

**CM13.1. Development Application 10.2020.37505.1 - Two Lot Englobo Subdivision & One Hundred and Nineteen Lot Torrens Title Subdivision of Lot 26 in DP753356, Thurgoona Drive Wirlinga**

<b>DATE</b>	21 October 2020	<b>FIL REFERENCE</b>	AF20/01663
<b>CONFIDENTIAL</b>	No		
<b>FURTHER ENQUIRIES</b>	David Christy City Development	<b>PHONE</b>	6023 8111
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**Summary**

This report is presented for Council's determination of Development Application 10.2020.37505.1 for a two lot Englobo subdivision and the staged one hundred and nineteen lot Torrens Title subdivision of Proposed Lot A (Yarrabee Park North – Stages 1 – 4) of Lot 26 in DP 753356 at Thurgoona Drive, Wirlinga. The Development Application was lodged as Integrated Development and received on 8 May 2020 and publicly notified between 13 May 2020 and 12 June 2020. During this period Council received one submission. Two further submissions were received late, on 6 July 2020 and 21 August 2020 respectively.

As Integrated Development, the application is also seeking Bush Fire Authority from NSW Rural Fire Service pursuant to Section 100B of the *Rural Fires Act 1997*.

Council requested further information at various times in order to assess the application. In summary, the further information requested and subsequently provided entails the following;

Table 1 – Additional information

Date	Information requested	Information provided
16 June 2020	Improved road design, retention basin design, retaining wall details, access off Kerr Road, temporary court heads.	
13 July 2020	Sloane's Froglet habitat and Bushfire Assessment Report.	
15 July 2020		Amended plans provided (dedicated Public Open Space added, traffic calming to central collector road added, temporary turning provisions at termination points of east-west roads added, locations of

		proposed retaining walls added).
18 August 2020	Detailed Sloane's Froglet habitat basin design.	
25 August 2020	Stormwater drainage from neighbouring property to the south-east.	
21 September 2020		Sloane's Froglet Habitat Management Plan, Wetland design sheet and Wetland design drawing.
24 September 2020		Stormwater drainage plans.
1 October 2020	Longitudinal sections to prove drainage.	
2 October 2020		Landscape Plans.
5 October 2020		Final plans incorporating additional information provided previously.
22 October 2020		Amended Bushfire Assessment Report.

Following the applicant's response to the issue of potential Sloane's Froglet habitat, the Department of Planning, Industry and Environment: Biodiversity Conservation Division's (DPIE: BCD) comments were requested on 13 August 2020 when it became apparent that DPIE: BCD considers the land occupied habitat. As evident from Table 1 above, the required information was provided to the satisfaction of DPIE: BCD as discussed in the report.

The report recommends approval of Development Application 10.2020.37505.1 for a two lot engloba subdivision and the staged one hundred and nineteen lot Torrens Title subdivision of Proposed Lot A (Yarrabee Park North – Stages 1 – 4), subject to conditions.

## People

Habitat Planning on behalf of Nick Doherty.

## Cost

Nil.

## Development Description

The development is proposed to be staged with the first stage of the development involving the subdivision of the land into two englobo lots.

