

## REASONS FOR RECOMMENDATION

Having regard to the assessment of the Application, Development Application No. DA2022/721 should be refused for the following reasons:

1. Section 4.47(2) of the EP&A Act identifies that before granting consent to development that is Integrated Development, the consent authority must obtain the GTAs from each relevant approval body. General Terms of Approval have not been obtained from NSW Department of Primary Industries – Fisheries, pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).
2. Insufficient information has been provided to determine the source of power relied upon to assess and determine the proposal where works are located in areas identified on the 'Coastal Wetland and littoral Rainforest Area' Map referred to in Section 2.7(1) and 2.8(1) of State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP).
3. Insufficient information has been provided to assess and determine the proposed height of the development and therefore the application fails to demonstrate compliance with development standards in Section 80(4)(c) and 80(3) of the State Environmental Planning Policy (Housing) 2021 (Housing SEPP).
4. Insufficient information has been provided to enable an assessment of the proposed independent living units including matters relating to siting and location within the site, security, letterboxes, accessibility, internal unit design and storage and therefore the application fails to demonstrate compliance with development standards in Schedule 4 of the Housing SEPP (pursuant to Section 85 of the Housing SEPP).
5. Insufficient information has been provided to properly assess the likely neighbourhood amenity and streetscape impacts, visual and acoustic privacy impacts of the proposed built form, the solar access achieved for each dwelling, as well as the proposed stormwater design, crime prevention, site accessibility and waste management. Therefore, the application fails to demonstrate that adequate consideration has been given to the Design Principles set out in Division 6, Part of the Housing SEPP.
6. The application is inconsistent with the Design Principle in Section 99 - Neighbourhood amenity and streetscape of the Housing SEPP for the following reasons:
  - a) the intensity of development (including fill, retaining structures and stormwater infrastructure) at the interface with adjoining development and its elevation from existing ground levels results in unreasonable impacts in terms of bulk, scale and overlooking; and
  - b) the further elevation of the land (up to 5 metres) and the height of acoustic mitigation measures (up to 2m above the finished surface levels) along the perimeter of the site results in an inappropriate and uncharacteristic streetscape presentation to River Street as well as to surrounding properties.
7. Insufficient information has been provided to assess the siting and location, maximum building height and density of the proposed buildings, as well as the solar access, landscaping and deep soil zones provided for each of the proposed independent living units. Therefore, the application fails to demonstrate compliance with the non-discretionary development standards in Section 108(2)(a), 108(2)(b), 108(2)(c), 108(2)(e), 108(2)(f), 108(2)(g), of the Housing SEPP.

8. Inadequate assessment is provided in the submitted technical reports, including the Biodiversity Development Assessment Report (BDAR), Groundwater Monitoring Assessment Management Plan, Geotechnical Report, Engineering Assessment Report and Aquatic Ecology Technical Report for the consent authority to be satisfied of the matters in Section 2.7(4) of State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP) in relation to the protection of the identified Coastal Wetlands on site.
9. Inadequate assessment is provided in the submitted technical reports (referred to in Reason No. 8 above) for the consent authority to be satisfied of the matters in Section 2.8(1) of the Resilience and Hazards SEPP regarding the area identified as Proximity Area for Coastal Wetlands and impacts to the adjacent Coastal Wetland areas.
10. Insufficient information has been provided for the consent authority to properly consider the matters in Section 2.10(1) and be satisfied of the matters in Section 2.10(2) of the Resilience and Hazards SEPP in relation to the likely impacts on land within and surrounding the site identified as Coastal Environment areas.
11. Insufficient information has been provided for the consent authority to properly consider the matters in Section 2.11(1) and be satisfied of the matters in Section 2.11(2) of the Resilience and Hazards SEPP in relation to the likely impacts on land within and surrounding the site identified as Coastal Use Areas.
12. The application does not identify nor contain information regarding potential impacts to the Priority Oyster Aquaculture Area proximate to the site and therefore insufficient information is provided for the consent authority to be satisfied of the matters in Section 2.27(1) and 2.28 of State Environmental Planning Policy (Primary Production) 2021 (Primary Production SEPP).
13. The application does not adequately demonstrate that safe and adequate site access arrangements have been made and therefore insufficient information is provided for the consent authority to properly consider the matters in Section 2.122(4)(b)(iii) of State Environmental Planning Policy (Transport and Infrastructure) 2021.
14. The application does not provide sufficient information regarding the proposed signage including compliance with the assessment criteria in Schedule 5 of State Environmental Planning Policy (Industry and Employment) 2021 (Industry and Employment SEPP) and therefore the consent authority cannot be satisfied of the matters in Section 3.11(1) of the Industry and Employment SEPP.
15. Insufficient information (including relevant Reduced Levels (RLs) for existing ground and finished floor surfaces) is provided for the consent authority to properly assess the proposed building height and therefore compliance with the height of building development standard in clause 4.3 of the Ballina Local Environmental Plan 2012 (BLEP 2012) cannot be determined.
16. Insufficient information (including relevant Reduced Levels (RLs) for existing ground and finished floor surfaces) is provided for the consent authority to properly assess the proposed maximum building height and therefore compliance with the height of building development standard clause 4.3A of the BLEP 2012 cannot be determined.
17. Insufficient information (including siting and location of the proposed dwellings within the site) is provided for the consent authority to properly assess the proposed floor space ratio (FSR) and therefore compliance with the FSR development standard in clause 4.4

