COUNCIL ASSESSMENT REPORT
NORTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSNTH-195 – [SUB2023/0001]
PROPOSAL	**284 lot subdivision -** (277 low density residential lots, 1 medium density residential development lot, 1 commercial development lot, 1 low density development lot, 3 drainage reserve lots, 1 open space reserve lot)
ADDRESS	Lot 46 and 47 DP 751395 [52-54 Miles Street Yamba NSW 2464]
APPLICANT	Garrard Building Pty Ltd
OWNER	Kahuna No 1 Pty Ltd
DA LODGEMENT DATE	18 January 2023
APPLICATION TYPE	Development Application (Integrated)
REGIONALLY SIGNIFICANT CRITERIA	Clause 2 Schedule 6 of the SRD SEPP: General Development over $30 million – Development that has a capital investment value of more than $30 million
CIV	$ 48,458,741.00 (excluding GST)
CLAUSE 4.6 REQUESTS	Nil.
KEY SEPP/LEP	• *Environmental Planning and Assessment Act 1979;* • *Environmental Planning and Assessment Regulation 2021;* • *Water Management Act 2000;* • *Rural Fires Act 1997;* • *State Environmental Planning Policy (Resilience and Hazards) 2021;* • *State Environmental Planning Policy (Planning Systems) 2021;* • *State Environmental Planning Policy (Transport and Infrastructure) 2021;* • *Clarence Valley Local Environmental Plan 2011;* • *Clarence Valley Council Residential Zones Development Control Plan;* • *North Coast Regional Plan 2041*
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	*330 (57 unique submissions) comprising 327 objections and 3 in support of proposal* • Stormwater drainage

	• Flooding • Flood Evacuation • Impacts associated with Climate Change • Urban Design • Impacts to biodiversity and natural environment • Filling of Land • Infrastructure and services • Environmental impacts associated with dredging • Impact on town amenity
DOCUMENTS SUBMITTED FOR CONSIDERATION	• Statement of Environmental Effects – Rob Donges Planning Consultant March 2024 • Preliminary Engineering - Mortons Urban Solutions (Revision F) 9 May 2023 • Additional Engineering Plans – Mortons Urban Solutions – 23 May 2023 • Landscaping Plan – Zone Landscape Architects – 22 November 2023 • Acid Sulfate Soils Assessment - Regional Geotechnical Solutions – 5 March 2020 • Biodiversity Development Assessment Report – GeoLink 21 July 2023 • Vegetation Management Plan Lot 46 – GeoLink – 21 July 2023 • Vegetation Management Plan Lot 47 – GeoLink – 21 July 2023 • Bushfire Risk Management Plan – BushfireSafe (Aust) Pty Ltd December 2022 • Endorsement of Cultural Heritage Assessment Report – Birrigan Gargle Local Aboriginal Land Council – 9 September 2022 • Cultural Heritage Assessment – Everick Heritage Consultants Pty Ltd – September 2011 • WYURA Flood Impact Assessment – BMT 22 November 2021 • WYURA Flood Impact Assessment Addendum – BMT 25 November 2022 • WYURA Flood Impact Assessment – BMT 30 October 2023 • West Yamba Flood Evacuation Plan – BMT 30 August 2023 • West Yamba Flood Evacuation Plan Addendum – BMT 31 October 2023 • Site Contamination Assessment - Regional Geotechnical Solutions 10 March 2020 • Stage 2 Site Contamination Assessment – Addendum Regional Geotechnical Solutions August 2022 • Stage 1 and 2 Site Contamination Assessment - Regional Geotechnical Solutions – 23 August 2023 • Geotechnical Assessment – Regional Geotechnical Solutions 19 August 2022

	• Interim Results of Groundwater Level Monitoring Proposed redevelopment of West Yamba Miles and Cox Street, Yamba – Douglas Partners – 24 August 2022 , 19 January 2023 and 14 September 2023 • Stormwater Management Plan & Downstream Drainage Assessment – Biome 15 June 2023 • Revised Traffic Impact Assessment – Bitzios 8 May 2023 • West Yamba Urban Release Area – Water Supply and Sewer Servicing Strategy – Hunter H_2O – July 2019 • Shared Concept Shared Pathway Plan – Mortons Urban Solutions – 20 December 2022 • Addendum to Stormwater Management Plan – Mortons Urban Solutions – 26 April 2024 • Stormwater Management Plan response to Additional Information – Biome • Advice from SES – 11 March 2024 • SES Yamba Local Emergency Flood Plan – Clarence Valley Council February 2024 • Advice from Preferred Energy – 16 November 2022 • Comments from Busways – 30 May 2022
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	N/A.
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	YES
SCHEDULED MEETING DATE	11 June 2024
PLAN VERSION	9 May 2023 Version No F
PREPARED BY	James Hamilton, Development Services Coordinator
DATE OF REPORT	1 June 2024

EXECUTIVE SUMMARY

The development application (SUB2023/001) seeks consent for a 284 Lot Staged Residential Subdivision (including drainage reserves, open space and residue lot) ('the proposal').

The subject site is known as Lot 46 and 47 DP 751395, No. 52-54 Miles Street, Yamba ('the site'). The site has an area of 42.5 hectares (approximately 850m x 500m) and is located on the southern side of Yamba Road within the West Yamba Urban Release Area (WYURA). The site is approximately 2km west of the Yamba central business district (CBD) and 1.1km south east of Yamba Fair shopping precinct.

The subject site is relatively flat and low lying with frontage to Carrs Drive to the west, Miles Street to the north and Golding Street to the East. The site contains an existing dwelling and

has historically been used for grazing of cattle with vegetation covering the eastern and south western parts of the site. Furthermore, the land contains two natural watercourses.

Constraints that exist for the site include flooding, bushfire, acid sulfate soils, stormwater management (due to the site being in a flat low-lying area) and natural features including threatened flora and fauna species, watercourses and vegetation.

The subject site is located within the WYURA which is currently undergoing a transition from a greenfield area to residential land uses. The site is zoned R1 General Residential.

The principal planning controls relevant to the proposal include *State Environmental Planning Policy (SEPP) (Resilience and Hazards) 2021, State Environmental Planning Policy (Transport and Infrastructure) 2021, Clarence Valley Local Environmental Plan 2011* ('the LEP') and *Clarence Valley Residential Zones Development Control Plan 2011* ('the DCP').

The proposal is consistent with various provisions of the relevant State and local planning controls including:

- *SEPP (Resilience & Hazards) 2021 – being satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.*
- *Clarence Valley LEP 2011 –*
    - *Clause 5.21 Flood Planning – The applicant proposes to fill the portion of the site to be developed for residential purposes to above the 1 in 100 year flood level.*
    - *Part 6 – Urban Release Areas* - The design of the subdivision is generally consistent with the objectives and prescriptive controls of the DCP.

- *Clarence Valley DCP 2011 –*
    - *Part C – General Development Controls for Residential Zones*
    - *Part D. Floodplain Management Controls – the development has demonstrated that it does not detrimentally increase the potential flood effects on other development or properties either individually or in combination with the cumulative impact of development that is likely to occur in the same floodplain.*
    - *Part H Sustainable Water Controls*
    - *Part J. Subdivision and Engineering Controls*
    - *Part X Urban Release Area Controls*
        - *Vegetation Management*
        - *Hazard Management*
        - *Stormwater Management*
        - *Urban Design*
        - *Open Space and Recreation*

The proposal was advertised and notified in accordance with Council's Community Participation Plan (CPP) from 17 November to 18 December 2023. Council received a total of 330 individual submissions, comprising 327 objections and three (3) submissions in support of the proposal. The submissions raised issues relating to urban design, flooding, stormwater, traffic, filling, environment, services, climate change and sea level rise, and impacts on the town as a result of the increased population. The matters raised in submissions in support of the development include meeting the increasing demand for housing in the Valley, the site is suitable for the development following the lengthy rezoning process, is consistent with Council's Draft Local Housing Strategy and it is demonstrated that filling of land does not result in the flooding of Yamba Road or neighbouring streets due to the size of the Clarence River flood plain. These issues are addressed in this report.

The application is referred to the Northern Regional Planning Panel ('the Panel') as the development is 'regionally significant development', pursuant to Clause 2 of Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021* as the proposal is general development with a Capital Investment Value (CIV) over $30 million.

A briefing was held with the Panel on 19 April 2023 where key issues were discussed, including stormwater, flooding and evacuation, bushfire, urban design, and biodiversity.

The key issues associated with the current proposal are:

Urban Design -
This area is designated as an urban release area and therefore it is expected that the area will supply more housing. Having a variety of lot sizes provides opportunity for diverse housing typologies to suit various housing types. The overall urban design of the proposed development is generally consistent with the objectives and prescriptive controls contained within Part X of the DCP. The proposal balances to a satisfactory standard the purpose of the urban release area and the character of the surrounding area.

Flooding -
Given the proposed extent of fill, the creation of a 'floodway' lot, and the importance of proposed flood impact assessment, Council engaged the services of a third party to independently review the applicant's flood impact assessment. Supporting information that demonstrates the impacts of the development meet the performance and prescriptive controls of Council's adopted planning controls have been provided.

Stormwater -
The Stormwater Management Plan submitted in support of the development application conceptually addresses the requirements of the Sustainable Water Controls of Part H of the DCP. The conceptual design and treatment train has sufficiently demonstrated that the targets set in the DCP and required by NRDC can be achieved.

Biodiversity -
A Biodiversity Development Assessment Report and Vegetation Management Plan for retention of existing vegetation has been prepared to the satisfaction of Council and has adequately considered the presence of both Rotala (Rotala *tripartita)* and Spider Orchid (*Dendrobium melaleucaphilum*) on-site.

Integrated Development -

The proposed development required concurrence/referral from the following agencies:

- Essential Energy – clause 2.48 of *State Environmental Planning Policy (Transport and Infrastructure) 2021* – No objections subject to recommended conditions.
- Transport for NSW (TfNSW) – clause 2.122 of *State Environmental Planning Policy (Transport and Infrastructure) 2021* – referred as traffic generating development.
- Department of Planning and Environment – Biodiversity, Conservation and Science Division – Referred under the *Biodiversity Conservation Act 2016* relating to Biodiversity Development Assessment Report.
- The Department of Planning and Environment - Water – approval required for works on waterfront land (within 40m of a natural watercourse) and filling in of a Class 1 Stream pursuant to the *Water Management Act 2000*
- NSW Rural Fire Service (RFS) – approval required for the subdivision under Section 100B of the *Rural Fires Act 1997*

Bushfire -

The NSW Rural Fire Service (RFS) pursuant to the *Rural Fires Act 1997* have granted their General Terms of Approval to address bushfire risk applicable to the site and development.

Department of Planning and Environment - Water -
The Department of Planning and Environment - Water pursuant to the *Water Management Act 2000* did grant General Terms of Approval for works on waterfront land (within 40m of a natural watercourse) and filling in of a Class 1 Stream.

Following consideration of the matters under Section 4.15(1) of the EP&A Act, the provisions of the relevant State environmental planning policies, the *Clarence Valley Local Environmental Plan 2011* and the *Clarence Valley Residential Zones Development Control Plan 2011*, it is recommended that the proposed development be supported.

The issues of urban design, flooding, stormwater and biodiversity are all considered significant issues that have been addressed by the applicant and through external independent peer review of certain technical reports. The amended designs and technical information to support the application has resolved these issues which have been reinforced through draft recommended conditions of consent.

Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(a) of the *EP&A Act*, SUB2023/0001 is recommended for approval subject to the conditions contained at **Attachment A** of this report.

1. THE SITE AND LOCALITY

1.1 The Site

The subject land is known as Lot 46 and 47 DP 751395, No. 52-54 Miles Street, Yamba.

The site has an area of 42.5 hectares (approximately 850m x 500m) and is located on the southern side of Yamba Road within the West Yamba Urban Release Area (WYURA). The site is approximately 2km west of the Yamba CBD and 1.1km south east of the Yamba Fair shopping precinct.

The subject site is relatively flat and low lying with frontage to Carrs Drive to the west, Miles Street to the north and Golding Street to the East. The site contains an existing dwelling and has historically been used for grazing of cattle with vegetation covering the eastern and south western parts of the site. Furthermore, the land contains two natural watercourses.

Constraints that exist for the site include flooding, bushfire, acid sulfate soils, stormwater management (due to the site being in a flat low lying area) and natural features including threatened flora and fauna species, watercourses and vegetation.

Figure 1 – Site Plan (Source: CVC Intramaps)

Figure 1: View of site from corner of Miles Street and Golding Street looking west (Source: James Hamilton)

Figure 3: View of site from corner of Miles Street and Carrs Drive looking east (Source: James Hamilton)

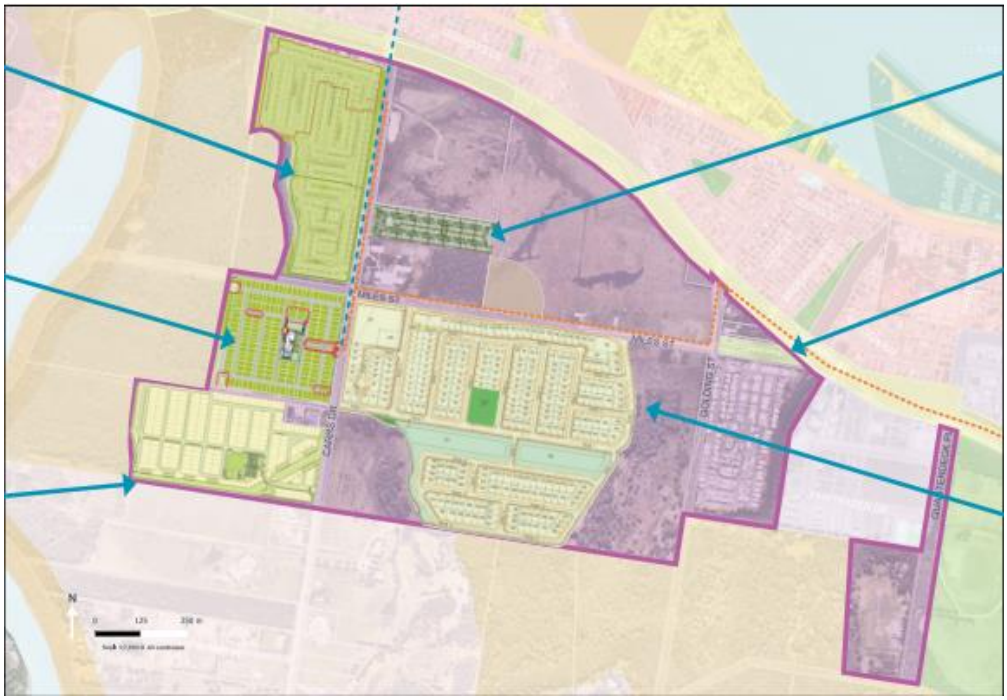

Figure 4: WYURA and the site location (Source: CVC West Yamba Development Update Brochure – March 2024)

1.2 The Locality

The site is located within the WYURA which is currently undergoing a transition from a greenfield area to residential.

Land to the north, east and west of the development are also located within the WYURA. Land to the south is zoned R5 Large Lot Residential and C3 Environmental

Management. Land to the direct west is currently under construction to provide a manufactured home estate of 200 dwellings and Council is currently considering a development application for a 216 dwelling manufactured home estate at 120 Carrs Drive.

The WYURA is separated from the existing residential area of Yamba by an urban bypass corridor. The lot immediately to the north contains an existing primary school.

Residential developments approved in the WYURA include 52 Unit Seniors Living (Lot 20 DP 1277589), 200 dwelling manufactured home estate (Lot 1 DP 568545) and a 161 Lot Subdivision (Lot 158 DP 1279485, first and second stages released totally 112 lots). The 161 lot subdivision was determined by the Northern Joint Regional Planning Panel (2014NTH019). A background about WYURA and the current development approvals can be found here: https://www.clarence.nsw.gov.au/Building-and-planning/West-Yamba-Development

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal seeks consent for a staged 284 Lot Residential Subdivision (Figure 5) including drainage reserves and a residue lot in the south western corner of the site.

