

COUNCIL ASSESSMENT REPORT

NORTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	[PPSNTH-215] – [DA2023/0241]
PROPOSAL	216 Dwelling Manufactured Home Estate and Communal Facilities
ADDRESS	Lot 32 DP 1280863 and Lot 2 DP 733507 [110 and 120 Carrs Drive Yamba NSW 2464]
APPLICANT	The Trustee for Yamba Land Trust
OWNER	The Trustee for Yamba Land Trust
DA LODGEMENT DATE	18 April 2023
APPLICATION TYPE	Development Application (Integrated)
REGIONALLY SIGNIFICANT CRITERIA	Section 2.19(1) and Clause 2 of Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> declares the proposal regionally significant development as: General Development over \$30 million – Development that has a capital investment value of more than \$30 million
CIV	\$80,037,000.00 (excluding GST)
CLAUSE 4.6 REQUESTS	Nil.
KEY SEPP/LEP	<ul style="list-style-type: none"> • <i>Environmental Planning and Assessment Act 1979</i> • <i>Environmental Planning and Assessment Regulation 2021</i> • <i>Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021</i> • <i>Water Management Act 2000</i> • <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> • <i>State Environmental Planning Policy (Housing) 2021</i> • <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> • <i>State Environmental Planning Policy (Planning Systems) 2021;</i> • <i>State Environmental Planning Policy (Transport and Infrastructure) 2021;</i> • <i>Clarence Valley Local Environmental Plan 2011</i> • <i>Clarence Valley Council Residential Zones Development Control Plan;</i>

	<ul style="list-style-type: none"> • <i>North Coast Regional Plan 2041</i> • <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> • <i>State Environmental Planning Policy (Housing) 2021</i>
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	<p>Eighty-nine (89) submissions objecting to the proposed development - 71 being form letters following a standard template and 18 being unique, individually written submissions</p> <ul style="list-style-type: none"> • Flood risk and drainage issues • Biodiversity • Climate change • Flood evacuation and emergency services • Lack of comprehensive planning for West Yamba • Urban Design • Traffic and Road Safety • Amenity
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> - Statement of Environmental Effects prepared by Catalyze Property Consulting Pty Ltd February 2024 - Amended Architectural Plans for Community Facility, prepared by Mark Shapiro Architects, revision C (19 February 2024) - Civil Drawings, prepared by Manage Design Engineer Pty Ltd (Revision 1) (19 February 2024) - Community Amenities Area Calculation Table and Staging Plan, Sheet 1 of 1 (Drawing no. SK01), prepared by MDE (issue 0) (15 February 2024) - Statement of Landscape Intent, prepared by Zone Landscape Architecture (revision E) (15 February 2024) - Acid Sulfate Soil Investigation Management Plan, prepared by Precise Environmental Consulting Environmental Scientists (version 1.1) (21 February 2024) - Biodiversity Development Assessment Report, prepared by Ecosure (version R6) (23 February 2024) - Response prepared by Ecosure addressing comments from Department of Planning and Environment – Biodiversity and Conservation Division (February 2024) - Vegetation Management Plan, prepared by Ecosure (version 03) (February 2024) - Supplementary Report relating to <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i>, prepared by Ecosure (version 01) (20 February 2024) - Flood Impact Assessment Report (version 02), prepared by BMT (20 February 2024) - Supplementary letter prepared by BMT (28 February 2024)