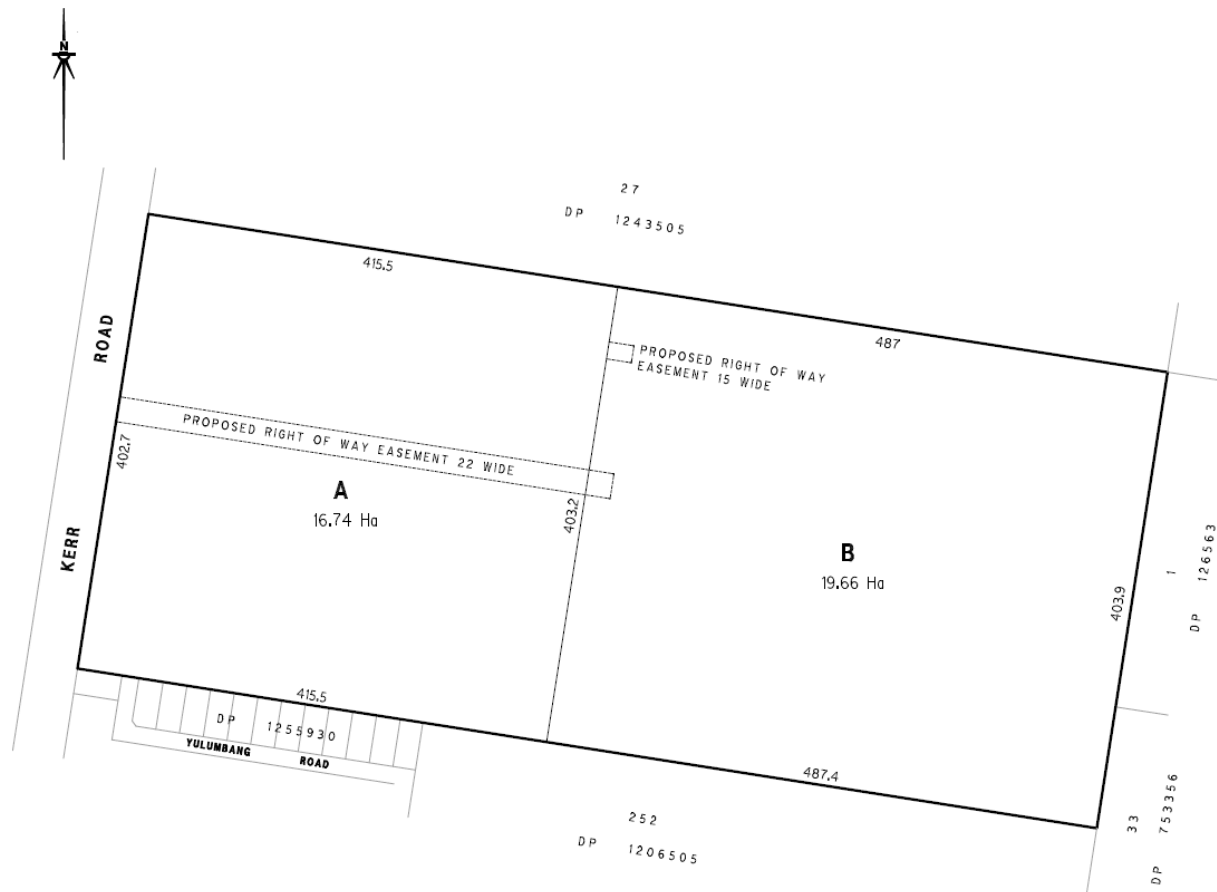


Figure 1: Proposed subdivision into two englobo lots.

It is proposed to subdivide the western portion of the land (proposed englobo Lot A) adjacent to Kerr Road into a further 117 Residential lots and one Park lot (the latter also containing a stormwater basin and Sloane's froglet wetlands). The proposed lots will be larger than conventional sized residential lots, ranging in area from 1,000m<sup>2</sup> - 1,320m<sup>2</sup>. The development will also include the construction of a new internal road network, including a new intersection at Kerr Road approximately 150 metres from the northern boundary as well as a link with the existing development to the immediate south (Yulumbang Road).

The road network will form a grid pattern which is consistent with the existing residential development to the south and ensures an integration between the two parcels within the Thurgoona growth area. The first stage of the residential lots will include the creation of a new intersection at

Kerr Road and a new internal collector road running east-west. The next stages will first progress north, and then leapfrog back south to eventually connect to the existing development to the south.



Figure 2: Staged subdivision of proposed Lot A into 117 residential lots and 1 park lot.