Specifically, the proposal involves:

- 277 Lot Residential Subdivision
    a. 81 lots less than 450m^2, the smallest lots being 404m^2
    b. 98 lots between 450m^2 and 480m^2
    c. 55 lots between 480m^2 and 600m^2
    d. 43 lots greater than 600m^2
- One (1) development lot of 8,001m^2 (intended for future residential development)
- One (1) development lot of 2,000m^2 (intended for future commercial development)
- Two (2) open space (Park) lots of 5,066m^2 and 570m^2
- One (1) residue lot of 1.55 hectares
- Three (3) lots (lot 901, 902 and 903) to include stormwater management devices and expanded flood way
- Demolition of existing buildings on-site
- Clearing of 2.96 hectares of native vegetation
- Filling of land including a first order stream
- Provision of infrastructure and services including drainage facilities.

The key development data is provided in **Table 1**.

Table 1: Development Data

Control	Proposal
Site area	42.5 hectares
Subdivision Footprint	27.13 hectares

FSR (retail/residential)	N/A.
Clause 4.6 Requests	Nil.
No. of lots	284
Min. Lot Size	N/A.

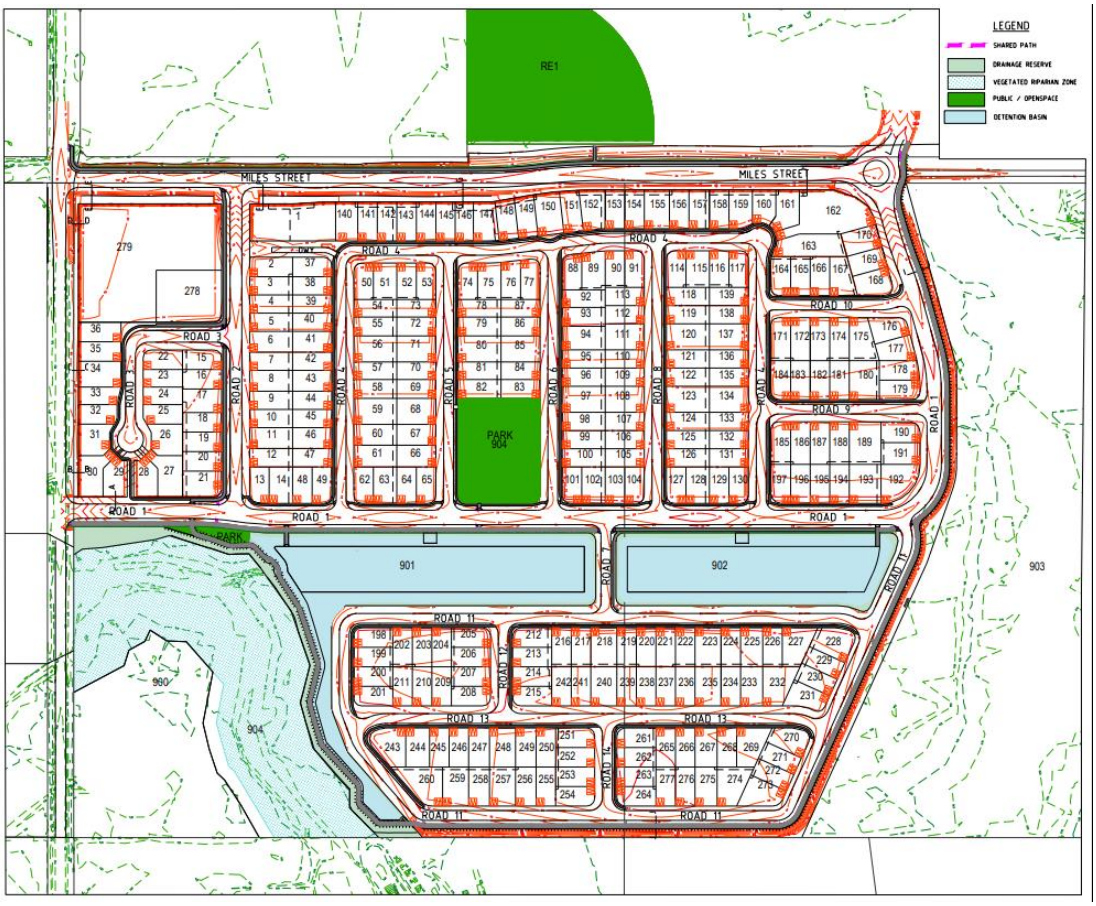

Figure 5 – Proposed Plans (Source: Mortons Urban Solutions)

2.2 Background

A pre-lodgement meeting was held prior to the lodgement of the applicant on 15 September 2022 where various issues were discussed. A summary of the key issues and how they have been addressed by the proposal is outlined below:

- Flooding – the nominated floodway through the subject site in Figure X1.3 of the Residential Zones Development Control Plan has been widened and a flood impact assessment provided.
- Stormwater drainage – two (2) large stormwater basins have been provided to address stormwater runoff from the site. A connected system of bio-pods within the street network have been provided to address quality.
- Urban Design – issues raised included a diversity of housing/lot types, inclusion of higher density development lots, provision of a neighbourhood centre.

- Open Space – suitability of open space provided including additional pedestrian facilities (perimeter pathway and pathways on at least one side of every street) and plantings/design details of road verges including retaining wall features.
- Servicing and Road Layout – general feedback on overall road layout/hierarchy, need for an emergency access, servicing of the development (water and sewer)
- Geotechnical – impacts on groundwater and surcharging associated with impacts of fill.
- Environment/Biodiversity – consideration of ongoing vegetation management and associated impacts on threatened species on-site proposed to be retained.
- Contamination – revised assessment to consider use of floodway lot and public access to this area.
- Bushfire – consideration of comments raised by NSW Rural Fire Service to manage bushfire risk.

Assessment against these key issues raised and compliance with relevant planning and engineering controls are discussed in detail within this report.

The development application was lodged on **18 January 2023**. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

Table 2: Chronology of the DA

Date	Event
18 January 2023	DA lodged
30 January 2023	DA referred to external agencies and Planning Panel
3 March 2023	Request for Information from Council to applicant
19 April 2023	Panel briefing
20 June 2023	Amended technical reports lodged to address issues raised in request for information dated 23 June 2023 accepted by Council under Cl 38(1) of the *Environmental Planning and Assessment Regulation 2021* ('2021 EP&A Regulation') on 7 July 2023.
18 August 2023	Amended DA referred to external agencies
19 October 2023	Request for Information from Council to applicant
4 November 2023	Information lodged to consider impacts of recently adopted 2022 Flood Model dated 30 October 2023 accepted by Council under Cl 38(1) of the *Environmental Planning and Assessment Regulation 2021* ('2021 EP&A Regulation') on 6 November 2023.
17 November 2023	Request for Information from Council to applicant
17 November 2023	Exhibition of the application

27 November 2023	Amended landscape plans lodged dated 22 November 2023 accepted by Council under Cl 38(1) of the *Environmental Planning and Assessment Regulation 2021* ('2021 EP&A Regulation') on 27 November 2023 to address items raised by NSW Rural Fire Service.
24 April 2024	Request for Information from Council to applicant
26 April 2024	Information lodged to assess impacts of changes in Miles Street and Carrs Drive on stormwater dated 26 April 2024 accepted by Council under Cl 38(1) of the *Environmental Planning and Assessment Regulation 2021* ('2021 EP&A Regulation') on 1 May 2024.
11 June 2024	Planning Panel Determination

2.3 Site History

The site is subject to three (3) approved development applications for filling of approximately 12 hectares within the north west corner of the site (refer Figure 1). The filling was in response to disposal of surplus material associated with the Woolgoolga to Ballina Pacific Highway and additional Clarence River Crossing at Grafton projects.

A previous Development Application SUB2019/0030 [PPSNTH-31] was lodged over the site within the same footprint seeking development consent for a 310 lot residential subdivision (refer to Figure 6 below). This application was withdrawn on 13 September 2022 following the Council Assessment Report to the Panel recommending refusal. The reasons for not being able to support the application included impacts to threatened species, contamination, non-compliance with Council's adopted planning controls relating to earthworks, flood planning, stormwater and urban design.

This application was initially lodged for Lot 46 only, for 305 lots, and was subsequently reduced to 295 after the first additional information request. The Natural Resource Access Regulator would not grant General Terms of Approval to fill in all natural watercourses on the subject site, however have permitted the filling of two Class 1 Streams on-site, hence the significant amendment to the plans and inclusion of Lot 47 in the proposal. The other significant change is the inclusion of two large stormwater basins (proposed Lot 901 and 902) to address the quantity of stormwater leaving the site and proposed Lot 903 (floodway). It is also proposed to create proposed residue Lot 900. The thorough assessment of the prior made application has resulted in an overall reduction in lot yield from approximately 480 to 284 under the subject application which has resulted in protection of environment value on the subject site.

Given the proposed extent of fill, the creation of a 'floodway' lot, and the importance of potential flood impacts, Council engaged the services of a third party to independently review the flood impact assessment submitted with the application. It is noted the flood impact assessment proposes flood management outcomes for the whole of the WYURA. The independent assessment was funded under the Department of Planning and Environment's Expert Assessment Program.

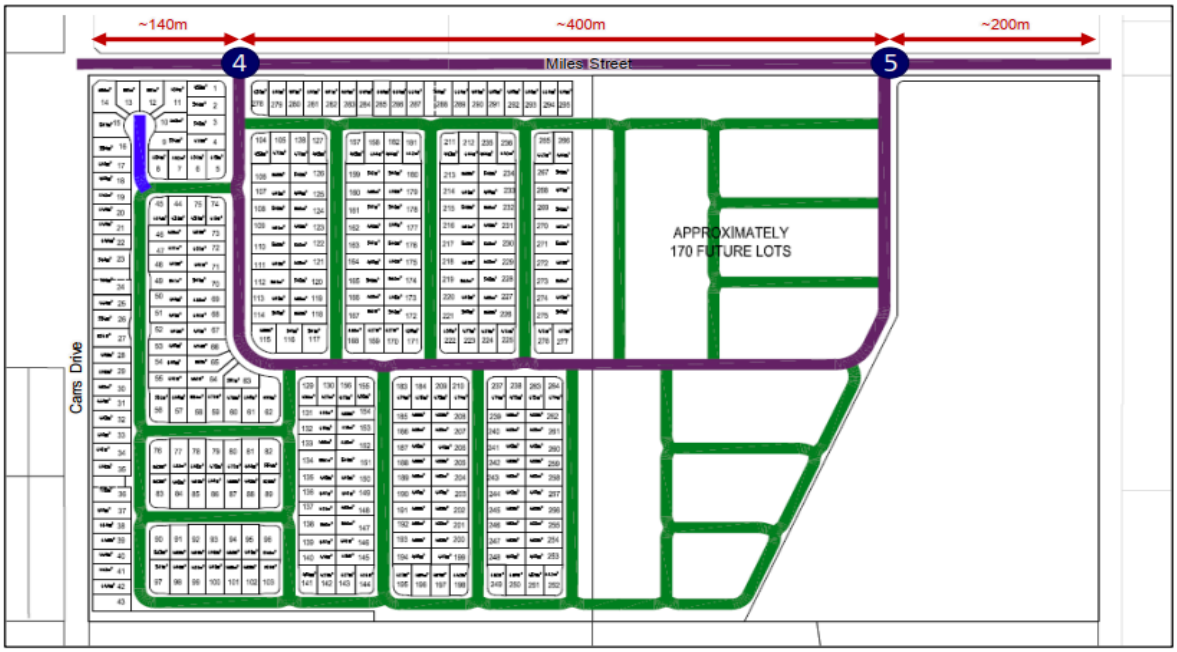

Figure 6: Shows original proposed subdivision (SUB2019/0030) and concept layout for lot 47 (Source Bitzios)

3. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

(a) the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations

(i) any environmental planning instrument, and

(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

(iii) any development control plan, and

(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),

that apply to the land to which the development application relates,

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

(c) the suitability of the site for the development,

(d) any submissions made in accordance with this Act or the regulations,
(e) the public interest.

These matters are further considered below.

It is noted that the proposal is considered to be (which is considered further in this report):

- Integrated Development (s4.46)

3.1 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

(a) Section 4.15(1)(a)(i) – Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Clarence Valley Local Environmental Plan 2011;*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

Table 3: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 2: Vegetation in non-rural areas Chapter 4: Koala Habitat Protection 2021	Y
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development • Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6 as it comprises General Development that has a capital investment value of more than $30 million.	Y
SEPP (Resilience & Hazards) 2021	Chapter 4: Remediation of Land • **Section 4.6 -** Contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory subject to conditions.	Y
State Environmental Planning Policy	Chapter 2: Infrastructure	Y

(Transport and Infrastructure) 2021	• **Section 2.48(2)** (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions. • Section 2.121(4) **-** Traffic-generating development	
Proposed Instruments	No compliance issues identified.	Y
LEP	• Clause 2.3 – Permissibility and zone objectives • Clause 5.10 – Heritage Conservation • Clause - 5.21 Flood Planning • Part 6 – Urban Release Area Controls • Clause 7.1 Acid Sulfate Soils • Clause 7.2 Earthworks • Clause 7.8 Essential ServicesClause	Y

Consideration of the relevant SEPPs is outlined below.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 4 - Koala Habitat Protection 2021
This Chapter (aims to encourage the conservation and management of areas of natural vegetation that provides habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline.

The Biodiversity Development Assessment Report (dated 21 July 2023) considered the provisions of Chapter 4 and identified the land as being highly suitable koala habitat due to the presence of koala food trees greater than 15% of the number of trees. The report also found that there is a single historical record of a koala sighting in Deering Street, Yamba however no evidence was found on site as a result of targeted searches. As native vegetation is being removed as a result of the proposal, a Koala Assessment Report was prepared in accordance with the Koala SEPP 2021 FAQs – development application guidelines. It is concluded that Core Koala Habitat is absent from the site, that there is no resident Koala population in the Yamba locality and the development has been located to avoid native vegetation on-site where possible. It is therefore deliberated that the proposed development does not contain core koala habitat and the proposal has low impact to Koalas and Koala Habitat.

State Environmental Planning Policy (Planning Systems) 2021 ('Planning Systems SEPP')

Chapter 2: State and Regional Development
The proposal is *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria in Clause 2 of Schedule 6 of the Planning Systems SEPP as the proposal is development for General Development that has a capital investment value of more than $30 million. Accordingly, the Northern Regional Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4: Remediation of Land
The provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021 ('the* Resilience and Hazards SEPP') have been considered in the assessment of the development application. Section 4.6 of Resilience and Hazards SEPP requires consent authorities to consider whether the land is contaminated, and if so, it is satisfied that the land

is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out. In order to consider this, two (2) Stage 1 and 2 Site Contamination Assessments (SCA) were prepared for the subject site by Regional Geotechnical Solutions dated 22 June 2023 and 23 August 2023 which assess different parts of the site for suitability.

Stage 1 and 2 Site Contamination Assessment, dated 10 March 2022 and addendum dated 22 June 2023, has been prepared for the subdivision footprint whereas the report dated 23 August 2023 considered the suitability of the widened floodway (lot 903).

Both SCAs involved a site walkover to assess visible surface conditions and identify potential evidence of contamination or past activities that may cause contamination; collection of samples within areas of environmental concern and laboratory testing of recovered samples of the Chemicals of Concern identified. The potential sources of contamination were considered to be spraying, spillage or storage of pesticides; building materials from construction of the existing house and any renovations; oil spills or fuel spills, and unknown importation of an area of fill material in the north east of the site.

