscape Values Overlay Code (if applicable);
- Environmental Performance Code;
- Excavation and Filling Code;

- Industry Design Code;
- Infrastructure Works Code;
- Landscaping Code;
- Parking and Access Code;
- Vegetation Management Code.

The assessment of development against nominated assessment benchmark requirements will be undertaken for future land uses on site in accordance with the requirements of the Planning Act 2016, associated Regulations and Rules, and CairnsPlan 2016 V3.1 interpretation requirements.

Importantly, it is noted that:

Planning Act 2016:

“Code assessment” in accordance with Section 45(3) of the Planning Act must be carried out “only” against the assessment benchmarks in the categorising instrument (the Scheme as varied, if a variation approval is obtained), and having regard any matters as prescribed – in the legislation or regulations supporting same.

Section 60(2) in the Act confirms that:

- (2) *To the extent the application involves development that requires code assessment, and subject to section 62, the assessment manager, after carrying out the assessment—*
- (a) *must decide to approve the application to the extent the development complies with all of the assessment benchmarks for the development; and*
- (b) *may decide to approve the application even if the development does not comply with some of the assessment benchmarks; and*

Examples—

- 1 *An assessment manager may approve an application for development that does not comply with some of the benchmarks if the decision resolves a conflict between the benchmarks.*
- 2 *An assessment manager may approve an application for development that does not comply with some of the benchmarks if the decision resolves a conflict between the benchmarks and a referral agency’s response.*
- (c) *may impose development conditions on an approval; and*
- (d) *may, to the extent the development does not comply with some or all the assessment benchmarks, decide to refuse the application only if compliance can not be achieved by imposing development conditions.*

This provision confirms the practical situation that may arise as between code requirements in Councils' planning scheme, or conflicts between Councils' scheme and State requirements that may also apply.

Codes are critical however – and have formed the basis for conditioning imposed by both Council and the State. Code provisions ('the benchmarks') cannot be ignored, and there are numerous examples where non-compliance results in conditions requiring changes to ensure compliance, or in serious cases, refusal of an Application in circumstances where non-compliance with code requirements cannot be resolved via changes and / or conditioning.

CairnsPlan 2016 V3.1

The application of Councils' assessment benchmarks, or "codes", is interpreted practically in accordance with the legislation and guidance provided within Section 1 of the Scheme. Importantly, Section 1.5 in Councils' scheme provides guidance as to the hierarchy of assessment benchmarks, providing that:

- (1) *Where there is inconsistency between provisions within the planning scheme, the following rules apply:*
- a. *Relevant assessment benchmarks or requirements for accepted development specified in the Planning Regulation prevail over the planning scheme to the extent of any inconsistency;*
 - b. *The strategic framework prevails over all other components to the extent of the inconsistency for impact assessment;*
 - c. *Overlay codes prevail over all other components (other matters mentioned in (a) and (b)) to the extent of the inconsistency;*
 - d. *Local plan codes prevail over zone codes, use codes and other development codes to the extent of the inconsistency;*
 - e. *Zone codes prevail over use codes and other development codes to the extent of the inconsistency;*
 - f. *Provisions of Part 10 may override any of the above.*

Part 10 within the Scheme includes a range of schedules, including for definitions, mapping, material supporting the local government infrastructure plan, infrastructure designations and notations in the Scheme for Variation Approvals (or any equivalent) if issued.

"Code assessment" is against nominated assessment benchmarks, and those benchmarks are 'enforceable' by regulatory authorities, and enforced by Courts in a range of contexts.

5.5.2 RELEVANT ASSESSMENT BENCHMARKS

Assessment of any future Application for land uses on the site – assuming the land use is one of those identified in the Application as referenced above – will need to consider a range of code provisions, which in the context of potential for 'harm' or 'affect' relevantly include the following:

Proposed Currunda Creek Trades and Services Precinct Code

The purpose of the Code has been revised to specifically provide, in purpose statements and performance outcome/s, that higher impact or intensity industrial development is not to establish on the development site.

Additional clarification and information in terms of ‘conditioning’ related to the nature of uses proposed and contemplated for the development site has also been included.

This revised Code is included for reference within **Attachment 3**.