All stormwater flow resulting from the estate is contained within the development. The proposed development is located at the top of the catchment for Basin B08 in Council's *Thurgoona Wirlinga Drainage Strategy* (TWDS). As a part of the estate's stormwater management, a sedimentation basin is proposed at the lowest point in the north-western corner of the development. Sediment basins are used to retain coarse sediments from runoff and play an important role in a treatment train by protecting downstream elements from being overloaded. They operate by reducing flow velocities and encouraging sediments to settle out of the water column.

As will be discussed later in this report under Key Issues, Sloane's Froglet habitat is also to be created through the construction of an artificial wetland system in this location. This system will consist of shallow vegetated water 300mm deep, which is designed to provide a suitable habitat for breeding, as well as deeper areas that serve to provide a refuge during periods of drier weather. The sizing ratio requirement for breeding habitat on site is 3,000m<sup>2</sup> for every 10 hectares of developed catchment. Its location on the north-western boundary of the development has the added benefit of leading into areas outside of the development, facilitating movement of Sloane's Froglet throughout the landscape.

To capitalise on the opportunity created by the wetland area to provide a range of habitat for both flora and fauna and integrate the area into passive recreation areas and walking trails, the applicant opted to locate the estate's public open space (enclosed children's playground) in this area as well (Refer to Figures 3 and 4 below). Construction of the basin, wetland area and playground will be undertaken by the contractor engaged as part of the Subdivision Works under Council's supervision. Once the landscaping is completed, the maintenance of the drainage systems during a one-year establishment phase will be undertaken by the contractor also under Council's supervision. Thereafter, maintenance responsibilities will be assumed by the Albury City Council as per the usual arrangements for community infrastructure assets.

Figure 3 below shows an extract from the development plans (included in attachment 1) as it relates to the basin, wetland area and enclosed children's playground:



Figure 3: Proposed sedimentation basin, Sloane's froglet habitat wetlands and children's playground.





Figure 4: Proposed enclosed children's playground

It is also noted that proposed Stage 2 will contain a temporary stockpile of fill material obtained from local earthworks.

The proposal, as amended, is shown in the amended development plans (included in attachment 1) and as described in the Statement of Environmental Effects (included as attachment 2).

### Site and Locality Description

The subject site is described as Lot 26 in DP753356 and addressed as Thurgoona Drive, Wirringa. It is located approximately three kilometres east of the Thurgoona Shopping Centre along Thurgoona Drive and approximately three kilometres north of the Riverina Highway along Kerr Road.

The property forms a rectangular parcel of land and has an area of 36.175 hectares. It has a frontage of 405 metres to Kerr Road and a depth of 903 metres. Kerr Road, at the western frontage of the land, has a sealed surface with table drains to either side. The road reserve contains vegetation of which the majority is planted or regrowth rather than remnant.

The land itself is predominantly cleared former farm land and has topography defined by gentle undulations. Sandy Creek extends through the eastern portion of the land in a north-south direction, along with a small dam and a strip of vegetation either side of the drainage line.

The site is part zoned R1 General Residential and part E3 Environmental Management under *Albury LEP 2010* and the proposed development is permissible with consent in this zone. It is noted that proposed Lot A is entirely zoned R1 General Residential and no subdivision of Environmental land is proposed.



Figure 5: Locality Plan – site located adjacent to Kerr Road north of existing Park.

### **Key Issues**

The Development Application Assessment Report is included in attachment 4. The key issues relating to this development are:

#### Sloane's Froglet Habitat

Originally, the likelihood of Sloane's Froglet habitat being present on the site was considered low as the site for the proposed subdivision works does not contain any permanent dams or waterbodies and the proposed development only involved works affecting the western half of the property, with the eastern half, which does include the creek and thus greater potential habitat for the froglet, to be contained in a balance lot for future development under a separate application. The site is also modified and disturbed from grazing and other minor earthworks associated with the rural functions of the land. As a result, the application was initially considered to not require referral to the DPIE: BCD.