	<ul style="list-style-type: none"> - Flood Risk Assessment and Flood Emergency Response Plan (issue 1), prepared by Martens (20 February 2024) - Traffic Impact Assessment (version 003), prepared by Bitzios Consulting (5 September 2023) - Stormwater Management Plan, prepared by Manage Design Engineer Pty Ltd (revision 1) (31 January 2024) - Earthworks Management Plan, prepared by Manage Design Engineer Pty Ltd (revision 1) (23 January 2024) - Staged Soil and Water Management Plan, prepared by Manage Design Engineer Pty Ltd (revision 0) (31 January 2024) - Stormwater Management Inspection and Maintenance Plan, prepared by Manage Design Engineer Pty Ltd (revision 0) (23 January 2024) - Portable Water Supply Service Assessment, prepared by H2ONE (version 1) (8 November 2023) - Pressure Sewer System Design Summary Report, prepared by Aquatec (revision 0) (11 August 2023) - Essential Energy – Overhead Conductor Blowout Model, prepared by D&K Pruss Design (revision A) (19 July 2023) - Clifton Yamba House Plans prepared by Cyber Drafting and Design (26 April 2022 and 3 May 2022) - Preliminary Site Investigation Revision 2 prepared by Easterly Point Environmental (15 August 2022) - Infrastructure and Servicing Strategy prepared by Manage Design Engineer Pty Ltd (6 September 2022) - Social Impact Assessment prepared by James Marshall & Co (October 2022) - Preliminary Geotechnical Investigation Report prepared by Geotech Investigations Pty Ltd (20 May 2022) - Crime Prevention through Environmental Design Report prepared by James Marshall & Co (September 2022) - Aboriginal Cultural Heritage Assessment prepared by Everick Heritage (Version 5) (17 May 2022)
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	N/A.
RECOMMENDATION	Refusal
DRAFT CONDITIONS TO APPLICANT	N/A.
SCHEDULED MEETING DATE	23 October 2024
PLAN VERSION	19 February 2024 Version C
PREPARED BY	James Hamilton, Coordinator Development Services

EXECUTIVE SUMMARY

The development application (DA2023/0241) seeks consent for a 216 Dwelling Manufactured Home Estate ('the proposal').

The site has an area of 17.7 hectares (approximately 830m x 180m) and is located on the southern side of Yamba Road within the West Yamba Urban Release Area (WYURA). The site is approximately 2.7km west of the Yamba Street central business district 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 east. The site contains an existing dwelling and has historically been used for agricultural uses including cropping and grazing of cattle with vegetation covering the western parts of the site. Since, agricultural uses ceased on the land, vegetation has naturally regenerated over the majority of the previously cleared land. Furthermore, the land contains a natural watercourse.

Constraints that exist for the site include flooding, 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 & Hazards) 2021*, *Clarence Valley Local Environmental Plan 2011* ('the LEP') and *Clarence Valley Residential Zones Development Control Plan 2011* ('the DCP').

The proposal is inconsistent with various provisions State and local planning controls including:

- *SEPP (Transport and Infrastructure) 2021 – the safety risks related to electrical infrastructure on or in proximity to the site has not been adequately addressed.*
- *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 development does not conform to the requirements of the DCP.*
- *Clarence Valley DCP 2011 –*
 - *Part D. Floodplain Management Controls – the development has not clearly 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 J. Subdivision and Engineering Controls*
 - *Access and Traffic*

- Council has not received sufficient information to fully assess vehicular access and traffic impacts.
- Part X Urban Release Area Controls
 - Vegetation Management
 - The submitted BDAR and Vegetation Management Plan has identified threatened species on-site with little regard to avoid and minimise the impacts of the development
 - Open Space Design
 - The development application should be refused as the proposed development does not provide interconnected passive and public open space both within the new development and more broadly to the WYURA.
- The proposed development has not satisfactorily addressed matters relating to flooding, stormwater management, traffic impact, urban design and biodiversity and therefore the proposed development is not considered to be in the public interest.
- The proposal also fails some of the matters for consideration under Section 4.15(1) of the EP&A Act in relation to potential adverse impacts to the site and the surrounding area due to flooding, stormwater drainage, biodiversity and urban design issues.

The proposal was advertised and notified in accordance with Council's Community Participation Plan from 14 March 2024 until 15 April 2024. Council received a total of 89 submissions objecting to the proposed development - 71 being form letters following a standard template and 18 being unique, individually written submissions. The submissions raised issues relating to urban design, flooding, stormwater, traffic, filling, environment, servicing, climate change and sea level rise, and impacts on the town. 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.

Briefings were held with the Panel on 1 August 2023 and 24 July 2024 where key issues were discussed, including stormwater, flooding, urban design, and biodiversity.

The key issues associated with the proposal are:

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 of 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.

Flooding

Given the proposed extent of fill, further information in regards to flooding would be required for this matter to be properly assessed. Therefore, there is no supporting information that demonstrates the impacts of the development meet the performance and prescriptive controls.

Furthermore, an updated Flood Evacuation Flood Emergency Management Plan which is to be undertaken in consultation with the NSW State Emergency Service has not been provided.

Stormwater

The capacity of the upstream and downstream drainage systems where the development will be increasing the catchment discharge volumes and the ability for existing systems to accept

additional flows is not satisfactorily addressed in the report. Inconsistencies have been identified and further information regarding stormwater would be required for this matter to be properly assessed.