Section 9.3.2 Environmental Performance Code (CairnsPlan 2016 V3.1)

The purpose of the code is to be achieved via a range of “overall outcomes”, including:

- (a) *development that has potential to cause an adverse impact on amenity of adjacent and surrounding land, or environmental harm is avoided through location, design and operation of the development;*
- (b) *sensitive land uses are protected from amenity related impacts of lighting, odour, airborne particles and noise, through design and operation of the development;*
- (c) *development ensure stormwater is discharged lawfully;*
- (d) *development is located, designed, constructed and managed to avoid or minimise impacts arising from altered stormwater quality or flow;*
- (e) *development contributes to the removal and ongoing management of weed species;*
- (f) *development is located and designed to ensure that users and nearby sensitive land uses are not exposed to unacceptable levels of contaminants.*
- (g) *development is designed and operated to ensure activities involving the use, storage and disposal of potentially hazardous materials and chemicals, dangerous goods, and flammable or combustible substances are located and managed to avoid or mitigate potential adverse impacts on surrounding uses, and minimise the health and safety risks to communities and individuals.*

The code requires that lighting is managed to avoid impacts on the amenity of adjacent and nearby sensitive land uses; odour impacts to the locality are managed through design, location and operation of the activity; noise is avoided through design, location and operation; dust is mitigated; and waste management is reflective of the receiving environment, activity and best practice approaches.

Importantly, the code requires that hours of operation are suitable having regard the potential for impact on nearby sensitive land uses.

Management of stormwater – onsite and potential for flows offsite – must achieve stormwater quality objectives (set within the code relative to best practice and state objectives), protect water environmental values and maintain waterway hydrology. This requirement, importantly, is a “performance outcome” with a number of potential “acceptable outcomes”.

Performance Outcome 11 within this code also requires that the “use, storage and disposal of potentially hazardous materials and chemicals, dangerous goods and flammable or combustible substances are located and managed to avoid or mitigate potential adverse impacts on surrounding uses, and minimise the health and safety risks to communities and individuals.”

This code also includes a number of tables within which specific criteria relative to drainage, erosion, sediment control and water quality are confirmed. These criteria form part of the 'benchmarks' against which assessment must be undertaken, with requirements that can and often are confirmed within conditions.

Section 9.3.4 Industry Design Code (CairnsPlan 2016 V3.1)

This Code applies to development for "industry activities" (which include Low Impact Industry), and has been nominated to apply to proposed land uses listed above per the Currunda Creek Trades and Services Precinct Table of Assessment.

The purpose of the code is to be achieved through a number of "overall outcomes", including that:

- (a) *the scale, character and built form of development contributes to a high standard of amenity;*
- (b) *the design incorporates facilities and features that contribute to a high standard environment for workers and customers;*
- (c) *infrastructure provision meets the needs of development, is safe and efficient and is provided to relevant standard;*
- (d) *industrial, noxious and hazardous land uses are adequately separated from sensitive land uses to avoid adverse impacts and the occurrence of environmental harm or environmental nuisance to a sensitive land use;*
- (e) *a site that is contaminated or poses a health risk is remediated prior to being developed for an alternative land use;*
- (f) *hazardous chemicals are appropriately located, handled and stored to protect public safety and reduce the risk of contamination on the environment and to appropriately mitigate associated risks and off site hazards.*

Importantly, performance outcomes within the code proper include requirements related to site arrangements (setbacks, landscaping and the like), storage and handling of hazardous materials, service provision and the like.

Technical Advice

Mr Collins of Water Engineering Partners has advised, within additional commentary provided for the project relative to water matters (flooding and quality), included for reference within **Attachment 8** to this reporting, that:

The proposed development contemplates large lots for trades and services. It is common industry practice for Council's to require in-lot water quality / stormwater management treatment that is particularly designed for the use. This could include oil separators, gross pollutant traps, bio-basins or proprietary filter cartridge systems for nutrient and sediment control. Council approval conditions could require load reduction targets to be met by each lot owner; but in any case, industry standard load reduction targets will need to be met for the overall development. An over-arching site based stormwater management plan will need to be prepared, with subsequent detailed plans prepared

for each individual development. Such an approach will ensure that an acceptable water quality outcome will be achieved.

Draft conditioning included within this response includes suggested conditioning to ensure this objective / recommendation is met.

