# RECORD OF DEFERRAL

NORTHERN REGIONAL PLANNING PANEL

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| **DATE OF DEFERRAL** | 15 March 2022 |
| **DATE OF PUBLIC MEETING** | 10 March 2022 |
| **PANEL MEMBERS** | Paul Mitchell (Chair), Penny Holloway, Stephen Gow, Ian Tiley and Greg Clancy |
| **APOLOGIES** | None |
| **DECLARATIONS OF INTEREST** | None |

Public meeting held by teleconference on 10 March 2022, opened at 4pm and closed at 6:30pm.

**MATTER DEFERRED**

PPSNTH-129 – Clarence Valley – DA2021/0558 at 8 Park Ave, Yamba – multi-dwelling housing (as described in Schedule 1).

**REASONS FOR DEFERRAL**

Parts of the site are located in the Flood Planning Area of the Clarence River and the site as a whole will become isolated from escape routes and emergency services in major flood events. Insufficient consideration has been given to safe evacuation from the site by residents (aged over 50), staff and visitors to flood free areas and services in such events, as required under the Clarence Valley Local Environmental Plan 2011 (LEP) and, specifically, the relevant provisions of Part D of the Clarence Valley Residential Zones Development Control Plan 2011 (DCP), including Schedule D4 in relation to Evacuation requirements for Urban Residential uses. It is noted that the DCP makes no provision for 'shelter in place' arrangements for developments of this type.

In the absence of a detailed Flood Emergency Management and Evacuation Plan, prepared in consultation with the SES, it has not been demonstrated that the site will be suitable for the proposed development, nor therefore that the granting of consent for the project would be in the public interest as required under s.4.15 of the EP&A Act 1979.

Requiring such a Plan as a condition of consent would in the Panel's majority view defer consideration of a matter which is essential to the determination of the DA.

The Panel agreed to defer the determination of the matter until the applicant provides a Flood Emergency Management and Evacuation Plan, to satisfy the relevant LEP and DCP requirements, prepared in consultation with NSW State Emergency Services, satisfies the requirements of the Clarence Valley Council Residential Zones Development Control Plan and is satisfactory to the Director Works & Civil.

The Panel expects revised information as referred to above be submitted to Council within three months of the date of this deferral record. Council is requested to provide a supplementary Council assessment report within two weeks of the receipt of revised information. The Panel may agree to an extension of time, if requested. Otherwise, If the information requested from the applicant is not provided within three months, the Panel may move to determine the DA based on the information currently at hand.

When this information has been received, the panel will hold another public determination meeting.

The decision to defer the matter was 3:2 in favour, against the decision were Ian Tiley and Greg Clancy. The Panel adjourned during the meeting to deliberate on the matter and formulate a resolution.

**Reasons for the decision of the minority of the Panel**

Ian Tiley and Greg Clancy voted to refuse the development application for the following reasons:

1. The allocation of open space does not meet the requirements of C20.2 the Residential DCP. There is 30m2 per residence allocated rather than the required 50m2.
2. The Statement of Environmental Effects is confined to impacts on the site, which is virtually cleared of vegetation other than one fig tree but the development has the potential to impact on the surrounding environment, in particular the Clarence Estuary Nature Reserve, 100 m to the east. The potential impacts include the spread of weed species and non-local native and exotic species used in the landscaping and the predation, or disturbance, of small mammals, reptiles, amphibians and birds by dogs and cats, mostly by cats.
3. The development has the potential to impact on surrounding residences as the fill existing at the site already causes flooding of adjacent properties and there is to be an additional 32,850m2 of fill dumped at the site. Despite assurances that the additional stormwater effects can be managed this additional fill, and the large number of houses with non-absorbent surfaces, is likely to place extra pressure on existing and proposed drains and retention structures.
4. Social impacts involve the proposed development being much higher than the surrounding residences and this can create a reduction in privacy for those residents. Some ameliorating measures are proposed but they may not be enough. The additional number of residents at the site will increase the demand on the State Emergency Services who do not have the capacity to cater for "additional" urban densities (Yamba Risk Management Study October 2008). The site is likely to become an island during major flooding and although the residences are unlikely to suffer water damage in a 1:100 year flood access is likely to be cut along with services and higher flood levels are possible. The noise and physical impact on residences and roads from numerous truck movements during construction is also a social impact.
5. If the site was on land above the flood-plain it would potentially be suitable as it is presently cleared of vegetation, other than introduced grasses, and is relatively flat. Approving residential development on floodplains, considering the scale of the recent floods and the likelihood of more severe flooding in the future, is risky. Even though the land is unlikely to flood in a 1:100 year flood event this level of flooding may be exceeded in the future. The flooding at Lismore was considered to far exceed the 1:100 year level. The inability of the State Emergency Services to cope with the additional population has been identified in the Yamba Floodplain Risk Management Study (October 2008). Figure 5 of that study maps the site as low risk in a 1:100 year flood but high risk in a Probable Maximum Flood (PMF).
6. 15 objections were received from members of the community, several of whom appear to have a good knowledge or experience with the issues of floodplain management and stormwater management.
7. For the reasons above, Ian Tiley and Greg Clancy consider that the public interest is best served by refusing this development.