of the BLEP 2012 (applying to the central portion of the site zoned R2 Low Density Residential) cannot be determined.

18. An assessment of the potential impacts of the development on Aboriginal objects and sites of significance proximate to the site has not been submitted and therefore insufficient information is provided to satisfy the provision in clause 5.10(8) of the BLEP 2012.
19. The site is within a Flood Planning Area and an inadequate assessment of the flood impacts including the associated risks to human life in the event of a flood has been provided. Therefore, insufficient information is provided for the consent authority to be satisfied of the matters in clause 5.21(2) of the BLEP 2012.
20. During flood events exceeding the flood planning level, safe occupation of, and evacuation from, the land by residents is significantly compromised and is not an appropriate mitigation measure. The impacts of the proposed development pursuant to Section 4.15(1)(b) of the *EP&A Act 1979* are unreasonable in these circumstances.
21. Insufficient information is provided to properly assess the impacts of the disturbance and remediation of acid sulfate soil on the surrounding coastal wetland environment for the consent authority to be satisfied of the matters in clause 7.1(3) of the BLEP 2012.
22. Inconsistent and insufficient information is provided in the application regarding the nature and extent of earthworks proposed within and outside site boundaries. On this basis, the consent authority could not properly consider the matters in clause 7.2 of the BLEP 2012.
23. Insufficient information is provided to properly assess the development against the Limitation or Operations Surface applying to the site and therefore the consent authority could not be satisfied of the matters in clause 7.5(2) of the BLEP 2012.
24. Insufficient information is provided to determine whether adequate arrangements for stormwater drainage and suitable vehicular access have been made and therefore the consent authority could not be satisfied of the matters in clauses 7.7(d) and 7.7(e) of BLEP 2012.
25. Insufficient information is provided in relation to the impacts of the development on key fish habitat areas and therefore the consent authority could not properly take into account the matters in Section 221ZV of the *Fisheries Management Act 1997* (FM Act).
26. Insufficient information is provided in relation to the impacts of the development on key fish habitat areas and therefore it cannot be determined whether a species impact statement pursuant to Section 221ZW of the FM Act is required.
27. The BDAR accompanying the application has not properly assessed the biodiversity values of the site and the impact of the proposal on the site and therefore the consent authority could not be satisfied of the matters in Section 6.12 of the *Biodiversity Act 2016* (BC Act).
28. The BDAR accompanying the application has failed to adequately assess whether the proposal will have serious and irreversible impact (SAIL) on the biodiversity values of the site pursuant to Section 7.16(2) of the BC Act. It is considered that the proposal will result in a further decline in each of the Endangered Ecological Communities (EEC's) that are already undergoing a rapid rate of decline pursuant to Section 6.7(2)(a) of the *Biodiversity Regulation 2017*.