The 2022 report for the subdivision footprint report states:

> *The ecological screening level for the F3 hydrocarbon fraction (>C16-C34) was exceeded at one location (S138) adjacent to an old parked up unregistered car near the northern site boundary between two existing dwellings. The hydrocarbon source is likely to be from the parked car and it is likely that the extents would be limited to the immediate area surrounding the vehicle. This portion of the site is to be overlain by up to 1.8m of imported fill or is to be located beneath the fill batter, and is beyond the northern boundary of the proposed residential lots. The elevated hydrocarbon concentration may present a potential risk to some ecological receptors which may result in slow or reduced plant growth in this area. However, the risk of human exposure to the hydrocarbon impacted soil in this location is considered to be very low given its inaccessibility due to the overlying layer of emplaced fill.*
>
> *Based on the assessment undertaken, the site soils are considered to meet with the requirements for a Residential A site as detailed in the NEPM 2013 guidelines.*
>
> *It is recommended that a hazardous materials survey be undertaken prior to demolition of the existing dwellings at the site. An asbestos clearance certificate should also be obtained by the demolition contractor to certify that all asbestos (if present) has been appropriately removed from the site. Should asbestos be encountered during demolition works, it is recommended that validation soil sampling be undertaken for the presence of asbestos from within the former dwelling footprints.*
>
> *Based on the assessment as presented herein, the site is considered to be suitable for the proposed residential development from a contamination perspective provided the recommendations of this report are adhered to.*

The 2023 report for lot 903 (the floodway) the states:

> *Given the limited nature of this investigation, there is potential for unidentified uncontrolled fill, buried waste, livestock dips and animal burial sites to be present. As such, should potential evidence of site contamination be identified during development activities, such as soil staining, buried materials, or odours, then a site contamination specialist should be contacted for advice without delay.*

Should unidentified fill materials be encountered that require removal off site, assessment for a Resource Recovery Exemption under Part 9, Clauses 91 and 92 of the Protection of the Environment Operations (Waste) Regulation 2014 in accordance with the Resource Recovery Order under Part 9, Clause 93 of the Protection of the Environment Operations (Waste) Regulation 2014 – the Excavated Natural Material (ENM) Order 2014, will be required.

Based on the results obtained in this investigation, it is considered that the site is likely to be suitable in its current state for the proposed recreational land use with regard to the presence of soil contamination, provided the recommendations and advice of this report are adopted, and site works (if any) are conducted in accordance with appropriate site management protocols and legislative requirements.

The reports submitted concluded that the site is suitable in its current state for the proposed subdivision and use of land subject to conditions of consent. No remediation is considered necessary for the development apart from pre-screening investigations and clearance certificates for asbestos associated with demolition of the dwelling.

The proposal is considered to be consistent with Chapter 4 of the Resilience and Hazards SEPP, subject to imposition of relevant conditions of consent in relation to works associated with demolition stated above and management plans being present on-site during construction. Both reports have been reviewed by David Tully of Contaminated Land Solutions Pty Ltd who is a Certified Environmental Practitioner and Site Contamination Specialist. The review concludes that the recommendations and conclusions of the report are supported.

State Environmental Planning Policy (Transport and Infrastructure) 2021

The application was referred to Essential Energy as the development involves work to be carried out in proximity to exposed overhead electricity (Miles Street) as required by Clause 2.48. No objections to the development have been raised by Essential Energy subject to recommended conditions requiring works in proximity to electrical infrastructure to be carried out in accordance with the relevant guidelines and that satisfactory arrangements are in place before issue of a Subdivision Certificate for the provision of electricity.

The application was also referred to Transport for NSW (TfNSW) as the development is traffic generating development requiring consideration under clause 2.122 of the Transport and Infrastructure SEPP. No objections were raised by TfNSW, however comment was provided requiring Council to be satisfied that the impacts of the development on the local road network and necessary infrastructure improvements are made to ameliorate the impacts and that connection to active and public transport is considered. Management during construction was also an issue raised by TfNSW. Further detailed discussion on traffic is provided below under Key Issues.

Clarence Valley Local Environmental Plan 2011

The relevant local environmental plan applying to the site is the *Clarence Valley Local Environmental Plan 2011* ('the LEP'). The aims of the LEP include:

(*aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
(a) to encourage and enable the sustainable use, development and management of natural and man- made resources, including agricultural land resources and productive rural lands,
(b) to limit dispersed rural settlement,

(c) to provide a mix of housing, including affordable housing, to meet the needs of the community,
(d) to protect areas of high ecological, scientific, cultural or aesthetic value,
(e) to provide adequate access and services to development carried out in accordance with this Plan,
(f) to maintain the character of villages and towns,
(g) to conserve items and areas of environmental and cultural heritage,
(h) to provide a hierarchy of business/retail centres,
(i) to identify land for industrial and business development that provides opportunities for employment,
(j) to protect key infrastructure and ensure adequate integration of infrastructure and development,
(k) to maintain or improve the natural conservation and scenic amenity values of the land, including significant habitat areas and wildlife corridors.

The proposal is consistent with these aims as the proposal provides for a mix of housing to meet the needs of the community, protects areas of the site that are of significant environmental value, has adequate access to services and is consistent with the future desired character of the WYURA. Specific clauses are included in the LEP to ensure developments achieve the broader aims outlined above and are further addressed below.

Zoning and Permissibility
The site is located within the R1 General Residential Zone pursuant to Clause 2.2 of the LEP

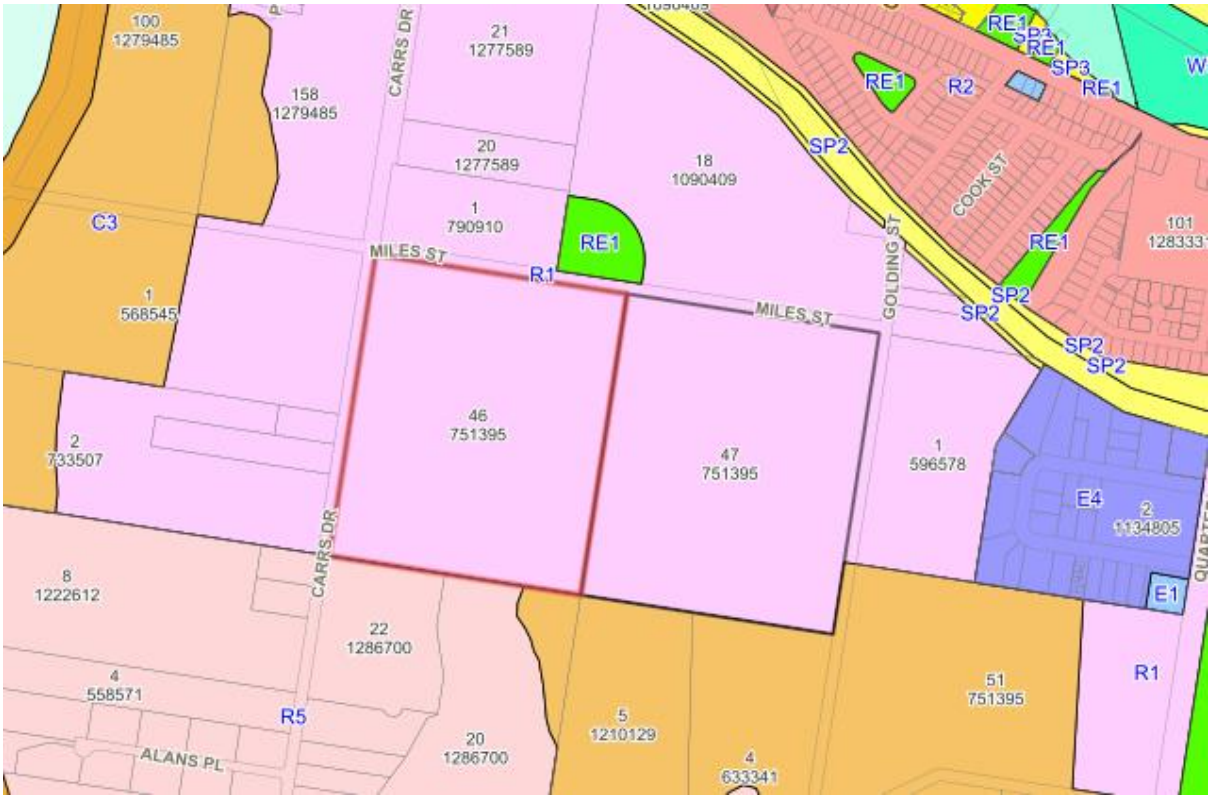

Figure 7 – Zoning of the Land (Source: CVC Intramaps)

According to the definitions in Clause 4 (contained in the Dictionary), the proposal satisfies the definition of subdivision for residential accommodation which is a permissible use with consent in the Land Use Table in Clause 2.3.

The zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal is considered to be consistent with these zone objectives as the subdivision will provide for additional residential accommodation which will provide for the housing needs of the community and provides lot/s (the neighbourhood centre lot) that will enable future development of facilities and services to meet the needs of the community.

General Controls and Development Standards (Part 2, 4, 5 and 6)

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 4** below.

Table 4: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Heritage Conservation (Cl 5.10)	The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance—consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment	The subject site is not within a heritage conservation area and is not listed as an item. There is a known Aboriginal place of heritage significance in the locality and an Aboriginal Cultural Heritage Site Assessment was submitted with the rezoning of the land. Further consultation with the Birrigan Gargle Local Aboriginal Land Council to assess and protect cultural heritage values has been undertaken and a letter from the Birrigan Gargle Local Aboriginal Land Council confirms and endorses the findings of the original 2011 report following an inspection of the site on 9 September 2022.	Yes.
Flood planning (Cl 5.21)	(2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is	In summary, the applicant proposes to fill the portion of the site to be developed for residential purposes to above the 1 in 100 year flood level, with the required allowance for sea level rises (400mm) and freeboard (500mm)	Yes

Control	Requirement	Proposal	Comply
	satisfied the development— (a) is compatible with the flood function and behaviour on the land, and (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and (d) incorporates appropriate measures to manage risk to life in the event of a flood, and (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.	resulting in a minimum finished ground level of 2.8m AHD allowing minimum habitable floor levels for dwellings of 3.0m AHD. The applicant has demonstrated that the development is compatible with the flood function and behaviour on the land, and other requirements. Assessments provided take into account increased sea level rise and rainfall associated with climate change and the model showed no impact on residential properties in the new development or in areas surrounding the development. Based on the WYURA Flood Impact Assessment and West Yamba Evacuation Plan prepared by BMT and submitted in support of the application and consultation undertaken by the applicant with SES, there is no substantive risk to life. People may need to evacuate in the event of major flooding and is considered acceptable noting capacity of evacuation routes and available warning times. Refer to detailed discussion under Key Issues - Section 5.1 and 5.3 below.	
Urban release areas (Part 6)	Satisfactory requirements are to be made for provision of infrastructure and preparation of a DCP	Infrastructure is proposed to service the subdivision and detailed requirements are able to be addressed by way of conditions of consent. Part X of the	Yes

Control	Requirement	Proposal	Comply
	including specific controls for the land.	Clarence Valley Residential Zones DCP 2011 includes specific controls for development of the land. The design of the subdivision does conform to the requirement of the DCP – refer comments below.	
Acid sulfate soils (ASS) (Cl 7.1)	On land classified as Class 2 ASS where works are proposed below the natural ground surface or works by which the watertable is likely to be lowered, an ASS Management Plan is to be prepared.	An ASS Management Plan has been prepared and provided with the application. Recommendations are provided in relation to earthworks on the site. These form conditions of consent.	Yes
Earthworks (Cl 7.2)	Development consent is required for earthworks on the site. (3) Before granting development consent for earthworks, the consent authority must consider the following matters— (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality, (b) the effect of the proposed development on the likely future use or redevelopment of the land, (c) the quality of the fill or the soil to be excavated, or both, (d) the effect of the proposed development on the existing and likely amenity of adjoining properties,	Filling on the site in relation to flooding impacts and impacts to drainage patterns has been adequately addressed by the applicant. Detailed plans have been provided via the landscaping strategy to provide a high quality urban design outcome for the retaining wall treatment. The applicant has not nominated the source of future fill however the Secretary's Environmental Assessment Requirements have been issued for a dredging proposal which would reduce impacts on Council's road assets, this is subject to a separate application, likely of state significance. A detailed assessment of the impacts associated with filling are provided in Key Issues - Section 5.4.	Yes

Control	Requirement	Proposal	Comply
	(e) the source of any fill material and the destination of any excavated material, (f) the likelihood of disturbing relics, (g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.		
Floodplain risk management (Cl. 7.4)	(2) This clause applies to— (a) land between the flood planning area and the line indicating the level of the probable maximum flood as shown on the *Flood Planning Map*, and (b) land surrounded by the flood planning area, but does not apply to land subject to the discharge of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.	The development was lodged prior to Clause 5.22 Special Flood Considerations coming into effect on 10 November 2023. Notwithstanding, the development is wholly subject to the 1% flood event, hence consideration under this clause is not required.	N/A.
Essential services (Cl 7.8)	Development consent is not to be granted unless the consent authority is satisfied that all of the essential services are available.	Infrastructure is proposed to service the subdivision and are detailed in the DCP assessment and detailed in the Key Issues section of the report.	Yes

The proposal is considered to be generally consistent with the LEP.

(b) Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are several proposed instruments which have been the subject of public consultation under the EP&A Act, and are relevant to the proposal, including the following:

Draft Remediation of Land SEPP
This proposed instrument is considered below:

Draft Remediation of Land SEPP

The Draft Remediation of Land SEPP is intended to provide a State-wide planning framework for the remediation of land. It is also intended to require planning authorities to consider the potential for land to be contaminated when determining DAs and rezoning land. The applicant submitted two (2) SCA's for the development which deemed the land suitable for the proposed subdivision and land use, being consistent with the Draft instrument.

(c) Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

- *Clarence Valley Residential Zones Development Control Plan 2011* ('the DCP')

The key controls are discussed below and a full compliance table assessing the proposal against the provisions of the DCP is provided at **Attachment B**.

The Applicant has requested the following variations to the DCP pursuant to Clause A9:

- *C5.2.Cut and fill*
- *Clause J8 Subdivision Requirements for lots less than 560m2*
- *Figure X1.3 Conceptual Stormwater Network Plan: delete south-west drainage reserve and replace with western detention basin and 2nd order stream; add eastern detention basin and increase area of floodway.*

Discussion is provided within the DCP compliance assessment table in Attachment B which considers the variation.

Key controls:

Part D. Floodplain Management Controls

Overall, the proposed flood impacts for the site and surrounding area have been considered against Council's current flood planning controls and it has been demonstrated that the proposed filling of land will not result in any detrimental impacts on the flood plain flows on neighbouring properties. The applicant has submitted two (2) West Yamba Urban Release Area Flood Impact Assessments dated 22 November 2021 and 30 October 2023, both prepared by BMT, to demonstrate compliance. Upon considering the findings of the peer review by WMA Water and subsequent response by the applicant, Council Engineers consider that the development appropriately manages the flooding risks while not creating unreasonable impacts upon adjoining properties through the design of the development, including engineering design of the built form and increasing the width of the floodway on the subject land, thus reducing necessary earthworks.

The West Yamba Flood Evacuation Plan (BMT 30 August 2023 and associated addendum (BMT 31 October 2023), states that the development proposal would not exceed the capacity of the evacuation routes, and this is consistent with the results from the most recent flood impact assessment. Subsequently, SES responded to the plan, advising that the flood evacuation triggers on page 8 of the BMT West Yamba Flood Evacuation Plan are consistent with the Local Flood Emergency Sub Plan for the Yamba Sector.

Refer to Key Issues - Section 5.1 and 5.3 for detailed assessment and discussion of flood impacts.

Part H. Sustainable Water Controls

The development proposes two (2) stormwater basins located centrally to the development with bespoke outlet structures to control outgoing stormwater volumes to match the pre-development scenario. Road water is to be managed via on-street stormwater quality treatment consists of modules distributed throughout the development to capture stormwater runoff. These modules are constructed within the verge, inline with piped stormwater infrastructure and capture stormwater runoff and direct flows to a permeable media and select vegetation to reduce sediment and pollutant loading before discharge to the large basins. Roof water from future dwelling is to be captured in rainwater tanks and discharged to the two basins. The overall result of the proposed stormwater system incorporates best practice principles of water sensitive design that adds streetscape value which meets Council's Sustainable Water controls and current water quality pollution targets in line with Part H of the DCP.

Part J. Subdivision and Engineering Controls

The proposed road network will connect efficiently with external traffic routes. The proposed road types and associated carriageway widths are compliant with the requirements of Northern Rivers Design Guidelines. The overall lot layout provides for a variety of lot sizes, provides opportunity for diverse housing typologies to suit various housing types, and as highlighted above, the principles of water sensitive design are incorporated in the submitted Stormwater Management Plan.