| PANEL MEMBERS | |
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| Paul Mitchell (Chair) | Penny Holloway |
| Stephen Gow | Ian Tiley |
| Greg Clancy | |

| SCHEDULE 1 | | |
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| **1** | **PANEL REF – LGA – DA NO.** | PPSNTH-129 – Clarence Valley – DA2021/0558 |
| **2** | **PROPOSED DEVELOPMENT** | Multi Dwelling Housing (136 Dwellings, one exhibition home, community facilities including clubhouse, swimming pool, gym and cinema, associated infrastructure and landscaping) |
| **3** | **STREET ADDRESS** | 8 Park Avenue, Yamba |
| **4** | **APPLICANT/OWNER** | Applicant: Hometown Australia Management Pty Ltd<br>Owner: Parkes Menai P/L |
| **5** | **TYPE OF REGIONAL DEVELOPMENT** | General development over $30 million |
| **6** | **RELEVANT MANDATORY CONSIDERATIONS** | • Environmental planning instruments:<br>o **L**ocal Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021<br>o State Environmental Planning Policy No. 55 - Remediation of Land<br>o State Environmental Planning Policy (State and Regional Development) 2011<br>o State Environmental Planning Policy (Coastal Management) 2018<br>o Clarence Valley Local Environmental Plan 2011<br>o North Coast Environmental Plan 2036<br>o NSW Coastal Design Guidelines<br>• Draft environmental planning instruments: Nil<br>• Development control plans:<br>o Clarence Valley Council Residential Zones Development Control Plan<br>• Planning agreements: Nil<br>• Provisions of the *Environmental Planning and Assessment Regulation 2000*<br>• Coastal zone management plan: Nil<br>• The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality<br>• The suitability of the site for the development<br>• Any submissions made in accordance with the *Environmental Planning and Assessment Act 1979* or regulations<br>• The public interest, including the principles of ecologically sustainable development |
| **7** | **MATERIAL CONSIDERED BY THE PANEL** | • Council Assessment Report: 4 March 2022<br>• Addendum Council Assessment Report: 4 March 2022<br>• Written submissions during public exhibition: 21<br>• Verbal submissions at the public meeting:<br>o Leslie Reeves, Peter Maslen, Bob Cairns and Stan Cousins<br>o On behalf of the applicant – Joseph Waugh, Chris Pickford and Geoff Dearden<br>o Council assessment officer – Chris Dear and Carmen Landers |
| **8** | **MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL** | • Final briefing to discuss council's recommendation**:** 10 March 2022<br>o Panel members: Paul Mitchell (Chair), Penny Holloway, Stephen Gow, Ian Tiley and Greg Clancy<br>o Council assessment staff: Carmen Landers, Adam Cameron, Kerry Harre and Chris Dear<br>o Department staff: Carolyn Hunt, Stuart Withington and Lisa Foley |
| **9** | **COUNCIL RECOMMENDATION** | Approval |
| **10** | **DRAFT CONDITIONS** | Attached to the Addendum Council Assessment Report |