Biodiversity -

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**) including Coastal Swamp Sclerophyll Forest and Coastal Swamp Oak. Further, the vegetation clearing required for the proposed development will result in significant impact for two threatened ecological communities and two listed endangered species.

Integrated Development

The proposed development required concurrence/referral from the following:

- Essential Energy – clause 2.48 of *State Environmental Planning Policy (Transport and Infrastructure) 2021* – safety concerns have not been adequately addressed.
- Department of Planning and Environment – Biodiversity, Conservation and Science Division – Referred under the *Biodiversity Conservation Act 2016* relating to Biodiversity Development Assessment Report.
- The Natural Resources Access Regulator (NRAR) – approval required for works on waterfront land (within 40m of a natural watercourse) pursuant to the *Water Management Act 2000*

Natural Resources Access Regulator

The Natural Resources Access Regulator (NRAR) 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.

Conclusion

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 is refused.

The issues of urban design, flooding, stormwater and biodiversity are all significant issues that have not been adequately addressed by the applicant. It is possible that design amendments and the submission of additional information may resolve these issues. However, as these issues remain presently unresolved, they therefore contribute to the reasons for refusal.

Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(b) of the *EP&A Act*, DA2023/0241 is recommended for refusal subject to the reasons contained at **Attachment A** of this report.

1. THE SITE AND LOCALITY

1.1 The Site

The subject land is known as Lot 32 DP 1280863 and Lot 2 DP 733507, No. 110 and 120 Carrs Drive, Yamba.

The site has an area of 17.7 hectares (approximately 830m x 180m) and is located on the southern side of Yamba Road within the West Yamba Urban Release Area (WYURA). The site is approximately 2.7km west of the Yamba Street central business district 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 east. The site is vacant and has historically been used for agricultural uses including cropping and grazing of cattle with vegetation covering the western parts of the site. Since, agricultural uses ceased on the land, vegetation has naturally regenerated over the majority of the previously cleared land. Furthermore, the land contains a natural watercourse.

Constraints that exist for the site include flooding, 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 Aerial photograph of the site (source: Council's Intramaps).

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 and east 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 east had a Development Application SUB2023/0001, refused by the planning panel for a 284 Lot Residential Subdivision (PPSNTH-195).

The WYURA is separated from the existing residential area of Yamba by an urban bypass corridor.

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 stage released 58 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 founds 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 216 Dwelling Manufactured Home Estate inclusive of communal facilities.

The proposal involves:

- Filling of land
- Construction of 216 dwellings across 13 stages
- Construction of a Community Building and other community facilities including swimming pool, bowling green and croquet lawn
- Vehicle Parking areas for visitors, vehicle washdown areas and recreation vehicle parking
- Clearing of 8.3 hectares of Vegetation
- Stormwater infrastructure

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

Table 1: Key Development Data

Control	Proposal
Site area	17.68Ha
GFA	Community Facilities – 10,760m ² Communal Building – approximately 950m ²
FSR (retail/residential)	N/A
Clause 4.6 Requests	No
No of dwellings	216 Manufactured Homes
Max Height	The community building (clubhouse) is the only building proposed as part of this application with a height of 6.8m above proposed imported fill. The building has an approximate maximum Building Height of 8.5m.
Car Parking spaces	74 parking spaces inclusive of visitors and Recreation Vehicle parking

Setbacks	<ul style="list-style-type: none"> • 10m from dwelling sites to the front boundary • 3m from dwelling sites to other boundaries • 20m setback to watercourse
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Figure 2 Site Plan (Source: Mark Shapiro Architects)