Part X Urban Release Area Controls

Schedule 1 to Part X of the DCP provides for clarity on how the development of West Yamba Urban Release Area is to occur and how it is to consider natural hazards. Controls under Schedule 1 provide guidance on staging, servicing, road network, landscaping and open space provision, urban design and management of natural hazards including flooding and acid sulfate soils. With the exception of the departure from the conceptual stormwater management network (as applicable to the site) as shown in Part X of the DCP, the proposed development is generally consistent with the objectives and prescriptive controls contained within Schedule 1.

The key departures from the conceptual stormwater management plan, as shown in Figure 8 below, are the substantial widening of the eastern floodway and relocation of the drainage pathway in the southwestern portion of the site centrally to provide two (2) large stormwater basins that discharge east to the floodway and west to the natural watercourse through the site. The applicant has submitted the relevant technical reports that demonstrate compliance with Council's stormwater and flooding controls as detailed under Section 5 Key Issues below.

Figures 8 and 9 (below) show conceptual road layouts, urban design elements including neighbourhood centre, higher density housing opportunities, centralised park and stormwater/drainage overland flowpaths within the urban release area.

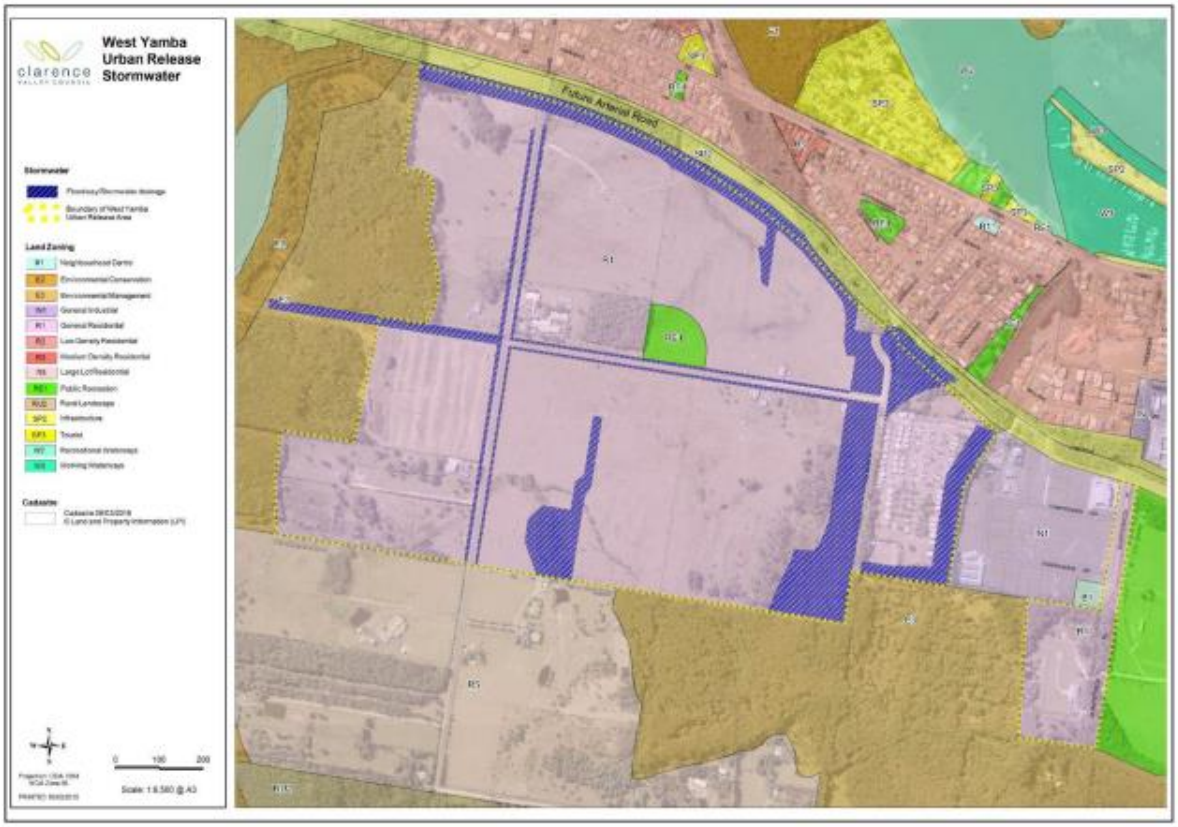

Figure 8 – Conceptual Stormwater Network Plan (Source: Figure X1.3 extracted from Clarence Valley Residential Zones Development Control Plan).

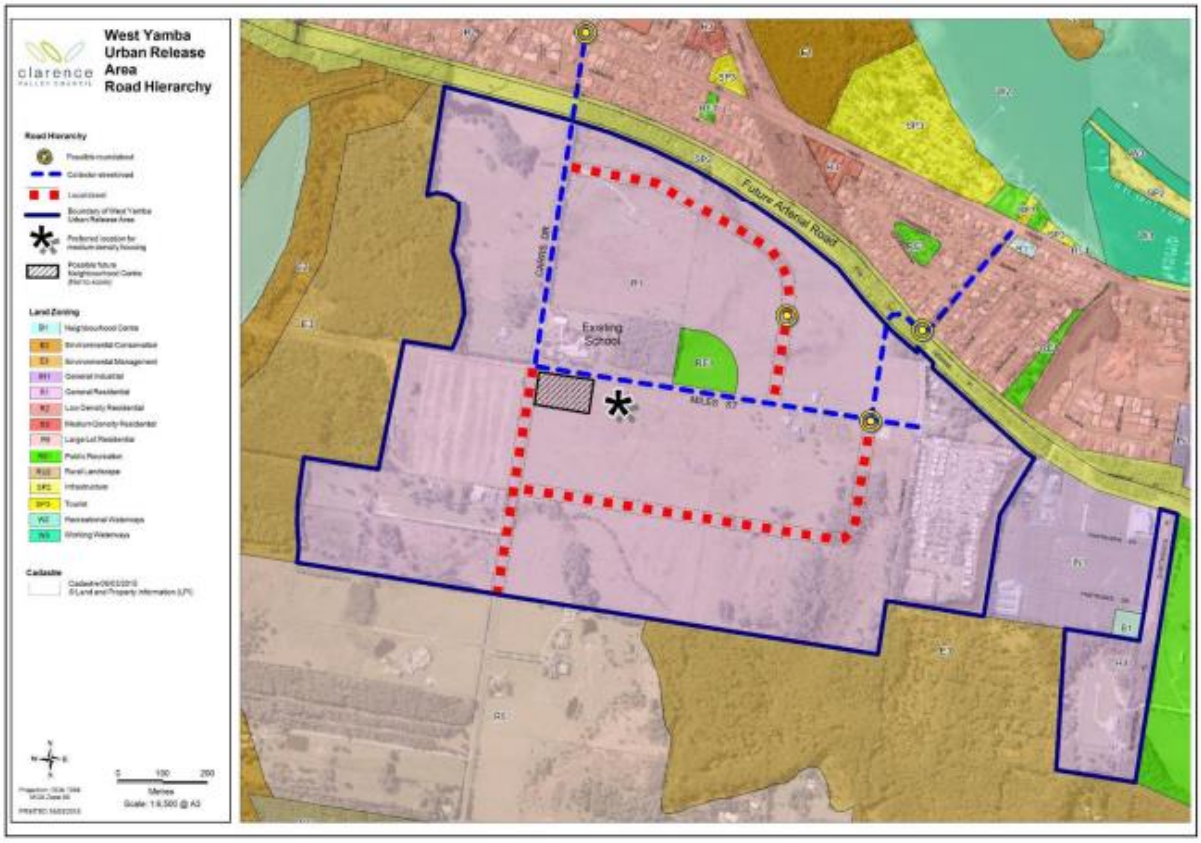

Figure 9 – Indicative road hierarchy plan (Source: Figure X1.2 extracted from Clarence Valley Residential Zones Development Control Plan).

Section 7.11 Contributions Plans

The following contributions plans are relevant pursuant to Section 7.18 of the EP&A Act and have been considered in the recommended conditions:

- *Clarence Valley Contributions Plan 2011*
- *Clarence Valley Council Carrs Drive West Yamba Contributions Plan 2020*
- *Maclean Shire Council Section 94 Contribution Plan for Street Trees in Urban Subdivisions*
- *Maclean Shire Council Section 94 Contributions Plan Yamba Urban Bypass and Urban Intersections 2000*

The above Contributions Plan have been considered and are included the recommended draft consent conditions.

(d) Section 4.15(1)(a)(iiia) – Planning agreements under Section 7.4 of the EP&A Act

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

(e) Section 4.15(1)(a)(iv) - Provisions of Regulations

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application, with the following matters being relevant to the proposal:

- Demolition of existing structures on-site and therefore the provisions of AS 2601 will apply and are considered in recommended conditions.
- Clause 66A – No potential Conflicts of Interest were identified during assessment of the application.

These provisions of the 2021 EP&A Regulation have been considered and are addressed in the recommended draft conditions (where necessary).

3.2 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to the relevant SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

The consideration of impacts on the natural and built environments includes the following:

- Context and setting – This area is designated as an urban release area and therefore it is expected that the area will supply more housing and undergo change. Having a variety of lot sizes provides opportunity for diverse housing typologies to suit various housing types. Existing approved development in the locality includes a 161 lot residential subdivision, two manufactured home estates (Carrs Drive and Golding Street) and a 52 dwelling seniors living development within the WYURA. Adjacent to the site is also a primary school and south of the urban release area is zoned R5 Large

Lot Residential which is currently being devevlopment. The proposal balances, to a satisfactory standard, the purpose of the urban release area and the character of the surrounding area without significantly affecting surrounding land uses.

- Access and traffic – The proposed development will generate additional traffic and travel demand. A Traffic Impact Assessment has been submitted with the application to consider the impacts of this development proposal and the cumulative impacts of the entire urban release area if developed. Key intersections on Yamba Road will continue to operate within acceptable levels of service inclusive of this development, however the cumulative impacts of all development in the urban release area will require the through construction of Miles Street to Golding Street to alleviate traffic loading on Carrs Drive/Yamba Road roundabout. Upgrades to Miles Street and Carrs Drive are required to service the development which are to be provided by this development.

- Active Transport - Bus shelter provisions have been considered along Road 1 however provision of the bus shelter has not been considered at this stage due to the lack of service in the area. Plans have been submitted which demonstrate compliant swept path manoeuvring of bus movements throughout the development. It is noted that circulating internal roadways have sufficient carriageway width to support future provision of bus stops, should Council/Busways consider this in the future. Demand for public transport in the urban release area will no doubt increase once the subject development and other surrounding developments progress.

  The development nominates a 2.5m shared path network along all major internal roads, connecting to the existing shared path on Carrs Drive (to the north) and extending south along Carrs Drive past the development site. The shared path network connects the existing Carrs Drive shared path along Miles Street to Golding Street. All minor internal roads provide a 1.2m footpath on one side of the road and connect to the surrounding shared path network. Additionally, a 1.5m path extends around the perimeter of the site.

- Public Domain – Public open space is proposed in the form of a single central park and a pathway loop suitable for exercise and dog walking. The park is intended to consist of park furniture, seating and feature playground, while the supplementary facilities will be provided around the stormwater basins to provide refuge/resting points in a relaxed setting for non-structured activities and visual amenity. The provision of open space within the development will compliment the larger central park zoned RE1 Public Recreation, refer to Figure 9. The provision of open space is supported and will link with the broader network and other developments in West Yamba.

- Utilities – The site has access to reticulated water and sewer supply infrastructure which will be extended through the site. Telecommunications and electricity are available to the site and provisioning certificates will be required prior to release of the Subdivision Certificate from these authorities.

- Heritage – the subject site does not contain any heritage items and is not located within a heritage conservation area. In consultation with Birrigan Gargle Local Aboriginal Land Council, no known items of Aboriginal or European heritage significance exist on the property and it is not anticipated that any items of significance would be uncovered during works.

- Other land resources – the site was previously rural and is currently operated as a cattle grazing property. Notwithstanding, the strategic merit for residential development on the site and loss of agricultural land within West Yamba, has previously been tested and determined appropriate via rezoning of the land.

- Flora and fauna impacts - The site has been substantially cleared due to previous agricultural land uses however stands of vegetation remain in the eastern and south western part of the site which will be largely retained under the proposal however, will result in the loss of native vegetation. A Biodiversity Development Assessment Report (BDAR) was completed to assess potential biodiversity impacts from the proposed residential subdivision which is discussed under the Key Issues section below. The site does not contain any areas of biodiversity value (as per the Biodiversity Values Map and Threshold Tool). Potential impacts as a result of the development activity can be mitigated by consent conditions.

- Natural environment – As required by the controls of the DCP, fill is required to raise the existing land topography requiring the inclusion of a number of retaining walls up to 2.0m. As discussed in detail in the Key Issues section and the DCP assessment, Council does consider that suitable urban design outcomes have been achieved without significant adverse impacts to adjoining properties.

- Noise and vibration – Noise and vibration impacts during construction are likely to occur. These are able to be mitigated with the imposition of conditions of consent.

- Natural hazards – the site is affected by natural hazards such as flooding, bushfire and acid sulfate soils and these hazards have been adequately addressed by the proposal.

  The site is mapped as bushfire prone land and a Bushfire Risk Management Plan has been submitted to accompany the application. The NSW Rural Fire Service have provided General Terms of Approval which will be required to be complied with prior to issue of any subdivision works certificate or subdivision certificate.

  A detailed assessment of the flood impacts associated with the development are detailed under the Key Issues section.

  The site is mapped as Acid Sulfate Soils Class 2. An acid sulfate soil assessment has been provided in the form of an Acid Sulfate Soils Management Plan and any potential disturbance or impacts on ASS as a result of the development activity can be managed and mitigated by conditions of consent.

- Social impact – The incorporation of a neighbourhood park, passive recreation facilities including seating and viewing platforms around the central stormwater basins and neighbourhood centre within the subdivision promotes some interaction between the new development area and will link in with the existing and future developments within the WYURA. The additional pedestrian facilities including perimeter pathway and connection to external pedestrian network will assist in promoting the wellbeing of residents within West Yamba.

- Economic impact – It is considered that the proposal will have economic benefits for the area. During the works phase, there will be direct benefits from increased employment generation in the area. There will also be indirect economic benefits for the businesses in the local area. A subdivision of this size also has the potential to increase business investment in the area due to an increase in population.

- Site design and internal design – The proposed residential subdivision accommodates a diversity of lot sizes. All lots within the proposed subdivision exceed 400m^2 and are capable of accommodating suitably sized building envelopes and adequate landscaping. The larger lots provide a mix of lot size to accommodate different housing typologies which is consistent with the DCP requirements. An extensive pathway network will allow for connectivity throughout the development, providing the residents with a variety of safe links and opportunities to access the open space network and site in general.

- Construction – It is considered that potential impacts from construction, such as dust, noise, vibration and odour, could be adequately mitigated by conditions of consent.

- Cumulative impacts – The proposed development is generally consistent with the planning controls that specifically apply for West Yamba and the proposal has considered the cumulative impacts on traffic, servicing, stormwater and flooding associated with development of West Yamba. On balance the development will not result in an adverse cumulative impact.

Accordingly, it is considered that the proposal will not result in any significant adverse impacts in the locality as outlined above.

3.3 Section 4.15(1)(c) - Suitability of the site

The strategic merit for residential development on the site, and West Yamba, has previously been tested and determined appropriate via rezoning the West Yamba Area to R1 General Residential, R5 Large Lot Residential and C3 Environmental Management. The rezoning application was considered consistent with the Maclean Local Growth Management Strategy and the *Maclean Local Environmental Plan 2001* amendment No.20 was subsequently published in April 2010. The site remains as land identified within the Clarence Valley Urban Growth Area in the NSW Government Department of Planning, Housing and Infrastructure – North Coast Regional Plan 2041. The West Yamba area remains a key part to the Clarence Valley meeting its housing targets to meet the needs of the population provided it is sustainable and responds to natural hazards that apply to the site.