5.5.3 ENVIRONMENTAL PROTECTION ACT 1994

The Environmental Protection Act 1994 is relevant to all activities, regardless of whether approval under this Act for “environmentally relevant activities” is required.

Importantly, the object of the Act, confirmed within Section 3, is to:

*... protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends (**ecologically sustainable development**).*

Achievement of this object requires consideration of the key concepts under the legislation, which include defining environmental harm in various forms, and identification of environmentally relevant activities requiring specific and additional regulation.

Pursuant to the legislation, a range of Environmental Protection Policies are established, dealing with issues including air quality, noise and water quality.

In addition, pursuant to Section 319 of the Act, all persons owe a “general environmental duty” – broadly – in terms of environmental harm. This provision provides that:

- (1) *A person must not carry out any activity that causes, or is likely to cause, environmental harm unless the person takes all reasonably practicable measures to prevent or minimise the harm (the **general environmental duty**).*
- (2) *A person commits an offence if—*
 - (a) *the person contravenes the general environmental duty in relation to an activity; and*
 - (b) *the contravention causes, or is likely to cause, serious or material environmental harm.*

Environmentally relevant activities are listed in Schedule 2, with thresholds and requirements / criteria that apply to each activity nominated; there are stringent controls applied to these activities – even if a more simplified process applies to the undertaking of or obtaining of approval for same.

This framework provides for the regulation of activities based upon “environmental values” and “risk” to those values posed by activities. It is a site-specific, and use-specific framework.

This framework would apply in the event that significant activities are proposed, notwithstanding any Council approval requirements, or variation approval alterations to same, that exist.

Importantly though, the “general environmental duty” applies to all activities and operations at all times. There are penalties for non-compliance, ensuring that activities are undertaken with due regard for the receiving environment and its characteristics.

5.6 Flooding / Creek Runoff

Concern was raised within objections, with particular focus on direct impacts – potential or perceived increases in impacts directly to other properties downstream. Additional concern was raised regarding ‘indirect’ impacts, arising as a result of perceived or potential increases in flooding impacts at the Currunda Creek Crossing to the south of the subject site on Redlynch Intake Road.

Commentary in response to these concerns is provided below:

5.6.1 DIRECT IMPACT

The Application (as amended) incorporated a detailed Flood Impact Assessment prepared by BMT, and dated 15 December 2022.

Analysis was undertaken in compliance with contemporary best practice engineering assessment methodology, considering a ‘fully developed’ scenario across the approximate 8ha of land contemplated for trades and services land uses. This assessment is not affected by lot yield or related considerations.

The reporting concluded that:

... the development can be designed and constructed in a manner that will result in no actionable adverse impacts external to the site while achieving the required flood immunity levels. It is acknowledged that some minor adjustments to the development layout and design earthworks may be required to refine the potential impacts and to accommodate stormwater management measures which will be addressed in future stages of the approval process.

Importantly, as is noted in preceding sections of this response, there are a number of subsequent approval processes to be completed in advance of ‘development’ being building works or creation of individual allotments occurring within the portion of the site proposed for trades and services land uses.

The Flood Hazard Overlay Code specifies that a ‘no worsening’ effect on upstream or downstream properties is to occur. This overlay code applies to this Application; conditioning to confirm compliance with this requirement is offered and a conventional approach to this issue.

Furthermore – reporting undertaken to date confirms that the proposed development complies with this requirement. The maximum development footprint of the industrial portion of the proposal has been designed to ensure a no worsening effect will occur.

Notwithstanding, following completion of public notification, the Applicant engaged BMT to undertake further reporting and modelling to ascertain / confirm potential flood impacts that may arise and / or options to mitigate and ensure these impacts do not arise. This reporting is included for reference at [Attachment 9](#), and the advice within includes the following:

The site is located within the local, 749 ha, Currunda Creek Catchment and the broader 103km² Freshwater Creek Catchment. The location of the site with respect to these catchments is presented in Figure 1.1.

The Currunda Creek Catchment has the following statistics derived from the 2021 LiDAR survey used in the flood modelling, and aerial photography used for assessment of the catchment hydrologic properties:

- *Ground elevations vary from 1000m AHD at the top of the range (2km to the west of the Site), to 20m AHD at the Redlynch Intake Road crossing adjacent to the Site.*
- *Catchment slopes vary from 1-4% in the drainage pathways within 1km of the Site, increasing up to 40% at the higher elevations of the range.*
- *The majority of the landuse within the catchment is dense forest, with a small area (approx. 22ha) of cleared rural land around the Site.*

The proposed development footprint, of approximately of 8ha, is 1% of the catchment area.