Notwithstanding this initial view, the application was forwarded to DPIE: BCD, and the applicant was required to submit further information to address the likelihood of impact on Sloane's Froglet habitat.

DPIE: BCD advised that they consider that the site constitutes occupied breeding habitat and requested further discussion on the matter between Council staff, the applicant and themselves. Furthermore, DPIE: BCD also advised that any development that will remove occupied wetland breeding habitat for Sloane's Froglet needs to be referred to the federal government for assessment of significant impacts. This advice was provided to the applicant.

Given this, the applicant was requested to revise the plans to include provision for the establishment of alternative Sloane's breeding habitat prior to works that may remove potential habitat.

In response, the applicant prepared a revised layout plan for the development which introduced a permanent wetland in the north western corner of the development, adjacent to the originally identified basin, and consolidated proposed public open space into this area. The final subdivision plan, as amended, as well as the superseded plans are included for Council's information in attachment 1.

The revised layout plan was accompanied by a Sloane's Froglet Management Plan, Sloane's Wetland Design Assessment Sheet and detailed wetland design drawing (included as attachment 5). All the information was provided to DPIE: BCD for concurrence.

Following assessment of the information provided and a site visit, DPIE: BCD confirmed that they are satisfied that the documentation and discussions meet the requirements for considerations around Sloane's Froglet for Stage 2 of the development approval process (section 2 of the Sloane's Froglet Stormwater Wetland Design Guidelines). DPIE: BCD recommended that any development consent include a condition requiring all revegetation and landscape plantings associated with the stormwater basins to be undertaken in line with the requirements detailed in the Sloane's Froglet Stormwater Wetland Guidelines, including species and planting densities.

#### Tree removal

The subject land itself is bio-certified and entirely cleared across the western and central portions of the site. The land is highly disturbed from previous agricultural uses, including grazing. There is little likelihood of threatened flora occurring within the works area. Stands of native vegetation are identified along Sandy Creek within the eastern portion of the land and are very isolated to this corridor which is protected by its "E3 Environmental Management" zoning. The proposed works will have no impact upon the E3 zoned portion of the land as this area is to be contained within the balance portion of the land.

However, the proposed new intersection point at Kerr Road will result in the removal of four Blakely's Redgum (*eucalyptus blakeyii*) trees which are located within the Kerr Road reserve, which is excluded from bio-certification. The loss of these trees is unavoidable as it is essential to have an access point to the site from Kerr Road. The design considered the most appropriate location for the access point, where it will have limited impact on the biodiversity conditions of the road reserve. The location selected for the access point is a relatively open portion of the roadside vegetation, other than for the identified trees which represent a generally isolated group.

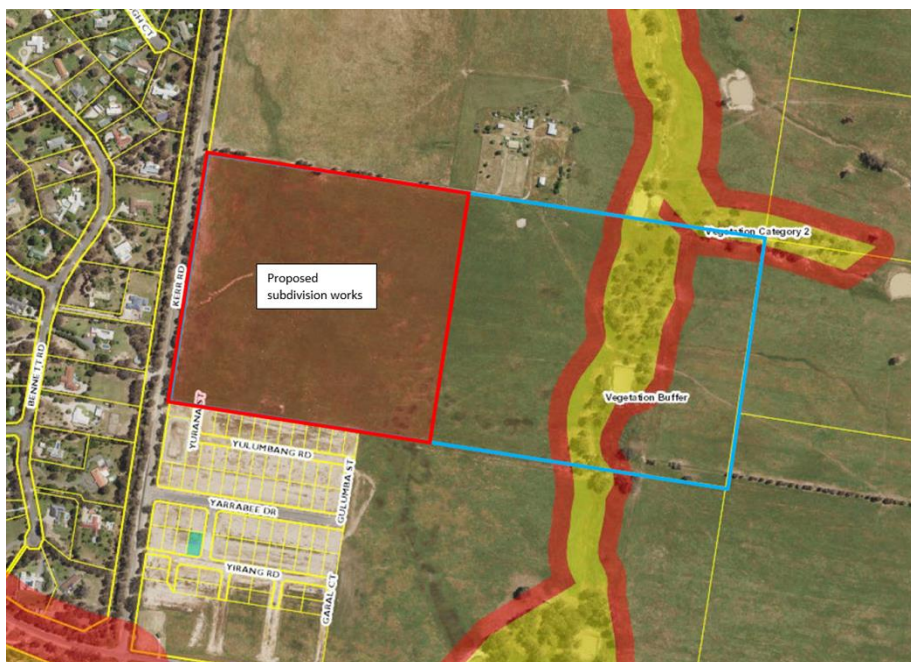
The trees to be removed are generally considered to be of limited biodiversity value, insofar they do not contain hollows and are isolated in the roadside vegetation landscape. The vegetation to the south and north of this access point will be retained in present conditions and the works will not impact these species in any way. Given the above and the availability of other suitable habitat vegetation within the area, it is not considered that their removal will have substantial impact on biodiversity and habitat values.