The West Yamba Urban Release area has been undergoing a gradual transformation of the natural scenic quality of the area as it is developed, and the character will change from a rural residential landscape to an urban landscape. The overall built form will be made up of single dwellings consistent with the character of other residential living zones in Yamba which is considered to be suitable in terms of its relationship with the surrounding area and impact to the natural scenic quality.

The site is predominately cleared of native woody vegetation due to historical cattle grazing with the exception of the eastern part of the site. The site does not contain vegetation mapped as high biodiversity value, however is directly affected by flooding, bushfire and acid sulfate soils. The suitability of the site for residential development subject to the key considerations of flood impact, stormwater management and biodiversity being addressed, detailed comments on these matters are provided in Section 5 – Key Issues.

Services have been extended to the site to facilitate a subdivision for residential accommodation. These constraints have been addressed as part of the application and as detailed in the assessment.

On balance and having considered how the constraints applicable to the site have been addressed, the subject site is suitable for the proposed development.

3.4 Section 4.15(1)(d) - Public Submissions

These submissions are considered in Section 5 of this report.

3.5 Section 4.15(1)(e) - Public interest

The development demonstrates compliance with the relevant SEPPs and LEP. With the exception of non-compliances with the DCP regarding the conceptual layout for West Yamba the development meets the performances objectives of the DCP. The application satisfactorily addresses Council's criteria and would provide a development outcome that, on balance, would result in a positive impact for the community. The subject site is zoned R1 General Residential which core objectives is to *provide housing diversity to meet housing needs of the community of* which there is an increasing demand and need for more housing in Yamba and surrounds. Approval of the development would be in the public interest.

The public interest is maintained by the proposal as it is generally consistent with the relevant state legislation, Local Environmental Plan and local development control plan as adopted by Council. The proposal remains consistent with the North Coast Regional Plan 2041 and is also consistent with the following objects of the Act:

> *(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
> *(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
> *(c) to promote the orderly and economic use and development of land,*
> *(d) to promote the delivery and maintenance of affordable housing,*
> *(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
> *(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
> *(g) to promote good design and amenity of the built environment,*
> *(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
> *(j) to provide increased opportunity for community participation in environmental planning and assessment.*

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in Table 5.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

Table 5: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
N/A.			
Referral/Consultation Agencies			
Department of Planning and Environment – Biodiversity, Conservation and Science Division	Referred under the *Biodiversity Conservation Act 2016* relating to Biodiversity Development Assessment Report.	The Biodiversity Development Assessment Report and vegetation management plan satisfactorily address the presence of both Rotala and Spider Orchid on-site. Recommended conditions for ongoing management and monitoring are included in the Draft Conditions of Consent.	Y
Electricity supply authority	Section 2.48 – *State Environmental Planning Policy (Transport and Infrastructure) 2021* Development near electrical infrastructure	No objections subject to recommended conditions.	Y
Transport for NSW	Section 2.121 – *State Environmental Planning Policy (Transport and Infrastructure) 2021* Development that is deemed to be traffic generating development in Schedule 3.	No objections were raised by TfNSW, however comments were provided requiring Council to be satisfied that the impacts of the development on the functionality of the local road network and necessary infrastructure improvements are made to ameliorate the impacts and connection to active and public transport is considered. Management during construction was also an issue raised by TfNSW.	Y
Integrated Development (S 4.46 of the EP&A Act)			
RFS	S100B - *Rural Fires Act 1997* bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes	Residential Subdivision of bushfire prone lane. General Terms of Approval have been granted.	Y

Department of Planning - Water	S89 - 91 – *Water Management Act 2000* water use approval, water management work approval or activity approval under Part 3 of Chapter 3	Works on waterfront land (within 40m of a natural watercourse) and filling in of a Class 1 Stream. General Terms of Approval have been granted.	Y

4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 6.**

Table 6: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Council's Engineering Officer has reviewed the following: • Stormwater concept plan and considered the proposed stormwater management arrangements are satisfactory. • Traffic impact assessment including external and internal road layout (internal and external), service locations in proximity to the proposed stormwater management devices (biopods) within the road reserves. • Active Transport facilities including provision of bus circulation and connection to external footpaths • Geotechnical – impact to groundwater and consolidation of materials. • Flood Impact Assessments for the 2013 and 2022 Council adopted Flood Models including peer review by WMA Water. • Servicing of the development required by Clause 7.8 of the LEP. These items are discussed in detail under the Key Issues section below however the proposal generally complies with Council's adopted controls and engineering specifications and is therefore supported subject to recommended conditions.	Yes
Building	No objections subject to recommended conditions.	Yes
Environmental Health	Council's Environmental Officer reviewed the Acid Sulfate Soils Management Plan and Stage 2 Site Contamination Assessment. The applicant has satisfactorily addressed the relevant requirements and the site is suitable subject to recommended conditions.	Yes
Water Cycle	Council's Water Cycle section has reviewed the proposal against the relevant servicing strategies and adequate provision of water and sewer services will be provided for the development.	Yes

Natural Resource Management	Council's Natural Resource Management Officer reviewed the Biodiversity Development Assessment Report and Vegetation Management Plan and no objections were raised subject to recommended conditions.	Yes

4.3 Community Consultation

The proposal was notified in accordance with the Council's Community Participation Plan from 17 November 2023 until 18 December 2023The notification included the following:

- A sign placed on the site;
- Notification letters sent to adjoining and adjacent properties (a total of 59 letters were sent);
- Notification (via email) to those that had put in submission on the previously made development application;
- Notification on the Council's website.

The Council received a total of 330 submissions were received (being 57 unique submissions), comprising 327 objections and three (3) submissions in favour of the proposal. The issues raised in these submissions are considered in **Table 7.**

Table 7: Community Submissions

Issue	Council Comments
Flooding Submissions raised concern the development will adversely impact flooding within the locality.	Refer to detailed comments under Key Issues Section 5.1. **Outcome**: This issue has been satisfactorily addressed
Flood Evacuation Submissions raised concern the development will adversely impact evacuation within the locality.	Refer to detailed comments under Key Issues Section 5.3. **Outcome**: This issue has been satisfactorily addressed
Stormwater Submissions raised concerns about the impact of the development on stormwater.	The application proposes an appropriate stormwater management network which will capture and control discharge of stormwater to the watercourse in the southern portion of the site. Stormwater modelling has been submitted to demonstrate the proposed stormwater management chain, including discharge to watercourse, and will not have negative impacts on downstream properties in peak storm events.

	Council's Development Engineer has reviewed the proposal and raises no objections to the proposed stormwater management arrangements. Further comments are below in Section 5.2. **Outcome**: This issue has been satisfactorily addressed subject to the imposition of relevant recommended conditions of consent (Schedule 1).
Filling Submissions raised concerns about the impact of importing building supplies and fill on the road network and safety of the school and indirect impacts of transporting these materials.	Refer to detailed comments under Key Issues Section 5.4. **Outcome**: This issue has been satisfactorily addressed
Climate change and rising sea levels Submissions raised concerns about future impacts of climate change and rising sea levels.	Consideration of these matters is required as part of the flooding assessment for the application. The consideration of climate change on flooding, detailed assessment of consideration of climate change during flooding is considered in Section 5.1 below.
Lack of a Masterplan for West Yamba	The subject site is within an Urban Release Area, therefore the controls under Part 6 of the LEP apply which requires a Development Control Plan to be adopted by Council, alternatively a concept development application also satisfies this test. The Part X "Urban Release Area Controls" of the Residential DCP was adopted by Council in 2015 to meet the LEP Part 6 "Urban Release Area" requirements, with Part X "Schedule X1- West Yamba Urban Release Area" detailing the specific controls which guide development. Assessment against these controls is within **Attachment B**.
Impact on town Submissions raised concerns about negative impacts on Yamba's ambience, small village atmosphere, tourism and employment opportunities.	Planning for this population growth began in the 1990s. Numerous environmental, social, economic, cultural and feasibility studies followed, combined with peer reviews and consultation with state government agencies, environmental groups, First Nations people and the community to assess the suitability of the land for urban growth and ensure that environmentally sensitive land was protected. After consideration of this strategic planning, Council and the State Government approved land in West Yamba to be rezoned in April 2010 with an amendment to the *Maclean Local Environmental Plan 2001*. This provided for 121 hectares of land zoned for housing and

	supporting facilities, an additional 60 hectares for rural residential development and also set aside 116 hectares designated for environmental protection. The *Maclean Local Environmental Plan 2001* included a specific zone for urban residential areas to be low scale in response to community feedback. Council requested a specific zone for West Yamba to carry forward these controls in the *Clarence Valley Local Environmental Plan 2011*, however including specific controls to limit lot sizes or residential densities is not possible under the State Government's planning policy for residential growth areas. West Yamba's residential areas are now zoned R1 General Residential with objectives to provide for housing needs and diversity. The site remains as land identified within the Clarence Valley Urban Growth Area in the NSW Government Department of Planning Environment – North Coast Regional Plan 2041. The West Yamba area remains a key part to the Clarence Valley meeting its housing targets to meet the needs of the population provided it is sustainable and responds to natural hazards that apply to the site. Refer to further detailed comments under Section 3.2 and 3.3 regarding the impacts of the development and suitability of the site.
Impacts associated with dredging Submissions raise concerns with the environmental impacts associated with dredging of the river	The consideration of environmental impacts associated with the use of dredge material as a source of general fill will be subject to a separate development application and Environmental Impact Statement. The Secretary's Environmental Assessment Requirements (SEARs) (attachment to report) have been issued for considered of a state significant development application for dredging of the river, the applicant has indicated interest to pursue this avenue for land filling instead of hauling material to the site via road. **Outcome:** the assessment of environmental impacts will be considered under a separate application process.
Availability of services in Yamba and Lower Clarence	It is considered that an increase in population will attract more professionals to the Lower Clarence area as the demand for general practitioners and other medical needs increases. The provision of shopping centres is generally governed by market demand, and again, as the population grows it is likely that Yamba will experience a growth in commercial business to service the growing needs of the community. This development provides for two development lots (278; 279) located in the north west corner of the site to provide for future commercial development and medium density housing opportunities, and includes several larger sites near the future Miles Street roundabout which could facilitate diverse housing (Lots 162; 163) subject to future applications). In particular, proposed Lot 278 is generally sized to accommodate a neighbourhood centre scale development, allowing for development lot to meet local service the needs of the community. Lots 278 or 279

	may also cater for other uses, such as child care facilities, health consulting rooms or community facilities, which are some of the land uses permitted with consent in the R1 General Residential Zone (noting any future uses are hypothetical and subject to future development application/s) Council is also progressing the Treelands Drive Community Hub - Yamba Community Precinct (currently under construction) and the redevelopment of the Maclean Civic Hall, being the Maclean Community Precinct (approved; construction not yet commenced), which will provide new social infrastructure for the Lower Clarence Community.
Infrastructure Submissions raised concerns about lack of infrastructure	The proposed development will need to be connected to upgraded water and sewerage services in accordance with the WYURA servicing strategy as adopted by Council. In terms of the water main, the construction of that part of the trunk water main identified in the strategy to service this development will be required. For sewer the construction of the sewer rising main to the Yamba STP is required. It is up to the developers to work out how this construction is funded. The same requirements apply to other approved developments in the WYURA. The developer is required to construct and connect all services to the development including roads, electricity, telecommunications, water and sewerage at their expense.
Submissions in support of the development.	Of the three (3) submissions received in support of the proposal, the issues raised include: - There is an increasing demand for housing in the Valley with this proposal putting forward residential land at an affordable price point for Yamba. This is recognised through the strong uptake in the land recently released in Carrs Drive and is envisaged to provide housing options for essential workers given that Yamba is dominated by high priced canal and beach estates. - The site was found to be suitable for residential development after going through a comprehensive Local Environmental Study and Planning Proposal to rezone the land subject to strict development controls to overcome constraints for West Yamba. - The Draft Clarence Valley Council Local Housing Strategy discusses the difference between housing that is needed versus housing that is provided. The Strategy recognizes there is enough residentially zoned land in the Clarence Valley to meet future forecast demand and then goes on to list 4 Priorities with Priority 1 being to "accelerate the supply of development ready land in suitable locations supported by infrastructure and services". This development fits within that Priority. - The many flood studies that have been conducted over the years have shown that filling of the 120 hectares of WYURA land does not result in the flooding of Yamba Road or

	neighbouring streets due to the size of the Clarence River flood plain downstream from Maclean.
Council Submission	At its Council meeting held 28 May 2024, Council resolved to make a submission to the Panel as follows: *COUNCIL RESOLUTION - 07.24.072* *That Council make a submission to the Northern Regional Planning Panel to not support the 284 lot subdivision being: PPSNTH-195 – [SUB2023/0001] based on the CVC officers assessment of the non-compliance issues outlined in:* *1. Summary of Key Matters in the Relevant EPI (p.8 of A SUB2023-0001- Assessment Briefing Report) and;* *2. The unresolved issues from the Agency Referrals & Concurrence (p11 of A SUB2023-0001- Assessment Briefing Report) and; 3. The non-compliance reports from the Consideration of Council Referrals from Council officers (p.12 of A SUB2023-0001- Assessment Briefing Report).* In response to the resolution, the applicant provided the following response: *The document referred to in the resolution is dated **19 April 2023** and a copy is attached. It is a summary of all relevant EPI's contained in 3 Tables which are each referenced in the resolution. The presence of a SEPP, clause or Part does not necessarily indicate non-compliance with that specific item as, for instance, the DCP list includes **Clause 9 Minimum lot size for dwelling houses – 400m^2** which is relevant but all lots have always been greater than 400m^2 so is compliant.* *Council staff have issued a number of Requests for Further Information (RFI) since the application was submitted, including on 3 March 2023 (which was being worked on by various consultants at the time of the Panel briefing), 18 October 2023 and 17 November 2023. All matters raised in those RFI's were addressed through additional reports, amended reports and amended plans. The application before the Panel today reflects those responses to the RFI's.* *We acknowledge the right of Councillors to make whatever decision they see fit and we also acknowledge that each individual Councillor has the right to make a decision as they see fit. The resolution is what it is and this submission simply seeks to put a bit of context around the information that was discussed by Council.*

5. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

5.1 Flooding

Under the Lower Clarence Flood Model Update 2013 (2013 Flood Model), the site is mapped as being flood prone, with a 1:100 year flood level (1% AEP) of 2.09m AHD with a corresponding Flood Planning Level (FPL) of 2.59m AHD, which includes 500mm freeboard. The 2013 Flood Model includes conservative climate change assumptions for sea level rise.

Since lodging the development application, Council has adopted a new Lower Clarence Flood Study Update 2022 (2022 flood model). Under the 2022 flood model, the site is mapped as being flood prone land under the 1:100 year flood level (1% AEP) with a 1:100 year flood level of 2.1m AHD, and is shown as being flood affected at 3.0m AHD under the 1% AEP flood event in 2023 with RCP4.5 climate change scenario.

Despite being lodged prior to adoption of the model, the applicant was requested to address the new 2022 flood model given that Clause 5.21 of the LEP requires consideration of the impact of development on projected changes to flood behaviour associated with climate change.

Council has not adopted a final position on adopting of Flood Planning Level incorporating updated climate change assumptions. Following exhibition of an interim Flood Planning Level (incorporating the 2023 climate change scenario), and an alternative 2090 climate change scenario was recommended for adoption within the Flood Planning Level report to the May 2024 Council meeting. The matter was deferred to enable a Councillor workshop and the proposed flood planning levels have not yet been adopted. As such, for the purposes of determining Flood Planning Levels with respect to the subdivision, the development is only required to comply with Council's current flood planning controls and is considered compatible with the flood function of the land under the 2013 flood model.

The concept of filling parts of WYURA to support urban development has been part of the planning and relevant supporting flood studies for many years, with the *Clarence Valley Local Environmental Plan 2011* and *Residential Zones Development Control Plan 2011* (Part X – Urban Release Areas includes specific controls for WYURA) including planning controls addressing impacts related to flooding and stormwater.

The development proposes filling of the land by up to 2.7m across the site to obtain the required minimal habitable floor levels and relevant grades for drainage of stormwater within the development. As per the adopted controls in Schedule 1 Part X of the DCP, landfilling is recommended to overcome the flooding hazard for development in West Yamba provided it does not cause increases to flood impacts to neighbouring properties and does not affect local drainage issues.