In addition:

Since the development is located in the lower reaches of the Currunda Creek Catchment, and the downstream flood level impact mapping does not show any significant increase in post-development flood levels, it is expected that the downstream peak flow rates will be the same between pre- and post- development.

Additional advice is provided by BMT in regards the iterative process undertaken when completing flood modelling exercises, including that undertaken for this project.

In addition, the Applicant sought additional advice from Mr Collins, the flooding expert who has decades of experience working within the Cairns Region, and Redlynch Valley locality more specifically. Mr Collins, now consulting to Water Engineering Partners Pty Ltd, has provided an additional technical note, included for reference at **Attachment 8**.

Objectors raised concerns regarding the impact of 2018 flooding on properties downstream of the site. Having regard these concerns, and noting Mr Collins personal experience with the outcome and assessments relative to this event, Mr Collins advises that:

The Site is located in the lower catchment of Currunda Creek, with the Site located approximately 300 metres upstream of its discharge junction with Freshwater Creek. Currunda Creek has a catchment area of 749 hectares which is predominantly west of the Site. Freshwater Creek has a catchment area of 7,038 hectares to the Redlynch gauge at Mary Parker bridge. Currunda Creek experienced sever to extreme flooding and Freshwater Creek severe flooding on 26 March 2018, with a number of properties flooded and one reported case of overfloor flooding, and with severe damage to the Crystal Cascades Caravan Park and adjacent tennis courts. Severe bank collapse, erosion and deposition occurred in upper reaches of Currunda Creek, with a large flood debris load occurring, resulting in a “debris dam” building up on Redlynch Intake Road Culvert Crossing of the creek.

Neil Collins undertook an independent assessment of that event for Council and produced a detailed report by BMT in August 2018 outlining the investigation and the findings. The event was determined to be a 100 year ARI event in Freshwater Creek at the caravan park site, and more severe (slightly greater than a 100 year ARI event) in Currunda Creek. Major debris blockage on the Culvert Crossing exacerbated flooding locally in Currunda Creek and for approximately 300 m downstream of the Culvert Crossing.

...

There were submissions received from residents of 9 properties which were likely affected by the

March 2018 flood event downstream of or within 300m of the Culvert Crossing. There were also submissions from residents of 98 properties south of Currunda Creek which are not directly affected by Currunda Creek flooding; however their flooding concerns are likely to relate to the potential impacts of the development on the frequency and duration of closure of the Redlynch Intake Road Culvert Crossing of Currunda Creek. There are 1078 properties in total south of Currunda Creek which were affected by the closure of the Culvert Crossing.

Given the damage and trauma caused by the March 2018 flood event, it is understandable that there is this degree of public interest, as any change of use or works in the catchment may be seen as having the potential to worsen flooding impacts from a similar event in the future.

...

The requirement for a floodplain storage balance can be and is usually a standard approval condition applied by Council. Floodplain storage and flow conveyance balance can be achieved by maintaining or enhancing conveyance capacity of the waterway and that the compensating earthworks (cut in the overbank areas) can also maintain flood storage capacity. Based on the preliminary development details, it is our view that these requirements can be readily achieved through the detailed design process prior to the issue of a Development Permit for future ROL or MCU.

...

The proposed development will not add to flood debris loads and blockages on the Culvert Crossing. Provided the development ensures no significant adverse flooding impacts beyond the Site, including no increases in peak flood flow, there will be no adverse downstream flooding impacts. The August 2018 Independent Assessment Report noted that:

‘There was severe erosion and stream bank collapse in Currunda Creek, and there may have been land slips in the upper catchments of Currunda Creek and Freshwater Creek, downstream of the dam, which caused the very high debris and sediment load. It is important to appreciate that large debris loads in largely undeveloped forested catchments in the Wet Tropics is a natural phenomenon.’