Three hollow-bearing trees are located in the Kerr Road reserve along the frontage of the development. The interface between the trees and the proposed lots will include a fence and/internal retaining wall, and these works will be undertaken to ensure that the identified trees in the road reserve are not impacted. It is considered that the trees could potentially be detrimentally impacted by the proposal. These trees, like the others further to the south in the earlier stages, will need to be carefully managed to ensure they are not harmed as a result of the works. Conditions of Consent relating to tree protection measures can be included should Council approve the development. Such conditions will ensure all trees to be retained in the road reserve of Kerr Road shall be suitably protected from damage during excavation and construction. This shall include provision of protective fencing extending to a minimum of the drip line to protect the root zone of these trees installed before commencement of any works. Tree protection fencing must remain in place until the end of construction. Furthermore, Council's Landscape Services Team must be contacted prior to cut or fill or installation of the retaining wall to assess the impact on the remnant hollow bearing trees in Council's road reserve.

## Bush fire

The Development Application was lodged as Integrated Development pursuant to Section 4.46 of the Environmental Planning & Assessment Act (EP & A Act) 1979. According to the Act, Integrated Development is development, not being State significant development or complying development, that, in order for it to be carried out, requires not only development consent from the consent authority (Council), but also one or more approvals of other authorities. The Rural Fires Act 1997 is one of the Acts listed under Section 4.46, and authorisation under section 100B in respect of bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes is required. Whilst the proposed subdivision works only affect the western half of the site and not the area mapped as bush fire prone directly (refer to Figure 6 below), the bush fire prone land map is the trigger for the consideration of bush fire protection measures for new development (*Planning for Bush Fire Protection* and *Australian Standard 3959*) and is not intended as a detailed measure of risk.



*Figure 6: Bush fire prone land identified on the total site, but east of the subdivision works area.*

In response, RFS requested a Bush Fire Assessment Report on 7 July 2020. The applicant was asked to demonstrate the extent to which the proposed development conforms with, or deviates from; the relevant specifications set out in '*Planning for Bush Fire Protection 2019*' (PBP).

The applicant provided a Bush Fire Assessment Report on 22 July 2020. On 15 October 2020, the RFS responded that the report prepared by the applicant has not adequately addressed the adjoining grassland hazard or demonstrated how the proposed public access arrangements comply with Table 5.3b of PBP 2019. The applicant provided an update report on 22 October 2020 addressing the grassland hazard as requested. Having regard to the assessment and site conditions, it has been calculated that an Asset Protection Zone (APZ) of 10 metres is required for the development for a grassland hazard. This APZ is to be applied to the eastern and northern boundary of proposed Lot A, providing a managed space between the hazard to the east and north and the proposed residential lots to be created within proposed Lot A. Given that this APZ will apply to adjoining private land, an easement will be created to ensure that these APZs are protected and maintained. At the time of developing the adjoining lands, these easements will be extinguished.