Given the proposed extent of fill, the creation of a 'floodway' lot, and the importance of proposed flood impact assessment, Council has engaged the services of a third party, WMA Water, to independently review the applicant's flood impact assessments.

Two (2) Flood Impact and Risk Assessment Reports have been prepared by BMT 25 November 2022 and 30 October 2023, one to consider the 2013 Model and respond to previous questions raised in the peer review of the Flood Impact Assessment and secondly to consider the 2022 Model.

The assessment of impacts associated with the development under the 2022 Flood Impact and Risk Assessment Report include:

- Option 1 includes the proposed Yamba Gardens development and all approved and current WYURA applications.
- Option 2 is as Option 1 but also includes filling of all remaining WYURA development.
- Option 3 is as Option 2 but with the inclusion of a representation of the Yamba Bypass along the northern perimeter of the WYURA.

All three options were assessed for the 1 in 20 and 1 in 100 Annual Exceedance Probability (AEP) flood events and the peak flood levels have been compared to the Base Case (pre West Yamba development) flood levels. The report was expanded to include a 1 in 100 AEP event with a 10% increase in rainfall.

It should be noted that the Council adopted 2022 Flood Model used for the 2023 Flood Impact and Risk Assessment Report has higher assumptions for climate change than the 2022 Flood Impact and Risk Assessment Report prepared by BMT.

The assessment of impacts associated with the development under the 2022 Report include:

> *Two scenarios have been modelled to represent different landforms. The scenarios have been defined to capture the cumulative flood impact from all WYURA development.*
>
> - *The pre-development scenario includes all the WYURA development filling completed before 2022, such as Yamba Parklands, Clifton Lifestyle Manufactured Home Estate (MHE) and Golding Street MHE. It also includes approved Carrs Drive upgrade plans within the Yamba Parklands design between Harold Tory Drive and Miles Street.*
> - *The post-development scenario was as the pre-development scenario but included the filling of all the lots within WYURA.*

<u>Flood Model</u>

The applicant has based the submitted Flood Impact and Risk Assessment Reports on Council's respective adopted models for the 2013 and 2022 Flood Models and incorporated the development proposals into the model.

The 2022 Council wide Flood Study examined both an SSP2/RCP4.5 and an SSP5/RCP8.5 climate change scenario. As outlined in Section 6.3 of the 2022 Flood Study, the 2123 increase in rainfall intensity for the two scenarios was 12% and 21.5% respectively and sea level rise from present day (1.62m AHD) was 0.76m and 1.09m respectively. The previous flood models conservatively used an ocean level of 2.6m AHD, which was similar to the SSP5 sea level rise scenario.

The sea level rise information in the flood study was based on the Risk Frontiers report adopted by Council and the interaction of flood and ocean levels was based on current Department of Climate Change, Energy, the Environment and Water (DCCEEW) guidance. Council's 2022 Flood Study was peer reviewed by independent experts JBP as well as DCCEEW staff and it is therefore considered Council can demonstrate that the information in the flood study represents "good faith" as the best available information.

The flood model has been calibrated against three gauges in Yamba - Yamba tide, Oyster Channel Bridge and Lake Wooloweyah, shows good calibration to the recorded flood hydrograph at all three gauges in the three calibration events.

<u>Consideration of WYURA and the 2022 Flood event</u>

The 2022 Council Flood Study is a regional flood model and in terms of river flood levels the modelling indicates that West Yamba filling to date has minimal impact on flood levels. For example, in the March 2022 Flood event in Yamba, the Council adopted 2022 Flood Model indicates the filling resulted in changes in flood levels in Yamba of less than 10mm with some areas increasing and other areas decreasing. The ponding that occurred in many areas of Yamba in March 2022 was due to the following factors:

- Stormwater drainage is designed assuming there are "initial" and "continuing" losses in pervious areas during rainfall events (typical values may be 10mm initial and then 5mm/hour continuing). Due to the elevated groundwater at Yamba due to the rainfall prior to the event, there were virtually no initial and continuing losses, which meant the runoff for a given rainfall event was much higher than design.
- Council's stormwater drainage design standard is for gravity systems to be designed with the outlet at mid tide level. This recognises that if a rainfall event occurs during a high tide there may be localised ponding.
- The rainfall event in Yamba was between a 0.2% and 0.5% event, with 522mm recorded in 30 hours.

The combination of these three factors was why stormwater could not release into the river, and this would have occurred regardless of filling within West Yamba.

It is not correct to draw a conclusion that the current filling in the WYURA has caused flooding of properties, in particular flooding caused by large and somewhat unpreceded events. The February/March 2022 flood event in Yamba was an approximate 3% AEP (1 in 30 year) riverine flood event which coincided with rainfall that was approximately a 200 to 500 year event. The rainfall event is classified by Australian Rainfall and Runoff, Geoscience Australia (AR&R) as a 'very rare' event. The confluence of these events has an approximate probability of occurring of between 1 in 6,000 to 15,000 in any given year. Public stormwater infrastructure systems are generally designed for much smaller frequent storm events (i.e. in the order of 5 to 10 year rainfall events as defined by AR&R) and cannot be feasibly designed for very rare storms such as experienced during the February/March 2022 flood event.

<u>Impacts</u>
Council initiated the review of a previous flood impact assessment prepared by BMT, the impact assessment submitted with this application considers the findings of the review and has amended the Flood Risk Impact Assessment 2022 accordingly. The impacts are:

> *For mapping and reporting purposes we maintained an impact reporting threshold of 30mm. This is to maintain consistency with all previous West Yamba assessments and allow all developments to be assessed in a consistent and fair manner. We note too that this is lower than the value of 50mm adopted for the Pacific Highway Upgrade which also used the lower Clarence flood model as the basis of its assessment.*
>
> *With regards to the different flood events, Council's adopted model (Lower Clarence Flood Model Update 2013), includes the following AEPs: 1 in 5, 1 in 20, 1 in 50, 1 in 100 along with an extreme event. Council therefore does not have adopted events for the 1 in 500 and 1 in 200 AEPs. We note that the previous Council flood study, undertaken in 2004, did include the 1 in 500 AEP (referred to as the 500 year ARI event). To address the peer review comment we have modelled the 1 in 500 AEP event based on the 2004 flood study inputs and assumptions. The 1 in 500 AEP main Clarence River inflow has been sourced from a study BMT is currently preparing for Council and is based on an updated flood frequency analysis at Grafton. The 1 in 500 AEP peak flow is similar to that from the original 2004 study. We have assessed the 1 in 500 AEP event for flood impacts and presented results within Annex A, B and C.*

We have also additionally modelled the 1 in 50 AEP event and assessed this event for impacts.

We have not assessed any events with a smaller magnitude than the 1 in 20 AEP event as the 1 in 20 AEP event showed minimal impacts. It is assumed the comment regarding assessment of the 1 in 5 and 1 in 10 AEP events is more targeted for local catchment runoff assessment which is outside the scope of this assessment.
To assist Council in interpreting the impacts and to address the peer review comments we have undertaken the following for each assessed AEP event and for Option 1 and 2:

- *Mapped peak flood level impacts for additional AEPs (1 in 50, 1 in 500 and 1 in 100 with climate change) – presented in Annex A.*
- *Mapped peak flood velocity impacts – presented in Annex B*
- *Mapped peak flood hazard category impacts – presented in Annex C*
- *Presented plots showing potential changes in flood duration at impacted locations – presented in Annex D*
- *Presented updated tables of above floor level impacts for Options 1 and 2. The updated information includes additional details on whether or not a property is flooded above floor level in the base case and to what depth – presented in Annex E.*

Results show no notable impacts above those presented in the BMT report including when considering the larger magnitude events of the 1 in 500 AEP and the 1 in 100 AEP with climate change (1 in 100CC AEP). There are some additional dwellings shown to have impacts of 30mm or more in the 1 in 500 and 1 in 100CC AEP events (see Annex E) but the higher Base Case flood levels in these events means that these same dwellings are also inundated above floor level in the Base Case.
As noted by WMAwater, there are some increases in peak velocity on Carrs Drive within the WYURA, for example in the 1 in 100 AEP under Option 2 (see Map B-6). However, there is a decrease in flood hazard along Carrs Drive at the same locations showing these velocity increases (see map C-6). This is due to the increased height of Carrs Drive as part of the development resulting in lower flood depths. The flood hazard (which is a function of both depth and velocity) shows an overall reduction. There is no meaningful change in flood duration for all events modelled under both Option 1 and Option 2 (see Annex D).

The analysis of impacts greater than 30mm at residential dwellings shows no properties impacted above floor level for the 1 in 50 AEP for both Options 1 and 2. As shown in Annex E, in the 1 in 100 AEP there is one dwelling impacted by 30mm or more above floor level for Option 1 and two additional dwellings impacted in Option 2 (3 in total). Of these three dwellings impacted by 30mm or more, only one at 28 Golding Street is not inundated above floor level in the 1 in 100 AEP Base Case but is inundated above floor level under Option 2. It is noted that this dwelling is located within the land identified as floodway in the WYURA.
In both the 1 in 500 AEP event and the 1 in 100 AEP event with climate change, there are two dwellings impacted by 30mm or more above floor level under Option 1 and a further four dwellings impacted by 30mm or more above floor level under Option 2 (6 in total). In all cases the dwellings are inundated above floor level in the Base Case although at 28 Golding Street, the Base Case inundation depth above floor is very shallow.

The findings of the review of the Flood Risk Impact Assessment 2023 found:

BMT provided a detailed response letter in November 2022 to the first review by WMAwater (September 2022), with additional model runs and new maps. However, a new FIRA for the WYURA was developed in 2023 (BMT, 2023a), based on the Lower Clarence Flood Model Update 2022 (BMT, 2023b); this new FIRA supersedes the previous FIRA (BMT, 2021) that was reviewed in 2022, as also stated in Donges (2023).

The most recent FIRA (BMT, 2023a) includes several updates and improvements on the model adopted for the regional flooding assessment. These updates are clearly stated in the report provided (Table 3.1 in BMT, 2023a). A major change in the flood model is the implementation of the tidal boundary conditions, which are lower than in previous studies. The most recent model uses the OEH (2015) guidelines and combines a 5% AEP peak storm tide level with the 1% AEP flood event. The riverine flood peak and storm tide peak are also assumed to occur at the same time.
Pre- and post-development scenarios were compared, with the post-development including design landforms for the Yamba Gardens. The events considered were 10%, 5%, 1%, 0.5%, 0.2% AEP, PMF, and 1% AEP including climate change (CC) conditions for an intermediate scenario with a warming of about 2.4℃ by 2100 (scenario SSP2/4.5, analogous to RCP4.5).

The impact of development was found to be less than the previous study (BMT, November 2021) reviewed by WMAwater. This is most likely due to the lower tidal level implemented in the updated model. The model showed no impact on residential properties in the new development or in areas surrounding the development. Increases up to 24 mm in flood levels were modelled at St James Catholic Primary School in the 0.2% AEP and 1% AEP CC events without change in their H3 hazard category. However, the school is also flooded in pre-developed conditions. The increased level to the Primary School could be considered a significant risk depending on the time available to evacuate and roads evacuation capacity. It is therefore recommended to investigate if the development would impact the evacuation potential in the school area.

Given that Clause 5.21 of the LEP includes consideration of climate change, weight must be given to the findings of the revised 2023 Flood Impact Assessment submitted with the application (which considers Council's 2022 Flood Model). The assessment is based on Council's adopted climate change position per the Risk Frontiers report. Furthermore, this model has been developed with DCCEEW guidance and peer reviewed by technical experts. The impacts under the assessment showed no impact on residential properties in the new development area or in areas surrounding the development when considering the site in isolation and cumulative impacts associated with development of future vacant zoned land in West Yamba. These sites will be considered separately and subject to assessment with future development applications. Consideration of this application in isolation from other vacant land in West Yamba to be developed, this development does not impact on surrounding properties.

To consider the impacts of the development on flooding against the LEP and DCP provisions, impacts to flood behaviour, property and evacuation are relevant. The applicant has demonstrated in the Flood Impact Assessments that the development shows no impact on residential properties in the new development or in areas surrounding the development in terms of changes in flood extent, flood velocity, or time of inundation. The main changes to these flood behaviours are due to the raising of Miles Street and Carrs Drive, thus reducing the depth over these roads however increasing velocity, importantly the hazard category remains the same.

The impacts are detailed below extract from Part 5 of the 2023 Flood Impact Assessment by BMT which models 10mm increments which is different to the previous impact assessment that uses 30mm tolerance:

Changes in Flood Level
No increase in flood levels affected residential properties in all the analysed flood events. The changes in flood levels affecting non-residential properties can be summarised as follows:

- *No changes in 10% AEP flood level were observed in any adjacent properties. An increase in 10% AEP flood levels of 20mm was observed in the drain located along the south-east boundary of Golding Street MHE.*
- *No changes in 5% AEP flood level were observed in any adjacent properties. An increase in 5% AEP flood levels of 33mm is observed in the drain located along the south-east boundary of Golding Street MHE. A localised increase in flood levels of 28mm was observed on a 35m long section of Carrs Drive in proximity of the drain included in the Clifton Lifestyle MHE development. However, this increase in flood level did not change the flood hazard category of the road in this location, which is classified as H1 (i.e., generally safe for people and vehicles) in both the pre- and post-development scenarios. An increase in flood hazard category from H2 to H3 was observed within the new floodway expansion located east of Lot 18 DP1090409 in the 0.5%, 0.2% AEP and 1% AEP CC1 events.*
- *A reduction in flood hazard category from H3 to H2 was observed in some sections of Miles Street in the 0.5% and 0.2% AEP events. Even though there is an improvement in the overall flood hazard classification along Miles Street, it is noted that some sections of Miles Street still remain classified as H3 category, i.e. unsafe for vehicles, children and the elderly during the 0.5% and 0.2% AEP events.*
- *A reduction in flood hazard category from H4 to H3 was observed in a section of Miles Street in the 1% AEP CC1 event. Even though there is an improvement in the overall flood hazard classification along Miles Street, it is noted that some sections of Miles Street still remain classified as H4 category, i.e. unsafe for people and vehicles during the 1% AEP CC1 event.*
- *No changes in flood hazard category were observed in the PMF event. The reduction in flood hazard category affecting the proposed development fill areas is due to a reduction in flood depths occurring between the pre- and post-development conditions as a result of the filling.*

It is therefore considered that the development does not adversely impact flood behaviour or increase the hazard/risk category of properties that are already subject to flooding in a range of events from more frequent to less frequent. As a result of flood behaviour being similar post development, the impacts on flood evacuation and ability to evacuate are not detrimentally impacted for existing and future residents. The critical test within the DCP for impacts within the urban release area is no net increase in the number of existing dwellings whose habitable floor levels become inundated by filling in West Yamba. As such the development under the current flood modelling and having given consideration to climate change, the number of dwellings inundated during the base case compared to the post development case remains the same.

In regard to impacts to the St James Primary School, the report finds the school property is currently affected by flooding under the 1% AEP. As per the extract above, the impacts are noted in the 0.2% AEP however these are largely related to the grounds and not the buildings. The school does see an increase in the 1% AEP Climate Change Scenario in 2023 of 24mm however the school is currently affected by flood hazard category ranging between H2 (i.e.,

unsafe for small vehicles) and H3 (i.e., unsafe for vehicles, children and the elderly), therefore, the school should already be evacuated during a 1% AEP flood event of this magnitude.

As detailed below in 5.3, *the development proposal will not exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood.* Given the warning time available it is considered that in a flood event of significant magnitude, evacuation of the school can occur substantially before any such flood, meaning the development does not substantially increase risk to life or ability for evacuation.

In terms of flood storage, the volume of fill at West Yamba is extremely small compared with the overall flood storage in the floodplain, with the Clarence River floodplain being the largest within coastal NSW and an approximate area of 500km^2. The biggest influence on flood storage is whether it is "available" (i.e. if the flood storage may be reduced because of previous rainfall or flood events). Fore example, in the February/March 2022 flood event the main influence on available flood storage was the minor flood which occurred three days before the "main" flood.