With proposed stream stabilisation works, including the revegetation of all drainage reserves through the Site which will impede floating debris movement, the development should not add to

and may reduce the existing flood debris load. The developed area of the Site is only 8 hectares out of a 13 hectare site, which represents only 1% of the Currunda Creek catchment. As the development is at the bottom of the catchment, urbanised runoff from the overbank sections of the Site will result in a reduced response time over that for the existing grassed site, resulting in the developed site runoff getting away before the main creek flood peak arrives. In any case, on-site detention basins or tanks can be installed if required given the size of the lots to ensure no increase in existing creek flows.

Mr Collins has provided comment regarding sensible and reasonable conditions that should be imposed on any approval/s for this project, which have been taken into account and included for reference within a draft conditions set provided for Council consideration and discussed within Section 6.0 below.

5.6.2 ACCESS SOUTH OF THE SITE – CURRUNDA CREEK CROSSING

As per the Flood Impact Assessment prepared by BMT, provided in the original application, development “may require the mitigation of local site runoff due to the increase in impervious area associated with more hardstand, buildings, and internal roads”. The requirement for a ‘no worsening’ effect on other properties would likely be imposed as a condition of approval.

Insofar as concerns raised by objectors regarding the prospects of the development further impacting (negatively) blockages impacting and affecting the operation of the Currunda Creek Crossing at Redlynch Intake Road south of the site, Mr Collins in his assessment (refer [Attachment 8](#)) advises as follows:

The proposed access to the Site is north of the Culvert Crossing and a high immunity access is provided via the Redlynch Intake Road for all traffic heading to the Site from the north. Access from the south is affected by the immunity of the Culvert Crossing, which is significantly less than 5 year ARI currently. The Site access and internal roads propose a minimum 10 year ARI immunity. The design intent for the development is to have no significant adverse flooding impacts beyond the Site boundaries, including on the Culvert Crossing. This includes not affecting the Culvert Crossing flood immunity or the frequency and duration of road closures due to flooding.

...

This issue arises from existing upstream residents being isolated due to flooding of the Culvert Crossing. In some wet seasons there are several closures within a short period of time. During the March 2018 event, the Culvert Crossing was overtopped for several hours; however the flood damage and debris blockage repairs and clean-up took much longer to rectify. Modelling carried out for the August 2018 independent Assessment report that, ‘dependent on the degree of debris blockage at the culverts and along the guard rails, peak flood levels over the road to the north of the crossing could increase by between 140mm and 900mm and to the south by between 100mm and 700mm.’ Modelling for the proposed development to date indicates that peak flood level increases due to the development on a similar size flood event would be no more than 10mm downstream of the Culvert Crossing, and that flooding on downstream properties is much more sensitive to flood debris blockage on the Culvert Crossing than it is from impacts due to the development.

A review of historic approvals for more intensive development south of the subject site – Redlynch Valley Estate – has been undertaken. Insofar as this crossing over Currunda Creek on Redlynch Intake Road is concerned, it is noted that:

- At the time of issuance of initial approvals for the development, which were granted under the Local Government (Planning & Environment) Act (since repealed), Redlynch Intake Road was a “state controlled road”, with jurisdiction for conditioning resting with the Department of Main Roads of the day;
- Conditional approval for a different form of development was granted by the then-Mulgrave Shire Council under cover of letter dated 30 April 1991;
- An Appeal against this decision was filed by the then-Owner and Applicant, and was ultimately negotiated to compromise by Court Order on 26 June 1992;
- By Deed of Novation, obligations under previous Approvals were transferred to a new landowner in 1994;
- The new owner complied with conditions, and then in 1995 sought to change a number of conditions associated with the development;
- Agreement to those modifications and changes to conditions was reached, with the agreement being confirmed in Court Order dated 31 January 1996.

Changes to the approval facilitated changes to ultimate ‘use’, allowing for more conventional residential development to be achieved than that initially contemplated.

Ultimately, approvals permitted a ‘re-zoning’ of the Redlynch Valley site from Rural to a “special facilities” zone, as was common practice at the time.

Importantly, the following condition was imposed by Council on the 1991 Approval, and confirmed in the Court Order dated 26 June 1992:

The Appellant is required to pay a contribution towards the upgrading of Redlynch/Intake Road to the sum of \$1,121 per lot.