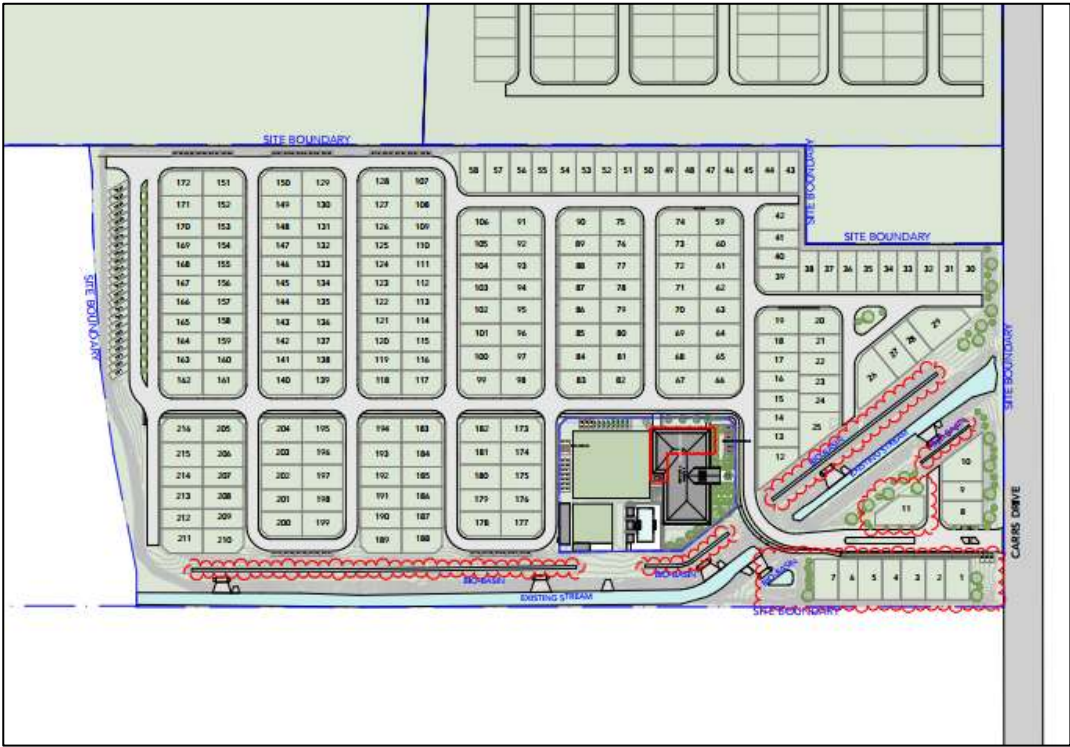


Figure 3 Proposed Plan (Source: Mark Shapiro Architects)

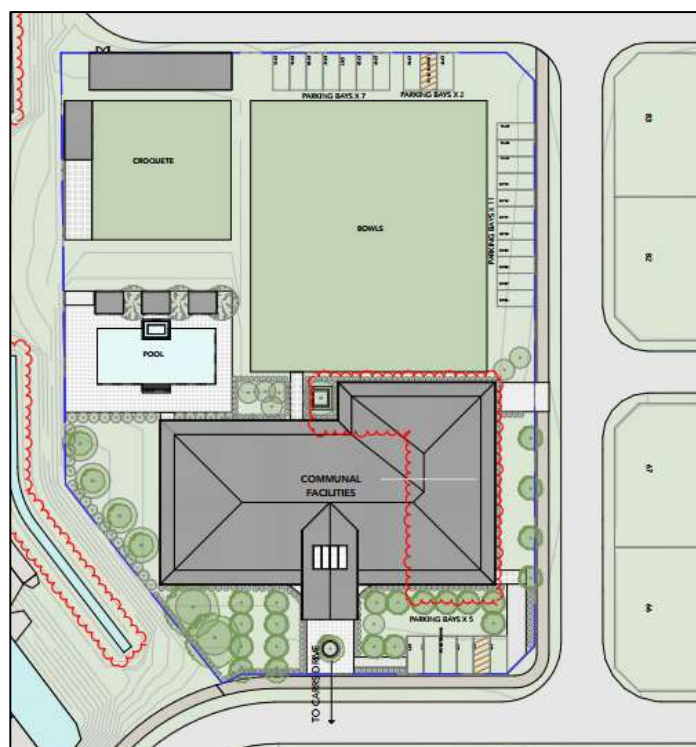


Figure 4 *Proposed Community Facilities* (Source: Mark Shapiro Architects)

2.2 Background

The development application was lodged on **4 May 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
10 May 2023	DA referred to external agencies
22 June 2023	Request for Information from Council to applicant
12 July 2023	Second Request for Information from Council to applicant following comments received from Department of Planning and Environment – Biodiversity and Conservation Division
25 July 2023	Meeting with Applicant
1 August 2023	Panel briefing meeting
25 October 2023	Third request for additional information – Flooding, Flood Evacuation, Habitable Floor Levels
15 December 2023	The applicant lodged a Class 1 appeal with the Land and Environment Court for a Deemed Refusal of the subject development application. The Class 1

	appeal is subject to separate consideration and process to the development application.
8 March 2024	Response to Additional Information submitted
14 March 2024	Application publicly exhibited
24 July 2024	Second Panel briefing
2 September 2024	Chair of the NRPP called application up to October NRPP meeting for determination