Conclusion

Overall, the proposed flood impacts for the site and surrounding area have been considered against Council's current flood planning controls and it has been demonstrated that the proposed filling of land will not result in any detrimental impacts on the flood plain flows or neighbouring properties when considering the proposed development on its own. The proposal has considered the cumulative impacts of this development in addition to future development of undeveloped zoned land in West Yamba which shows the cumulative impacts being acceptable. Upon considering the findings of the peer review by WMA and subsequent response by the applicant, Council Engineers consider that the development appropriately manages the flooding risks while not creating unreasonable impacts upon adjoining properties through the design of the development including engineering design of the built form and increasing the width of the floodway on the subject land, thus reducing necessary earthworks.

Resolution: The issue has been resolved

5.2 Stormwater

Comments are made in conjunction with Revision 3 of the Stormwater Management Plan and Downstream Drainage assessment has been submitted to accompany the development application.

The site is primarily flat, with survey indicating an elevation ranging from 0.4m – 1.5m AHD, grading between 0.1-0.5%. The Stormwater Report identified 5 points of discharge from the site, directed to 2 external catchments to mimic pre-development conditions as close as possible. Internally, the site is comprised of 8 internal catchment areas.

To quantify the impacts of the development and to design a suitable stormwater management system to meet Council's Sustainable Water Control targets for stormwater quantity, the site was modelled in the hydrologic and hydraulic modelling package, xpstorm. To determine the requirements for Council's stormwater quality targets, the development was modelled in MUSIC.

Given the proposed extent of fill and the importance of the proposed stormwater assessment, Council engaged the services of a third party, WMA Water, to independently review the applicant's Stormwater Assessment.

To treat stormwater on-site and mitigate impacts on downstream drainage catchments, the applicant is proposing the below measures.

Stormwater Quantity

The model considers both pre and post development scenarios, with the post development scenario consisting of the following:

- Two stormwater basins are proposed, with bespoke outlet structures to control outgoing stormwater volumes to match the pre-development scenario.
- Additional detention is proposed within the Miles Street swale drain.

Stormwater Quality

The Stormwater Management Plan modelled the site into 4 internal developed catchments, with those catchments divided into sub-catchments of roof, road and ground level areas (nominally split 35%, 25% and 40% respectively) in accordance with the accompanying subdivision layout plans.

An assumed roof area of 250m^2 per lot was considered for this assessment – future DA compliance should consider this total roof area per lot, with further detention required for any additional impervious area over this amount.

The nominated quality treatment for the development consists of:

- 3kL rainwater re-use tanks per lot, with overflow directed towards the proposed Inter Allotment Drainage network
- Streetscape Bio-retention 'pods' throughout the development to capture and treat road catchment areas.
- Grass lined stormwater detention basins
- Grass lined swale drainage (Miles Street only)

Rainwater detention

A restriction shall be placed on the title of each lot which requires no less than 3kL of rainwater storage for re-use (this is inclusive of BASIX requirements). A condition has been provided to flag future assessments of additional storage requirements for developments which propose a roof/impervious area including driveways greater than 250m^2 to ensure the stormwater system can accommodate additional runoff generated by future dwellings.

Bio-retention pods

The proposed on-street stormwater quality treatment consists of modules distributed throughout the development to capture stormwater runoff from road areas. These modules are constructed within the verge, inline with piped stormwater infrastructure and capture stormwater runoff and direct flows to a permeable media and select vegetation to reduce sediment and pollutant loading. Following treatment, stormwater flows are channelled to piped infrastructure for quantity treatment downstream.

Maintenance

The future maintenance costs of these stormwater systems has been discussed at length between Council and the developer representatives, with this design being considered suitable given site constraints for stormwater quality treatment and zoning density. The SWMP provides recommended inspection frequency and maintenance measures for this system.

Maintenance bonds which separate bio-retention areas from other civil assets shall be required until development of the applicable stage is greater than 80% dwelling construction rate. The SWMP recommends either surface protection of the filter media or bypass of the biopods via temporary bunding (Ch7.5.2). Either option will negate stormwater quality treatment of road catchment areas and the interim treatment of these areas needs to be considered during construction stages. It is particularly critical in this development that future

dwelling constructions have adequate on-site erosion and sediment control measures in place to ensure no impacts to on-street stormwater quality treatment devices.

Lot access constraints
The volume and size of the bio-retention pods have been considerate of the lot layout throughout the development and will not prohibit future dwelling accesses. It will be important to monitor throughout early stages of dwelling construction to ensure that contractor vehicles do not impede traffic flows or damage the on-street infrastructure.

Conclusion

The SWMP conceptually addresses the requirements of the Sustainable Water Controls. There is specific mention in the SWMP that stage specific construction plans are required (and have been conditioned for), but the conceptual design and proposed treatment methods has sufficiently demonstrated that the targets set in the DCP and required by NRDC can be achieved. Further detailed design will be required prior to construction to ensure relevant infrastructure is provided and any necessary upgrade to existing infrastructure is undertaken.

The stormwater concept does not consider on-site detention through rainwater tanks however each dwelling will be required to provide a rainwater tank to comply with BASIX requirements which will inevitably add a buffer into the stormwater system with ongoing rainwater reuse for each dwelling.

Resolution: There are sufficient controls within the development to meet quality/quantity requirements which is further resolved through recommended conditions of consent for further detailed design.

5.3 Flood Evacuation

The applicant has submitted a West Yamba Flood Evacuation Plan which gives consideration to evacuation of the entire urban release area and not just the development site itself. A further memo has been prepared to support the evacuation plan having considered the impacts of the updated 2022 Flood Model and any changes that may change the circumstances with regard to flood evacuation.

The West Yamba Flood Evacuation Plan provides an overview of the documents applicable to consideration of flood evacuation in the area and impacts considered as part of the Flood Impact Assessment as detailed under 5.1 above.

The Plan identifies *'The flood warning/time till inundation for the first two mechanisms are of the similar magnitude, approximately 24 hours. However, as with all forms of warning it will vary from event to event and be dependent upon the circumstances at the time…. The West Yamba Flood Evacuation Plan is not advocating shelter in place as the intention is that people would be evacuated during a significant riverine flood.'*

The flood evacuation plan considers the evacuation routes, evacuation centres and a timeline assessment to provide information on how the development impacts on the evacuation capacity of the area. This assessment is for riverine flooding, where evacuation is proposed. Non-riverine flood events, such as local catchment flooding or oceanic flooding are not included, as evacuation is not proposed for these types of events. The Plan concludes:

The proposed development, comprising Yamba Gardens and the northern developments will increase the number of dwellings that may require evacuation from 2,775 to 3,345. An assessment of the time needed for evacuation has been undertaken using the NSW SES evacuation timeline approach. This has been compared to the available warning time. This

demonstrates that the total number of dwellings (including the proposed development) have sufficient time to evacuate when required. When considering the full WYURA there also remains sufficient time to evacuate.

The assessment is based on the SES timeline methodology and contains a number of simplifying assumptions. In particular, BMT has not assessed the suitability of the existing proposed evacuation centre on Yamba Hill, as details of the facility were not available. Rather, the requirements for a suitable evacuation centre/s have been provided for consideration.

Under the adopted 2022 Flood model the below extract from the West Yamba Flood Evacuation Plan states the following:

The West Yamba Flood Evacuation Plan does not rely on flood model results to determine areas for evacuation. It conservatively assumed that all dwellings, excluding those on Yamba Hill, would require evacuation. As such, the calculated 'total time needed for evacuation' is unchanged due to the model update.

The West Yamba Flood Evacuation Plan also does not rely on model results to determine the 'actual available time (for riverine flooding)'. The actual available time is informed by the Bureau of Meteorology's Service Level Specification for Flood Forecasting and Warning Services which states a 'Target warning lead time' of 24 hours at the Maclean Gauge for a gauge level of 3.3m or greater. Therefore, the actual available time for evacuation is unchanged as a result of the updated flood model.

Overall therefore, the original conclusions of the West Yamba Flood Evacuation Plan are unchanged and the plan demonstrates that the development proposal will not exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood.

The applicant has consulted with SES regarding the West Yamba Flood Evacuation Plan prepared by BMT. Subsequently, SES responded to the plan, advising that the flood evacuation triggers on page 8 of the BMT West Yamba Flood Evacuation Plan are consistent with the current 2024 Local Flood Emergency Sub Plan Yamba Sector which has been endorsed by the Local Emergency Management Committee.

Resolution: To this extent, it does meet Clause 5.21 of the LEP and Part D and Part X Schedule 1 Flood Management Controls – Evacuation, 3 within the DCP. The development is to be consistent with any relevant flood evacuation strategy, Flood Plan adopted by Council or similar plan. The controls under Part X of the DCP require evidence from the applicant of consultation with the SES regarding any necessary updating to the Local Flood Plan and this has been provided by the applicant.

5.4 Filling

The development proposes fill over the subdivision footprint to enable future dwellings to meet the specific West Yamba controls of Part X of the DCP which requires filling to 3.01m AHD, with fill supplementing previous developments over the site to provide an additional 0.9m – 2.7m (average fill height over the development is stated at 1.40m).

Existing fill material lawfully placed on-site has been through truck and dog vehicle movements hauling material on Yamba Road to the development site. The impact of construction traffic, and especially the volume of trucks that will be required for the site filling will significantly differ from the existing traffic in Carrs Drive. Unless alternative filling options such as dredging become available, the traffic impact is an inevitable consequence of developing this and other

adjacent areas. Provision of a roadworks speed limit during construction and earthworks activities will partially mitigate the impacts.

Additional traffic in Carrs Drive will increase the rate of deterioration of the road pavement. It is a requirement that the existing road pavement is to be reconstructed south of the current approved works in Carrs Drive to the proposed access to this development. It is a requirement that developers work together to ensure each section of road is successfully constructed and integrated appropriately with existing road pavement. The road pavement design will cater for future traffic loading. A condition assessment/dilapidation report will be conducted before any work commences to determine a baseline condition that the developer will need to maintain during and on completion of the work. Additionally, a maintenance bond will be required prior to works commencing should any maintenance works be required during construction to ensure the continued safe use of the road.

Groundwater impacts

Groundwater monitoring wells were placed over the subject site and neighbouring Lot 18 DP1090409 and Lot 21 DP 1277589 from March, 2022. During this period, groundwater heights showed correlation between tidal movements and significant rainfall events. The applicant has provided a Geotechnical Report considering the impact of fill on groundwater, refer extract below:

'*Groundwater levels would be expected to fluctuate at the site by up to about 1m due to tidal influences and in response to rainfall and particularly extended rainfall events. On this basis and due to the limited predicted consolidation settlement, the influence of the fill surcharge on the groundwater levels on surrounding sites is expected to be negligible*'.

Use of dredging material for fill

The DCP contains controls within Part X Schedule 1 that infer that material for landfilling is to be sourced via dredge material from the Clarence River as opposed to haulage of suitable product by road.

The Secretary's Environmental Assessment Requirements (SEARs) have been issued for consideration of a state significant development application for dredging of the river to use as a source of general fill for remaining developments in West Yamba.

The documentation submitted to Council accompanying the site specific DCP for West Yamba in 2014/15 included the following information:

> *A separate development application for the filling of any land will be required together with environmental planning approval from the State Government before the issue of the necessary dredging licenses. The application is to include:*
>
> - *A Statement of Environmental Impacts.*
> - *Staging Plans and detail of survey levels for fill.*
> - *Area and extent of fill requirements, backed by engineering design detail.*
> - *The dredge location and proposed pipe routes to WYURA.*
> - *A maintenance and management plan for the period of the dredging.*
> - *The design and location of all stormwater drainage corridors.*
> - *Overland flow paths to reach the Harbour, the Lake or Oyster channel.*
> - *The required widths/depths of overland flow paths.*
> - *A program of works detailing actions and duration of fill and compacting.*

The use of dredge material as a source of fill has significant public benefits, namely the reduction in construction vehicle movements which will inevitably reduce congestion on the road network and significantly lower the potential impacts on Council's road assets. The applicant has delayed progression of an application to dredge material suitable for use on-site as general fill material until development approval has been issued. Should this be revisited, an updated Geotechnical Report which considers its application and suitability for intended use shall be submitted to Council.

As highlighted under Section 5.1 and 5.2 above, the applicant has provided technical reports that demonstrate there are no significant impacts associated with filling of the site in regard to flooding and stormwater.

Subject to the imposition of suitable conditions requiring the developer to exhaust all avenues to obtain a dredging permit to source general fill material first, the impacts associated with the importation of fill can be suitably managed during the construction phase of the development. Importation of material will still be required to provide suitable material to construct roads, stormwater and other infrastructure required by the development.

Resolution: The issue has been resolved through recommended conditions of consent.

5.5 Biodiversity

Geolink have prepared an updated Biodiversity Development Assessment Report (BDAR) dated 21 July 2023 and submitted two (2) vegetation management plans for the proposed areas of vegetation to be retained on-site for the subject land as part of the assessment process to consider the impacts of the proposed development on the biodiversity of the site.

The application was referred to Department of Planning and Environment – Biodiversity and Conservation Division (BCD) as part of the original application. BCD is not a regulatory referral required by legislation with regard to BDARs however offers support to Council's in reviewing the BDAR. Council remains the consent authority. The BDAR has been revised following subsequent requests for information from Council and BCD to consider the presence of threatened species and more appropriate surveys of the site to determine the species types present on-site. The vegetation management plans have also been revised to consider the ongoing management impacts and changes to hydrology on threatened species that occur on-site.

BCD have reviewed the revised and provide the following:

> '*Biodiversity Development Assessment Report (BDAR) prepared by Geolink dated 21 July 2023 and associated documents relating to the proposed subdivision are satisfied the applicant has provided all the additional information and amendments to the BDAR requested in our most recent letter dated 28 March 2023 (Ref No. DOC23/73052-6). The BCD has no outstanding issues in relation to the BDAR.*
>
> *A report prepared by Dr Andrew Benwell dated July 2023 on ecology, impact and management of Rotala tripartita on the subject land was provided with the BDAR. The BCD has reviewed the report on Rotala tripartita and is satisfied that council now has all the information required to make a decision on Serious and Irreversible Impacts (SAII) to the local Rotala tripartita population from the proposal.*'

The response from BCD also provided the following assessment of the Rotala Report by Dr Andrew Benwell, a specialist wetland ecologist.

VMP for Lot 47 has been updated with similar information relating to management of *Rotala tripartita,* management timeframes and monitoring, we provide the following comments.

The *Rotala tripartita* report required vegetation and soil monitoring plots to be recorded during and after construction to accurately determine the indirect effects of changes in land use (i.e. grazing and no grazing) and stormwater runoff (pre and post- construction; before and after treatment) on plant communities and the Rotala population. The report also emphasised the importance of an effective monitoring strategy to determine how stormwater treatment and habitat management measures affect the Rotala population and wetland plant communities.

Although the habitat management regime proposed in the VMP is expected to increase the likelihood of the Rotala persisting on the site, the monitoring actions recommended in the *Rotala tripartita* report have not been included in the VMP.

On the basis of the above advice and that contained within the expert report for Rotala, the ongoing management measures proposed, it is considered that the proposed development will not have a serious and irreversible impact on this entity.

Council's Accredited Assessor provided relevant conditions to be included to protect vegetation not in direct conflict with the proposed development and to ensure appropriate street tree plantings occur to ensure direct impacts of the development are limited to that shown in the BDAR. A detailed VMP will need to be provide to include management and monitoring requirements for the Rotala to ensure the long term viability of the population.

In conclusion of the report, it was found that the proposed development will result in unavoidable impacts of 9.25 ha of land and a further impact to 5.36 ha of suitable habitat for threatened species found on-site. This impact area is inclusive of impact directly to vegetation on-site and to threatened species habitat on-site.