In the Court Order confirming amendment to conditions issued on 31 January 1996, this condition was removed. Interestingly, the following condition was inserted:

“The Applicant is to advise all purchasers of land within the development of the existence of a major quarry on the western side of Redlynch Intake Road and the fact that such quarry has a long term approval and erect a sign at the entrance of the development. Such sign shall state the existence and approved life of the quarry....”

Further amendments to conditions were confirmed by order of the Planning & Environment Court on 21 April 1997. These changes included the imposition of Condition 21.2 in the revised conditions package. This condition provides that:

- “(a) *The Landowner shall design and construct the Currunda Creek crossing on the Redlynch Intake Road:*

- (i) Generally in accordance with McIntyre and Associates Plan No 10009-34/P3 (Version A); and
- (ii) In a manner to the satisfaction of DMR [Dept of Main Roads].

These road works shall include the following:

- (i) A road crossing with at least 1 in 50 year A.R.I. (ie, average return interval) flood immunity.
- (ii) The road works shall include provision of the road and walking / cycling path approaches to the crossing structure.

It is DMR's intention that additional land will be acquired / resumed to widen the existing road reserve to accommodate these road works. However, should DMR not be able to acquire / resume the additional land prior to construction commencing, DMR will allow deletion of the pedestrian / cyclist path component of the works such that the path can be added to the creek crossing structure at a later date.

All road and bridge design documentation shall be prepare by an RD1, BD1 and HD1 pre-qualified consultant per DMR's pre-qualification requirements.

All road works construction shall be undertaken by a R1 pre-qualified contractor as per DMR's pre-qualification requirements.

All bridge/culvert construction shall be undertaken by a B1 pre-qualified contractor as per DMR's pre-qualification requirements.

- (b) *The Landowner shall provide monetary contributions (or bank guarantees to an equivalent value) to the Department of Main Roads at the rate of \$1,000 (in 1 April, 1997 dollars) per additional residential allotment created, prior to Council sealing the relevant plan/s of subdivision relateing to the subject land. The \$1,000 / lot contributions (or bank guarantees) shall be adjusted at the time of payment to reflect changes in DMR's Road Input Cost Index (RICI) from 1 April, 1997 to the date of payment.*

The upgrading of the Currunda Creek crossing, as defined in part (a) above, shall be completed prior to Council sealing any subdivision plan/s which create allotments in excess of Stage 6 (or the 175th allotment whichever occurs first) on the subject land.

..."

Unfortunately we have been unable to source information regarding the completion of works in compliance with the level of immunity required, but note that this requirement was imposed upon the development of Redlynch Valley Estate.

5.7 Traffic and Road Infrastructure

It is noted that a new left-turn lane into the site is proposed from Redlynch Intake Road. The Traffic Impact Assessment prepared by GHD states that the proposed development will not impede on the efficiencies of the Redlynch Intake Road.

A range of concerns regarding potential negative impacts on existing road networks as a result of the proposed development have been raised by objectors.

Concerns include:

- Negative safety impacts for pedestrians using the road network, particularly those travelling to and from school off the cycle network provided for these purposes;
- Increases in vehicle numbers on the network as a result of this project creating detrimental safety impacts more broadly speaking for road users of Redlynch Intake Road, north and south of the subject site.

In terms of potential impacts on pedestrian and cyclist safety, it is noted that dedicated off-road infrastructure for pedestrians and cyclists is provided throughout the Valley. However, to ensure clear understanding of the potential scale of any impact relative to actual use of the road by pedestrians and cyclists, a “count” for these users was undertaken, on a fine, clear school day (which was selected as it was anticipated that this would be a ‘higher use’ day).

On 12 August 2024, between 7.15am and 9am, from a vantage point opposite the path connection to Chirio Drive, adjacent to Chirio Drive Park, providing a travel movement (towards school) from south to north, the following results were revealed:

Time Period	Pedestrians	Cyclists		School Students		
		Commuter	Sports	Cyclists	Scooters	Pedestrians
7:15 - 7:30		1				
7:30 - 7:45		1	2			
7:45 - 8:00						
8:00 - 8:15				1		
8:15 - 8:15				1	1	
8:15 - 8:30				3	1	
8:30 - 8:45						
8:45 - 9:00						
Totals	0	2	2	5	2	0

Whilst there are 7 students’ using the network, in addition to 2 commuters and 2 riders who were not apparently school students nor commuters, this number is incredibly low given lot numbers in the area.

