

Attachment A: Draft reasons for refusal

That the Development Application DA2023/0241 for a 216 Dwelling Manufactured Home Estate upon land known as Lot 32 DP 1280863 and Lot 2 DP 733507, No. 110 and 120 Carrs Drive, Yamba be REFUSED pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979*.

The recommendation is provided for the following reasons:

1. The consent authority cannot be satisfied that the impacts of the development on biodiversity values have been accounted for in the Biodiversity Development Assessment Report (**BDAR**) submitted for the development application:
 - a. Pursuant to s 6.12 of the *Biodiversity Conservation Act 2016*, there is little attempt to demonstrate that the proposed development has taken steps to *avoid or minimise* impacts of the proposed development. The proposed development footprint appears to be influenced by the zoning of the Subject Site and encompasses the entire area of R1 zoned land resulting in the clearance of 8.3 ha of native vegetation, all comprising Threatened Ecological Communities (**TEC**).
 - b. The Applicant's self-assessment for matters of national environmental significance (**MNES**) set out in Part 3 of the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**) confirmed that the vegetation clearing required for the proposed development will result in significant impact for two threatened ecological communities and two EPBC Act listed threatened species. There is no indication that there has been approval under the EPBC Act for impacts on the identified MNES.
 - c. The initial BDAR underestimated the area occupied by Plant Community Type (**PCT**) 1235. Version R6 (February 2024) shows this PCT as more extensive however this PCT is still mapped as occupying less area in the clearing footprint than PCT 1064 (Swamp sclerophyll forest).
2. The consent authority cannot be satisfied that the Subject Site is suitable for the proposed development given potential bush fire risk and conforms with the specifications and requirements of Planning for Bushfire Protection 2019, pursuant to s 4.15 of the EP&A Act.
3. The proposal is inconsistent with Clause 2.48(2)(b) of *State Environmental Planning Policy (Housing) 2021* as the development does not provide reasonable access to passive and public open space broadly in the WYURA.
4. The proposal is inconsistent with Clause 2.48(2)(b) of *State Environmental Planning Policy (Transport and Infrastructure) 2021* as the electricity supply authority remains unsatisfied that potential safety risks associated with the proposed development.
5. The proposal is inconsistent with the following Clauses of *State Environmental Planning Policy (Resilience and Hazards) 2021*:
 - a. Chapter 2 – Coastal Management: The proposed development is likely to have an adverse impact on the hydrological or ecological environment due to sufficient information not being provided as part of the geotechnical information, BDAR and SWMP to demonstrate the proposal will not impact on the water quality or marine or native vegetation.
 - b. Chapter 4 – Remediation of Land: The Phase 1 Preliminary Investigation contamination documentation recommended further detailed investigation and sampling on the vegetated eastern portion of the lot be provided. The additional sampling is essential to determine if contamination is present at the Subject Site. Given the potential for previous contaminating activities on the land and the fact that the proposed development seeks to introduce

residential accommodation use of the land – a more sensitive land use, the consent authority cannot be satisfied that sufficient information has been made available to ascertain whether the land is contaminated and requires remediation, as per the provision of the SEPP R&H. The suitability of the Subject Site cannot be confirmed until after consent is granted which raises the risk that unidentified contamination could be exposed during the clearing and construction works.

6. The proposal is inconsistent with the following Clauses of the *Clarence Valley Local Environmental Plan 2011*:
 - a. The proposal is inconsistent with the aims of *Clarence Valley Local Environmental Plan 2011* as it has not been satisfactorily demonstrated that the proposed development will enable the sustainable development of the site, adequately protect areas of high ecological value and maintain the character of Yamba township.
 - b. Purpose of Zone R1 – General Residential – the proposed development does not enable other land uses to provide facilities or services to meet the day to day needs of residents.
 - c. Clause 5.21 Flood Planning – the assessment associated with the impacts of flooding have not been completed therefore the consent authority is not satisfied the proposed development will not adversely impact flood behaviour, flood affectation, safe occupation and evacuation of land and whether measures proposed to mitigate flooding impacts will minimise these impacts.
 - d. Clause 6.2 Public Utility Infrastructure - as the electricity supply authority remains unsatisfied that potential safety risks associated with the proposed development have been addressed.
 - e. Clause 7.1 Acid Sulfate Soils - The Applicant's Acid Sulfate Soil Investigation and Management Plan adopts Queensland methodology for ASS management which is inconsistent with the requirement of cl 7.1(3) of *Clarence Valley Local Environmental Plan 2011* which requires an Acid Sulfate Soil Management Plan to be prepared in accordance with the NSW Acid Sulfate Soils Manual.
 - f. Clause 7.2 Earthworks - There is insufficient information available regarding stormwater management for the development to accurately determine whether the existing hydrological and water quality conditions are maintained.
7. The proposal is inconsistent with the following Parts of the Clarence Valley Residential Zones Development Control Plan 2011:
 - a. The development application was not accompanied by a site analysis satisfying the requirements of clause C3.
 - b. Part D – Floodplain Management Controls - the consent authority is not satisfied the proposed development will not adversely impact flood behaviour, flood affectation, safe occupation and evacuation of land and whether measures proposed to mitigate flooding impacts will minimise these impacts.
 - c. Part H – Sustainable Water Controls – The applicant has not satisfactorily demonstrated to the consent authority that the existing hydrological and water quality conditions are maintained.
 - d. Part X Urban Release Area Controls – Schedule 1 West Yamba Urban Release Area in the following areas:
 - I. Transport Movement Hierarchy and Road Network Design and Provision – the wider traffic network impacts of the development have not been properly assessed to determine whether the development is suitable. A Pedestrian Access and Mobility Plan

(PAMP) and concept plans for external works in Carrs Drive have not been submitted.

- II. Open Space and Recreation - The proposed development does not comply as no open space has been nominated in the proposed design. Further, based on the submitted plans and in the absence of a PAMP, it is not clear whether how the development will connect externally with the footpath network.
 - III. Natural and Environmental Hazards – Flood and Fill Management - A Stormwater Management Plan has not been completed to the satisfaction of the consent authority to ensure the maintenance of an effective drainage network.
 - IV. Stormwater Management and Water Quality - A Stormwater Management Plan has not been completed to the satisfaction of the consent authority to ensure the maintenance of existing hydrological and water quality conditions.
 - V. Hazard Management – A flood emergency management plan has not been prepared and evidence of consultation with State Emergency Services has not been provided.
 - VI. Urban Design – The proposed development has been designed to be consistent with the [Local Government \(Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings\) Regulation 2021](#), however there is a lack consistency with Part X with regard to urban design and diversity in housing provided on the site. The proposed development is mostly uniform in size, lacking in character and amenity for future residents. No pedestrian access or mobility plan has been provided to indicate how future residents will be able to access the development area and adjoining areas by foot, including access to public transport.
8. The proposed development is not in the public interest having regard to the inconsistencies with the relevant planning controls raised above and the matters raised in the submissions received (to the extent that they align with the matters above).