29. The proposal is likely to have an adverse impact on the extent of EECs on the site and will result in a loss of Swamp Oak Floodplain Forest EEC, Freshwater Wetland EEC and result in indirect impacts on Coastal Salt Marsh EEC and the application has not adequately demonstrated that impacts have been adequately avoided, minimised or offset pursuant to Section 7.13 of the BC Act.
30. The BDAR accompanying the application does not adequately assess Indirect Impacts on threatened species, their habitat and EECs, including protected fauna.
31. The proposed development is in conflict with the existing Biobanking Agreement (#444) under the *Threatened Species Conservation Act 1995* in relation to human activities that adversely affect biodiversity values within the Biobanking Site, natural flow regimes and the proposed Vegetation Management Plan.
32. The Mosquito Impact Assessment accompanying the application does not address all requirements of the Ballina Development Control Plan 2012 (BDCP 2012) in sufficient detail, is inconsistent with, and does not account for the final versions of other documents submitted with the application. On this basis, the consent authority could not be satisfied that the actual and potential mosquito risks to the proposal can be managed.
33. Pursuant to Section 4.15(1)(a)(iii) of the EP&A Act, the proposed development fails to satisfy the following sections of the BDCP 2012:
  - a) Section 3.1 Land Use Conflict
  - b) Section 3.2 Ridgelines and Scenic Areas
  - c) Section 3.3 Natural Areas and Habitat
  - d) Section 3.5 Land Slip/ Geotechnical Hazard
  - e) Section 3.6 Mosquito Management
  - f) Section 3.7 Waste Management
  - g) Section 3.9 Stormwater Management
  - h) Section 3.10 Sediment and Erosion Control
  - i) Section 3.12 Heritage
  - j) Section 3.15 Crime Prevention through Environmental Design
  - k) Section 3.21 Bushfire Management
34. Pursuant to Section 4.15(1)(a)(iii) of the EP&A Act, the application does not adequately address the provisions of Chapter 2(a) Vegetation Management, Chapter 2(b) Flood Plain Management, and Chapter 8 Other Uses of the BDCP 2012.
35. All land owners of the land subject of the application have not provided their consent as required by Section 23 of the *Environmental Planning and Assessment Regulation 2017* (EP&A Reg). Crown Lands owners' consent has not been provided for the stormwater infrastructure works fundamental and essential to the proposal, proposed within Crown Land. Council's owner's consent has not been provided for works on the River Street road reserve.
36. Insufficient information is provided to properly assess and determine the risk of bushfire hazard and associated risk to human life of the land pursuant to Section 4.15(b) of the EP&A Act.
37. The site is unsuitable for the proposal pursuant to Section 4.15(c) of the EP&A Act, having regard to the environmental and physical constraints, including flooding, and potential impacts on the biodiversity values of the site and adjoining lands including EEC, coastal wetlands, and fish habitats.

38. Insufficient information has been provided to assess the geotechnical conditions of the site and the geotechnical impacts of the proposal. There are inconsistencies and conflicts in the geotechnical information that accompanies the application and therefore the application fails to demonstrate that the site is suitable for the development pursuant to Section 4.15(c) of the EP&A Act.
39. The proposal will result in the isolation of Lot 5 and 6 in DP 537419 adjoining the western edge of the site and therefore the application fails to demonstrate that the site is suitable for the development pursuant to Section 4.15(c) of the EP&A Act.
40. The mitigation measures required to accommodate the proposal such as the filling of the land, acoustic wall, impacts on vegetation and biodiversity for mosquito management, earthworks, and batters result in unreasonable impacts and the site and therefore the site is not suitable for the proposed development pursuant to Section 4.15(c) of the EP&A Act.
41. The proposal will result in a vulnerable resident population being isolated in the event of flood and therefore the site is not suitable for the proposed development pursuant to Section 4.15(c) of the EP&A Act.
42. The proximity of development to mangroves results in potential odour and mosquitoes which will impact on the amenity of future residents and therefore the site is not suitable for the proposed development pursuant to Section 4.15(c) of the EP&A Act.
43. The extent of modification to the landform in regard to the amount of fill to be imported to the site, and subsequent impacts on the environment and character of the site makes it unsuitable for the proposal pursuant to Section 4.15(c) of the EP&A Act.
44. The landscape outcomes of the development fail to respond to the character of the surrounding coastal environment and the extent and intensity of development results in an overdevelopment of the site which makes the site unsuitable for the proposed development pursuant to Section 4.15(c) of the EP&A Act.
45. The proposal is not in the public interest pursuant to Section 4.15(e) of the EP&A Act as the proposal does not result in the orderly and economic development of land and will result in unreasonable and additional burdens on State Emergency Services in the event of flood where the risk is known and could reasonably be avoided.