Furthermore, all of those parties using the network on this date were acting reasonably and safely in the context of passing traffic.

It is noted that the overwhelming majority of school children from the Valley using active transport to access schools to the north use the Freshwater creek pedestrian and cycle path.

Redlynch Intake Road south of Tognalini's Corner has rural road configuration including a minimum 9m formation with dedicated cycle lanes. The section of the road from Toganlini's corner to Mary Parker Drive has a posted Speed limit of 70km/hr. The horizontal and vertical geometry is consistent with an 80 Km/hr design speed.

In addition to the above commentary, as confirmed within the Councils' information request, the Applicant reiterates advice that transport operators (in particular truck drivers / operators) tend to avoid travel during the commuter (including travel to school) peak periods due to increased travel and fuel consumption associated with peak period congestion. Operators tend to operate prior to or following commuter peak periods. This further reduces the potential for heavy vehicles to interface on the road with pedestrians or cyclists.

The conservative estimated traffic generation during the morning peak period indicated a total of 30 traffic movements from/to the north. Based on the conservative assumption that all of this traffic is generated from north of the two schools this represents <3% of the morning peak traffic of over 1300 vehicles per hours on Redlynch Intake Road at Rices Gully.

It is therefore not anticipated that there will be significant additional negative safety issues that will arise in the event the subject development is approved, in the context of the current road network arrangements, vehicle numbers and nature and scale of development contemplated.

In terms of broader traffic generation and negative impacts on the road network, it is noted that:

- Traffic generation arising as a result of the proposed development, estimated utilising acceptable and applicable engineering assumptions, was discussed in the GHD reporting included within the Application submission (as amended), and further expanded upon in the Applicants' Response to Councils' Information Request (Item 3);
- In terms of the potential for a Bus Depot to establish at the subject land, and this depot being a source of concern for Objectors, the Applicant has confirmed in a revised Table of Assessment for the Currunda Creek Trades and Services Precinct (incorporated within the broader "base" table for the Rural Zone derived from CairnsPlan 2016 V3.1) that Bus Depot as a sub-set of the Transport Depot land use would require an 'impact assessable' application to be successfully navigated, and also is not considered a "preferred" form of development on site;
- Traffic generation rates utilised within the Applicants' response to information request were very conservatively based. That is, the rates utilised were adopted from the TRA Guide to Traffic Generating Developments for an Industrial Estate with the total area of 8 Ha and conservative employment rates. The Daily and peak generation rates are contained in the information request response in terms of sensitivity case. The Sidraa Modelling

demonstrated that the Level of Service for Traffic on Redlynch Intake Road is not detrimentally impacted by the development.

The analysis was based on 80% of traffic originating north of the site and 20% from the south in the am peak and 80% of traffic having destinations north of the site and 20% to the south in the evening peak. This was a requirement of Council in its information request, and is considered to overstate traffic from the north as a significant proportion of business or employment opportunities are likely to be taken up by residents of Redlynch Valley Estate to the south. The Proponent considers that the more likely traffic distribution will be 60% to/from the North and 40% to/from the south/

Notwithstanding this the 80/20 distribution from the north is likely to be a worse case for the critical right turn movement in the am peak. It will also likely overstate the left turn to the north in the evening peak.

- The conservatively estimated daily and peak period traffic generations represent less than 5% of the coincident traffic on Redlynch Intake Road at the site entry;
- In the absence of the proposed development traffic accessing the proposed trades and services precinct from the south would be accessing similar facilities located external to the Redlynch Valley. Consequently, the availability of the business and employment opportunities within the Valley can lead to a reduction in traffic north of the site. The attraction of traffic from north of the site can result in an increase in south bound traffic in the morning peak and north bound traffic in the evening peak. Such increases are “counter tidal” i.e. travelling in the opposite direction to the peak traffic flow during peak periods;
- The commercial vehicle generation is estimated at 32 movements/day. This number includes commercial vans, body trucks, flat bed trucks and semi- trailers. HGVs (semi-trailers) are anticipated to be a max of 25% of the Commercial vehicle numbers i.e. 8/day.