As a requirement of the BAM, the environmental assessments and calculations undertaken in the BDAR, a total of 66 ecosystem credits have been calculated as applicable for the unavoidable loss of site vegetation associated with PCT 780 Coastal floodplain sedgelands, rushlands, and forblands of the North Coast, PCT 837 Forest Red Gum – Swamp Box of the Clarence Valley lowlands of the NSW North Coast Bioregion, PCT 1064 : Paperbark swamp forest of the coastal lowlands of the NSW North Coast Bioregion and Sydney Basin Bioregion, PCT 1227 Swamp Box swamp forest of the coastal lowlands of the NSW North Coast Bioregion and PCT 1235 Swamp Oak swamp forest of the coastal lowlands of the NSW North Coast Bioregion. A further 86 species credits have been calculated for loss of habitat on the subject site for the following species Spider Orchid (8), Rotala Tripartita (11) and Southern Myotis (67).

Note: A PCT or Plant Community Type is a vegetation community classification system that is used in the BC Act and BIONET. All vegetation types are currently being assigned a PCT number, and given associated credits.

The BOS states the offset rules permit proponents to meet their offset obligation by:

1. retiring credits based on the like-for-like rules or
2. making a payment to the Biodiversity Conservation Trust calculated using the offset payments calculator

The Biodiversity Offset Payment Calculator has estimated that a total of 152 credits are required to be retired on a like for like basis. The proponent has the choice to retire credits from stewardship sites, or if such credits are unavailable pay an amount to the Biodiversity Conservation Trust. The development application will be conditioned accordingly.

The BDAR report also concluded that a subsequent increase in occupation of the subject land as it develops may contribute to the following potential indirect impacts:

1. Trampling and degradation of native vegetation and threatened flora habitat within residual land by trespassing residents.
2. Increased noise and activity which may negatively affect native fauna.
3. Introduction of weed propagules to residue land from illegal dumping.
4. Ongoing disturbance to local fauna during occupation of the site from noise, light and human presence.
5. Impacts on fauna habitat from roaming domestic pets (dogs, cats).

The indirect impacts that could potentially arise following future occupation of the individual lots have been mitigated and minimalised through the imposition of suitable conditions including protection of vegetation areas no in conflict with the development, corresponding restrictions on use to prohibit clearing outside of these areas and planting of suitable street trees and landscaped features in the open space areas to name a few. Vegetation Management Plans have been provided for ongoing management of the retained vegetaion to ensure that the suitable habitat for threatened species is retained and those species do not go into decline.

It is considered that the proposed subdivision has been designed to occur mostly on already cleared land which has minimised clearing within the subdivision. Areas containing existing stands of vegetation are proposed to be retained which provide crucial connections with land to the south and a corridor for movement to the north of the site to the Clarence Estuary National Park. The retained vegetation also contains the suitable habitat and recorded threatened species that occur on-site. The BDAR considers the changes to the site through hydrological impacts and ongoing maintenance of the floodway lot for flood function and bushfire risk and considers that the impacts will not adversely affect these floral species.

It will be required that the developer protect trees no in direct conflict with the servicing requirements of the proposal. Furthermore, there is opportunity to increase biodiversity through the use of native endemic species for all plantings in public spaces. These impacts are not considered to be serious or irreversible. The proposal would not involve the removal of key fauna habitat features including hollow-bearing trees, known nest trees or aquatic habitat. Through the retiring or payment of ecosystem credits to offset vegetation losses, preparation of a vegetation management plan and protection of remnant vegetation, the development is unlikely to result in irreversible environmental impacts.

Resolution: The issue has been resolved through recommended conditions of consent and preparation of specialist reports including the BDAR and Vegetation Management Plans.

5.6 Traffic and Access

The applicant has prepared a Traffic Impact Assessment (dated 8 May 2023) (the TIA) which considers traffic generated by the development and the cumulative impact on the road network of remaining undeveloped land in the urban release area.

The submitted TIA recognises that adjacent developments will generate 302 AM and 313 PM peak hour trips, while the subject development (including the proposed commercial lot) will generate 299 AM and 319 PM peak hour trips. The forecast traffic generated by the development considers a 20% reduction in vehicles to/from the commercial site due to local pedestrian traffic. This is consistent with TfNSW Guide to Traffic Generating Developments and is considered reasonable in this instance.

SIDRA assessments for 2033 and 2043 were provided with the TIA to consider design traffic and seasonal traffic scenarios for key intersections (Yamba Road/Treelands Drive roundabout, Yamba Road/Carrs Drive roundabout, Yamba Road/Shores Drive roundabout and Yamba Road/Golding Street roundabout). The assessment considered impacts to these intersections with and without access to Golding Street for this development. It is noted that access via Carrs Drive only was not considered in the 2043 scenario as the Golding Street connection is proposed within this development.

The TIA recognises that all intersections operate within a Level of Service A (delay <10s) and Degree of Saturation (DoS) <0.85, with the exception of:

- Carrs Drive/Golding Street intersection producing a DoS of 0.89 in the 2043 seasonal traffic PM scenario
- Yamba Road/Carrs Drive intersection producing a DoS of 0.93 and 0.87 for 2033 seasonal traffic scenarios
- Yamba Road/Golding Street intersection producing a Dos of 0.9 in the 2033 seasonal traffic scenario and 0.93 and 1.04 for the 2043 background and seasonal traffic scenarios respectively.

From this, it is identified that Yamba Road/Treelands Drive and Yamba Road/Shores Drive intersections operate within acceptable performance limits, with or without the proposed development in the 2043 scenario.

The Yamba Road/Carrs Drive intersection will fail in the 2033 scenario (with development traffic) if connection to Golding Street is not provided. With the Golding Street connection provided, the Yamba Road/Carrs Drive intersection will operate within acceptable performance limits up to the 2043 scenario, at which point it would fail with or without development traffic factored in (though with development traffic factored in, the intersection performance worsens).

Ultimately, the forecast traffic of the WYURA will result in key intersections still being within operational capacity for the 2043 scenario. Seasonal traffic will impact these intersections further. While outside the scope of this assessment, the future planned construction of the Yamba Road and Witonga Drive roundabout to the west of Treelands Drive will have beneficial impacts by reducing queue lengths and improving levels of service for other roundabouts and intersections onto Yamba Road.

Council also has an urban bypass corridor north of the urban release area which is being investigated through preliminary environmental investigations. Further, Council has an adopted Section 94 Contribution Plan that collects funds towards future improvements to Yamba Road or construction of the bypass, or parts thereof to alleviate strain on Yamba Road.

<u>TIA upgrade triggers</u>
Due to the above-mentioned impacts to key external intersections, connection of the WYURA to Golding Street is required to reduce traffic loading on the Yamba Road/Carrs Drive intersection. The TIA states that the completion of the subject development and adjacent sites will result in this intersection being overcapacity by 2033.

The identified trigger point for the link was determined by incrementally adding development traffic loading to the background model and was found to be either:

- Development of the commercial site, medium density site and a maximum of 350 low-density residential lots, or
- Development of the maximum 450 low-density residential lots.

While the TIA modelling does not necessarily communicate with other reports submitted with the DA, this upgrade has been conditioned to be required prior to the release of Stage 11 or as per the triggers above should other developments be approved within the urban release area.

External Roads
Directly servicing the development, two access points are proposed from Miles St (one signalised intersection and one roundabout) and one signalised intersection accessing Carrs Drive. Turn warrant assessments were provided with the TIA and recognise that Basic Left and Basic Right (BAL/BAR) intersections are sufficient for the initial connection points to Carrs Drive and Miles Street, with the second eastern access to Miles Street requiring a roundabout.

A minimum centreline height of 1.7m AHD is necessary to maintain suitable flood free access to the site (excluding the mapped floodway along Miles St).

Land dedication is required along the Carrs Drive and Miles Street frontage to accommodate the road corridor to ensure that the road carriageway and assoaicted infrastructure is within the road reserve.

Internal Roads
The submitted plans nominate one collector road (Road 1) which provides connection from the Carrs Drive intersection, through to the Miles Street roundabout (east intersection), with the other internal main roads being Road 2 and Road 11, which functions as a perimeter road to the lots on the southern side of the two drainage reserves. All remaining internal roads are accessed via these main roads. The proposed road types and associated carriageway widths are compliant with the requirements of NRDC Table D1.5. It is noted though that Table 6.2 of the submitted TIA nominates a road reserve width of 14.5m for Local Streets, which does not comply with NRDC requirements. Contrasting this, the Road Hierarchy Staging Plan included in the submitted preliminary engineering plans nominate a minimum road reserve width of 17m for all Local Streets, with the exception of Road 7 (15.5m proposed) and Road 3 (variable width). The proposed road reserve widths in this instance are above the requirements of NRDC and shall prevail.

Resolution: The issue has been resolved through recommended conditions of consent.

5.7 Servicing

Extension of the existing water main located on the corner of Carrs Drive and Miles Street is required to service each stage of the development such that each lot has frontage and service to reticulated main infrastructure. Details of the proposed extensions shall be provided with the Subdivision Works Certificate for each stage. A Water Network Plan has been submitted with the application which shows observed pressures from the existing 315mm HDPE main on Carrs Drive. While this recognises that there is currently sufficient pressure to support the development, it does not consider the cumulative impact as the WYURA progressively gets developed. It is noted that the supporting Water and Sewer Servicing Plan and associated

Water Supply Servicing Strategy prepared by Hunter H^2O considered the full development of the WYURA and the network identified a DN250 ring main which looped the existing 315mm HDPE main back to the reticulated water network on Yamba Road via Golding Street. In accordance with the identified reticulated water network within WYURA, Stage 1 of the development shall extend the reticulated water network from the existing 315mm HDPE line on Carrs Drive with DN250, in accordance with the Water Supply Servicing Strategy. The development shall then provide internal connection from this main.

The sewer trunk main to the Yamba Sewerage Treatment Plant from West Yamba has been constructed by other developers in West Yamba which caters for the cumulative demand generated by the area. Each Subdivision Works Certificate shall nominate the proposed internal pressure sewer network and for applicable stages, connection detail to the trunk main on Miles Street shall be provided. Boundary pressure sewer kits are to be installed or bonded prior to Subdivision Certificates being issued for any stage of the development to facilitate future connection of dwellings.

Other infrastructure such as energy/electricity and telecommunication services/NBN will also need to be planned for and provided for the development. Satisfactory arrangements will need to be made with designated State and Local Authorities to determine availability, timing and cost arrangements, including the payment of contributions where required prior to release of lots within any relevant stage.

Essential Services are required to service the development and the DA has been conditioned accordingly.

Resolution: The issue has been resolved through recommended conditions of consent.

5.8 Urban Design

Schedule 1 to Part X of the DCP provides for clarity on how the development of West Yamba Urban Release Area is to occur. Controls and objectives under Schedule 1 provide guidance on staging, servicing, road network, landscaping and open space provision, urban design and management of natural hazards including flooding and acid sulfate soils.

The subdivision design is effectively insular which is consistent with the DCP to not have direct access onto Carrs Drive and Miles Street. The largely homogenous urban structure does not appear to directly create or foster character precincts, however the diversity of lots will create varied price points and future built form for any future community. Additionally, the incorporation of a central open space area, two large stormwater basins, high quality landscaping, retention of natural and vegetated areas and inclusion of active transport facilities promotes an attractive streetscape. The proposal provides for a housing diversity and neighbourhood centre for West Yamba that is connected to existing and future developments.

Significant bulk earthworks give rise to outward facing retaining walls of up to 2m onto Carrs Drive and Miles Street in order to comply with the controls within Part X of the DCP. The applicant has submitted concept retaining wall treatment within the landscape strategy which incorporates a suitable design and natural features such as sandstone and deep plantings to mitigate visual impacts in comparison to other nearby development.

This area is designated as an urban release area and therefore it is expected that the area will supply more housing. Having a variety of lot sizes provides opportunity for diverse housing typologies to suit various housing types. The overall urban design of the proposed development is generally consistent with the objectives and prescriptive controls contained

within Part X of the DCP. The proposal balances to a satisfactory standard the purpose of the urban release area and the character of the surrounding area.

Resolution: The issue has been resolved through recommended conditions of consent.

6. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported.

The strategic merit for residential development on the site, and West Yamba, has previously been tested and determined appropriate via rezoning. The site remains as land identified within the Clarence Valley Urban Growth Area in the NSW Government Department of Planning Environment – North Coast Regional Plan 2041. The West Yamba area remains a key part to the Clarence Valley meeting its housing targets to meet the needs of the population provided it is sustainable and responds to natural hazards that affect the site. The proposal is generally not inconsistent with Council's adopted planning controls and policies, therefore it is considered that the key issues as outlined in Section 5 have been resolved satisfactorily through amendments to the proposal and/or in the recommended draft conditions at **Attachment A**.

7. RECOMMENDATION

That the Development Application SUB2023/0001 for a 284 lot subdivision - (277 low density residential lots, 1 medium density residential development lot, 1 commercial development lot, 1 low density development lot, 3 drainage reserve lots, 1 open space reserve lot) at 52-54 Miles Street Yamba NSW 2464, being Lot 46 and 47 DP 751395, be approved pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Draft Conditions of consent
- Attachment B: Tables of Compliance
- Attachment C - Statement of Environmental Effects – Rob Donges Planning Consultant March 2024
- Attachment D – Preliminary Engineering - Mortons Urban Solutions (Revision F) 9 May 2023
- Attachment E - Additional Engineering Plans – Mortons Urban Solutions – 23 May 2023
- Attachment F - Landscaping Plan – Zone Landscape Architects – 22 November 2023
- Attachment G - Acid Sulfate Soils Assessment - Regional Geotechnical Solutions – 5 March 2020
- Attachment H - Biodiversity Development Assessment Report – GeoLink 21 July 2023
- Attachment I - Vegetation Management Plan Lot 46 – GeoLink – 21 July 2023
- Attachment J - Vegetation Management Plan Lot 47 – GeoLink – 21 July 2023
- Attachment K - Bushfire Risk Management Plan – BushfireSafe (Aust) Pty Ltd December 2022

- Attachment L - Endorsement of Cultural Heritage Assessment Report – Birrigan Gargle Local Aboriginal Land Council – 9 September 2022
- Attachment M - Cultural Heritage Assessment – Everick Heritage Consultants Pty Ltd – September 2011
- Attachment N - WYURA Flood Impact Assessment – BMT 22 November 2021
- Attachment O - WYURA Flood Impact Assessment Addendum – BMT 25 November 2022
- Attachment P - WYURA Flood Impact Assessment – BMT 30 October 2023
- Attachment Q - West Yamba Flood Evacuation Plan – BMT 30 August 2023
- Attachment R - West Yamba Flood Evacuation Plan Addendum – BMT 31 October 2023
- Attachment S - Site Contamination Assessment - Regional Geotechnical Solutions 10 March 2020
- Attachment T - Stage 2 Site Contamination Assessment – Addendum Regional Geotechnical Solutions August 2022
- Attachment U - Stage 1 and 2 Site Contamination Assessment - Regional Geotechnical Solutions – 23 August 2023
- Attachment V - Geotechnical Assessment – Regional Geotechnical Solutions 19 August 2022
- Attachment W - Interim Results of Groundwater Level Monitoring Proposed redevelopment of West Yamba Miles and Cox Street, Yamba – Douglas Partners – 24 August 2022, 19 January 2023 and 14 September 2023
- Attachment X - Stormwater Management Plan & Downstream Drainage Assessment – Biome 15 June 2023
- Attachment Y - Revised Traffic Impact Assessment – Bitzios 8 May 2023
- Attachment Z - West Yamba Urban Release Area – Water Supply and Sewer Servicing Strategy – Hunter H_2O – July 2019
- Attachment AA - Shared Concept Shared Pathway Plan – Mortons Urban Solutions – 20 December 2022
- Attachment AB - SEARs 1858 - Dredging of Clarence River Yamba – Department of Planning, Housing and Infrastructure – 15 February 2024
- Attachment AC - NSW Rural Fire Service General Terms of Approval - 23 January 2024
- Attachment AD - NSW Department of Planning and Environment - Water - General Terms of Approval – 13 December 2023
- Attachment AE - Addendum to Stormwater Management Plan – Mortons Urban Solutions – 26 April 2024
- Attachment AF - Stormwater Management Plan response to Additional Information – Biome
- Attachment AG - Advice from SES – 11 March 2024
- Attachment AH - SES Yamba Local Emergency Flood Plan – Clarence Valley Council February 2024
- Attachment AI - Advice from Preferred Energy – 16 November 2022
- Attachment AJ - Comments from Busways – 30 May 2022