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),*
- (b) *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 are 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 (Housing) 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 4: Koala Habitat Protection 2021	Y
State Environmental Planning Policy (Housing) 2021	Chapter 3: Diverse Housing Secondary dwellings, Group Homes, Co-living housing, build-to-rent housing, Housing for Seniors and people with a disability, short-term rental accommodation, manufactured home estates and caravan parks.	N
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development <ul style="list-style-type: none"> • 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)	Chapter 2: Coastal Management <ul style="list-style-type: none"> • Section 2.10(1) & (2) - Development on land within the coastal environment area • Section 2.11(1) & (2) – Development on land within the coastal use area Chapter 4: Remediation of Land <ul style="list-style-type: none"> • Section 4.6 - Contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory subject to conditions. 	N

State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 2: Infrastructure • Section 2.48(2) (Determination of development applications—other development) – electricity transmission	N
Proposed Instruments	No compliance issues identified.	Y
Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021	Division 3 – Manufactured Home Estates	Y
LEP	<ul style="list-style-type: none"> • Clause 2.3 – Permissibility and zone objectives • Clause 4.3 – Height of Buildings • 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 Services 	N
DCP	<ul style="list-style-type: none"> • Part C General Development Controls <ul style="list-style-type: none"> ○ Clause C13 Building Height ○ Clause C16 Setbacks ○ Clause C24 Provision of Essential Services ○ Clause C25 Development on Flood Liable Land ○ Clause C27 Development of Land with Acid Sulfate Soils • Part D Floodplain Management Controls • Part G Parking and Vehicular Access • Part H Sustainable Water Controls • Part I Erosion and Sediment Control • Part J Subdivision and Engineering Controls • Part X Urban Release Area Controls – Schedule 1 West Yamba Urban Release Area (refer to Figure 5 and Figure 6) 	N

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 applicant has submitted an assessment under the SEPP and considered the provisions of Chapter 4 and identified the land as being suitable koala habitat due to the presence of koala food trees greater than 15% of the subject site. 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 and that there is no resident Koala population in the Yamba locality. It is therefore

deliberated that the proposed development does not contain core koala habitat and does not currently support a Koala population.

State Environmental Planning Policy (Housing) 2021

Chapter 3 – Part 8 – Manufactured Home Estates

Having considered the matters listed in s125 (1) of the Housing SEPP, Council is satisfied that the development is capable of being connected to essential services and that existing services have sufficient capacity to accommodate the demand of this development, with exception to the concerns raised by Essential Energy (discussed below). Community facilities within the development are sufficient to service this development and adequate transport services will be available in the wider urban release area. However, due to the lack of pedestrian connectivity to other parts of the urban release area and broader active transport network, the future residents will not have reasonable access to all facilities.

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 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 2: Coastal Management

The land is identified as being located within the coastal environment area and coastal use area of the SEPP, however the development footprint is only located in the coastal environment area.

Clause 2.10 states that development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- (b) coastal environmental values and natural coastal processes,*
- (c) the water quality of the marine estate (within the meaning of the [Marine Estate Management Act 2014](#)), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) Aboriginal cultural heritage, practices and places,*
- (g) the use of the surf zone.*

Comment

It is considered that the proposed development is likely to have an adverse impact on the hydrological and/or ecological environment due to insufficient information being provided as part of the BDAR and SWMP to demonstrate the proposal will not impact on the water quality or marine or native vegetation and will not impact on coastal environmental values or natural coastal processes.

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 the land is contaminated, 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, a Preliminary Site Investigation ('PSI') has been prepared for the site.

The development application provided Phase 1 Preliminary Investigation contamination documentation which recommended further detailed investigation and sampling on the vegetated eastern portion of the lot. 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 a residential accommodation use on 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.

State Environmental Planning Policy (Transport and Infrastructure) 2021

The application was referred under s 2.48(2)(b) of the SEPP T&I, given proximity to electrical infrastructure to the development. The proposed plans do not contain distances to high and low voltage electricity transmission lines in close proximity to the site therefore, Essential Energy remain unsatisfied that the potential safety risks due to close proximity to electrical infrastructure have been suitably addressed by the proponent.