In terms of traffic impacts, and concerns expressed within a number of objections that the development will create significant detrimental impacts – both in terms of the road network at large, and community users of that network in particular – it is helpful to consider commentary from the Planning & Environment Court in the judgment of *Harris v Scenic Rim Regional Council* [2014] QPEC 16:

[220] *...Whilst the community responses to the proposed development as set out in the submissions can be taken into account, there needs to be an evaluation of the reasonableness of the claimed perceptions of adverse effect on the amenity of the neighbourhood.*

An evaluation of reasonableness involves the identification of evidence that can be objectively assessed to ascertain whether it supports a factual finding of an adverse effect on the amenity of the neighbourhood. A resident's view, “where it appears to be purely subjectively based, with no suggested justification in objective, observable likely consequences of the establishment of the proposed use”, is not necessarily to be disregarded, but it may be accorded “little weight”.

Ordinarily, preference would be given to “views from residents which find justification in specific, concrete, likely effects of the proposed development”

... A fear or concern without rational or justified foundation is not a matter which, by itself, can be considered as an amenity or social impact.

In the case of *Harris v Scenic Rim Regional Council* [2014], submitters expressed, both in submissions made within the original public notification process, and in statements at the court hearing, concerns as to the likely impacts of the traffic that might be generated by the proposed development.

The judgement states that the submitters' views were “not supported by the expert evidence of the traffic engineers or by the views of the responsible road authorities (DTMR and the Council), and lacked justification in specific, concrete, likely effects of the proposed development (as modified)”.

This is not to discount the views of the submitters in the subject application at Redlynch, where any person or party had the right to voice their opinions via a properly made submission. However, it is noted that reports and studies from suitably qualified professionals have been provided within the application materials, which refute claims of significant or detrimental impacts arising as a result of this proposed development.

6.0 Changes and Conditions

7.1 Changes to the Proposed Development in Response to Submissions

Following completion of public notification, the Applicant has sought to respond to a number of concerns raised within objections via refinement to the proposed Table of Assessment and Development Code for the Currunda Creek Trades and Services Precinct.

These alterations include:

- a. Overt removal of “bus depot” from the “transport depot” land use description for purposes of the category of assessment determination (leaving this use – bus depot – as impact assessable);
- b. Confirmation within the purpose statement for the Development Code as proposed that “bus depot” is not a preferred form of development;
- c. Confirmation within the purpose statement for the Development Code that heavier industries – medium, high impact or special – are not preferred land uses for the precinct;
- d. Refinement and clarification of purpose and acceptable outcomes within the proposed Development Code to ensure matters raised in objections are addressed as part of downstream application assessment processes;
- e. Refinement and additional ‘conditioning’ incorporated within a number of the land use definitions for which “code assessment” is sought, again in response to objector concerns.

This revised Table of Assessment and Development Code are included for Councils’ consideration within **Attachment 10** to this response.

7.2 Draft Conditions

To assist Council in its continued assessment of the Application, and to ensure absolute clarity in those items the Applicant seeks to condition, consistent with a best practice approach, complementing technical report outcomes and recommendations, and taking account of objector concerns, a suggested suite of draft Conditions is provided for reference within **Attachment 10**.

These conditions seek to ensure:

- i. Clarity in purpose, intent and requirements for the development the subject of this Application;
- ii. Suitable and contemporary responses to potential for impacts arising as a result of this development – through avoidance, mitigation and / or management as may be appropriate;
- iii. Suitable responses to technical reporting recommendations, including in respect to flooding, transport and environmental matters.

8.0 Conclusion

314 Submissions including 284 objections (some of which were duplicates and / or multiple submissions from the same address and / or same party) were lodged with Council during the recent Public Notice period for the subject application.

Objections to the Application made clear a range of issues requiring further commentary, including a perceived lack of clarity regarding the development proposal, misunderstanding of the proposal, misunderstanding of Application processes and assessment methodologies. Additionally, concerns were raised in regards potential negative amenity, flooding, traffic and environmental impacts that may arise in the event the development is approved.

The Applicant provides this response to respond to issues raised, where appropriate with additional technical reporting from suitably qualified third parties, and by including additional detail to assist Council in its continued assessment.

This Response to issues raised within Objections lodged with Council during the public notification period for the subject development is commended for Councils' ongoing consideration in its assessment of this Application.

The Applicant and its project team look forward to further engaging with Council Officers as the assessment advances.