Given the time that has elapsed (more than 100 days) and the type and condition of vegetation on and surrounding the site, Council is confident that the applicant will be able to provide the outstanding information to the satisfaction of RFS and subsequently obtain Bush Fire Authority. As a result, it is recommended that "deferred commencement" consent be given pending the issue of a Bush Fire Authority by NSW RFS.

#### Stormwater Drainage

The natural topography of the land drains stormwater from south-east to north-west. This means that neighbouring land to the south-east drains onto the subject property. Also, the existing dam on Thurgoona Drive is assumed to need retention as Sloane's Froglet habitat. The assumed discharge flow path from this dam through the neighbouring property is north-west as well, toward the proposed development.

The proposed development (most notably through earthworks and the construction of kerbed roads), has the potential of interrupting this natural overland flow direction and trapping water, leading to ponding on the neighbouring property, which itself is likely to consider residential subdivision in the near future.

The applicant provided design information for overland stormwater collection at the south-eastern corner, and dispensing it through the provided street network and drainage infrastructure. A drainage point is to be provided for the neighbouring property over proposed Lot 313 to avoid any ponding. See Figure 7 below for a schematic of the proposed solution.



Figure 7: Stormwater flow from the south-east can be collected at this point and dispensed through the proposed development's road and drainage network.

Detailed engineering designs in consideration of flow volume and velocity as well as infrastructure gradients will be required through a Condition of Consent should Council approve the development.

### Submissions

The development application was publicly notified between 13 May 2020 and 12 June 2020. One submission was received on 19 May 2020 in support of the application, but requesting the inclusion of a children's play park for the benefit of the community. A late submission was received on 6 July 2020 and related to the potential for Sloane's Froglet to be present on site. The last submission was received late on 21 August 2020 and relates to stormwater drainage. Due to their relevance and the fact that the application has not been determined yet, the late submissions have been accepted. A total of three submissions were received.

In summary, the submissions raised the following concerns:

- *In support of the proposed development, however would like to request that a children's playground or open space be included. This will greatly enhance the estate and is one of the few things lacking in the nearby area.*

**Comment:** A children's playground has been included in the amended plans and now forms part of the proposal.

- *I have been monitoring Sloane's Froglet at certain localities in the Thurgoona area and made two recordings of Sloane's Froglets calling in a flooded paddock area at Yarrabee Park North. The DA does not make any reference to the possible existence of any Threatened frog species on this site in their respective Statement of Environmental Effects, despite there being records of Sloane's Froglet nearby on NSW Bionet and on Atlas of Living Australia. I also understand this site is within the Sloane's Froglet LAMP for Thurgoona and that Albury Department of Planning, Industry & Environment Threatened Species staff can be consulted for further information.*

**Comment:** The application was forwarded to the DPIE: BCD and the applicant was required to submit further information in this regard.

DPIE: BCD, considered the site to be occupied breeding habitat and requested further discussion on the matter with Council staff and the applicant. DPIE: BCD also advised that any development that will remove occupied wetland breeding habitat for Sloane's Froglet needs to be referred to the federal government for assessment of significant impacts. This advice was provided to the applicant.

In response, the applicant prepared a revised layout plan for the development which introduced a permanent wetland in the north western corner of the development, adjacent to the originally identified basin, and consolidated proposed public open space into this area. Refer to attachment 1.

Following assessment of the information provided and a site visit, DPIE: BCD confirmed that they are satisfied that the documentation and discussions meet the requirements for considerations around Sloane's Froglet for Stage 2 of the development approval process (section 2 of the Sloane's Froglet Stormwater Wetland Design Guidelines). DPIE: BCD recommended that any development consent include a condition requiring all revegetation and landscape plantings associated with the stormwater basins to be undertaken in line with the requirements detailed in the Sloane's Froglet Stormwater Wetland Guidelines, including species and planting densities.

- *The proposals pose problems for drainage of future development at Yarrabee.*
  - *The existing dam on Thurgoona Drive is assumed to need retention as Froglet Habitat. The assumed discharge flow path from this dam through the neighbouring property is north-west, toward the proposed development. The proposed development does not consider this natural overland flow path.*
  - *Lots fronting Yulumbang Road have been filled along the northern and eastern boundary; they will create trapped water in the northern corner of the Nordcon development.*
  - *The neighbouring layout has not taken into consideration the "Kerr Road Development Precinct" plan submitted by Habitat Panning as part of the original Yarrabee Estate development approval.*



**Comment:** The applicant provided design information for overland stormwater collection at the south-eastern corner, and dispensing it through the provided street network and drainage infrastructure. A drainage point is to be provided for the neighbouring property over proposed Lot 313 to avoid any ponding.

Supporting information, including longitudinal sections were also provided. A Condition of Consent requiring detailed engineering drawings prior to the issue of a Subdivision Works Certificate can be imposed should Council approve the development.

The proposed subdivision layout is considered to be substantially similar to the “Kerr Road Development Precinct Plan” insofar as it is proposing a grid pattern street layout with primary access off Kerr Road in the north-western corner of the property. The only significant departure from this plan is the provision of Environmental Reserve in the south-eastern corner (for drainage purposes) which has been appropriately dealt with through engineering design as discussed above.

### **Options**

The Council has the following options in relation to this report:

1. Approve the application; or
2. Approve the application, subject to conditions; or
3. Defer the application for further information or redesign; or
4. Refuse the application.

Based on the assessment of the application and the manageable impacts arising from the proposed development, this report recommends that Council resolves to approve the application subject to the conditions contained in Draft Determination, included as attachment 6 to this report as per Option 2.

### **Conclusion**

Council staff have assessed the proposed development with regard to the submitted information, issues raised during public notification, and planning controls and requirements contained within ALEP 2010, ADCP 2010 and relevant State legislation. It is the role of Council staff to objectively weigh and consider the submitted information as well as any issues raised during public notification. This involves balancing the issues identified by all parties and will not always result in agreement with the noted opinion of any of these parties.

The development is considered appropriate to the context and setting of the site. The proposed development is considered consistent with the objectives of the R1 Zone and the Thurgoona Wirlinga Precinct Structure Plan, and the assessment has concluded that the proposed development provides a suitable and satisfactory planning outcome.

Given that the proposed development is Integrated Development requiring Bush Fire Authority pursuant to Section 100B of the Rural Fires Act 1997 and such Authority has not been issued yet, it is recommended that the development application be determined under Section 4.16(3) of the *Environmental Planning and Assessment Act 1979* as ‘Deferred Commencement’.

This Consent, if granted, shall therefore not operate until such time as an appropriate Bush Fire Authority pursuant to Section 100B of the Rural Fires Act 1997 has been issued by the NSW Rural Fire Service.

### **Recommendation**

That Council:

- a. Receives the contents of this report; and
- b. Grants consent to Development Application 10.2020.37505.1 for the Two Lot Englobo Subdivision & One Hundred and Nineteen Lot Torrens Title Subdivision of Proposed Lot A including temporary stockpile (Yarrabee Park North – Stages 1 – 4) – subject to ‘Deferred Commencement’ pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979* and the conditions contained in the Draft Determination, included at attachment 6 to this report.

### **Attachments**

1. Development Plans including superseded plans (DOC20/211743).
2. Statement of Environmental Effects (DOC20/211811).
3. Submissions (DOC20/211388).
4. Development Application Assessment Report (DOC20/146732).
5. Sloane’s Froglet Habitat Wetlands Management Plan (DOC20/212486).
6. Draft Determination (DOC20/210154).