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 inconsistent with these aims as it has not satisfactorily demonstrated that it will enable the sustainable development of the site, adequately protect areas of high ecological value and maintain the character of Yamba township.

Zoning and Permissibility (Part 2)

The site is located within the R1 General Residential, C3 Environmental Management and C2 Environmental Conservation zones pursuant to Clause 2.2 of the LEP – refer zoning map at **Error! Reference source not found.** below. The location of the development footprint is proposed to be within the R1 Zoned part of the site only.



Figure 5 Zoning Plan (Source: Council's Intramaps)

According to the definitions in Clause 4 (contained in the Dictionary), the proposal satisfies the definition of Manufactured Home Estate (MHE) which is not listed in the Land Use Table in Clause 2.3.

Pursuant to Clause 122 of the Housing SEPP, a MHE may be carried out with consent on land for which the purposes of a caravan park may be carried out. A caravan park is listed as permitted with consent in the Land Use Table in Clause 2.3 of the LEP for R1 zoned land. Therefore, the proposed development is permissible on the land.

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 development will provide for additional residential accommodation which will provide for the housing 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
Building Height (CI 4.3)	9m	The proposed height from existing ground level to the roof of the community facility is approximately 8.5m	Yes
Heritage Conservation (CI 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	<p>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.</p> <p>An Aboriginal Cultural Heritage Assessment has been considered as part of the application and there are no likely adverse impacts to any known significant places or Aboriginal practices expected from the development. The Everick Heritage Report report concluded that in consideration of the degree and history of disturbance across the project area, no Aboriginal sites will be impacted by the proposed works. as stated within the prepared for the application.</p>	Yes.

<p>Flood planning (CI 5.21)</p>	<p>(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 satisfied the development—</p> <ul style="list-style-type: none"> (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. 	<p>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) resulting in a minimum finished ground level of 3.0m AHD.</p> <p>The applicant has not demonstrated that the development is compatible with the flood function and behaviour on the land, and other requirements.</p> <p>Further, taking into account the PMF as applicable to the site when giving consideration to climate change, the proposed development and evacuation strategy for the site does not include an appropriate shelter in place facility should residents not be able to evacuate. It is therefore deliberated the proposed development would have an unreasonable impact on emergency services of the estate did require full scale evacuation.</p> <p>Refer to additional comments under the Key Issues Section.</p>	<p>No</p>
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Special Flood Considerations (CI 5.22)		The land is wholly affected by the 1% flood event therefore this clause does not apply to the land.	N/A.
Urban release areas (Part 6)	Satisfactory requirements are to be made for provision of infrastructure and preparation of a DCP including specific controls for the land.	Infrastructure is proposed to service the development and detailed requirements are likely to be able to be addressed by way of conditions of consent. The Clarence Valley Residential Zones DCP 2011 includes specific controls for development of the land. The development does not conform to the requirement of the DCP – refer comments below.	No
Acid sulfate soils (ASS) (CI 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 however it has not been prepared in accordance with the NSW Acid Sulfate Soils Manual.	No
Earthworks (CI 7.2)	<p>Development consent is required for earthworks on the site.</p> <p>(3) Before granting development consent for earthworks, the consent authority must consider the following matters—</p> <p>(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,</p> <p>(b) the effect of the proposed development on the likely future use or redevelopment of the land,</p>	<p>Filling on the site in relation to flooding impacts and impacts to drainage patterns has not been adequately addressed by the applicant.</p> <p>The geotechnical documentation fails to fully address and consider the increased volume of fill, the composition and source of clean cohesionless sands, the absence of groundwater impact assessment monitoring methodology and the anticipated but undetailed impacts on the watercourse.</p>	No

	(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, (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.		
Essential services (CI 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 development and detailed requirements could be addressed by way of conditions of consent.	Yes

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

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

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 a Preliminary Site Investigation for the development. Council's Environmental Officer reviewed the investigation and found that there are areas of the site that were not tested, requiring additional information from the applicant.

The proposal is generally consistent with these proposed instruments.

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

The *Clarence Valley Residential Zones Development Control Plan 2011* ('the DCP') is relevant to this application. The Key controls are discussed below. A full compliance table assessing the proposal against the provisions of the DCP is provided at **Attachment B**.

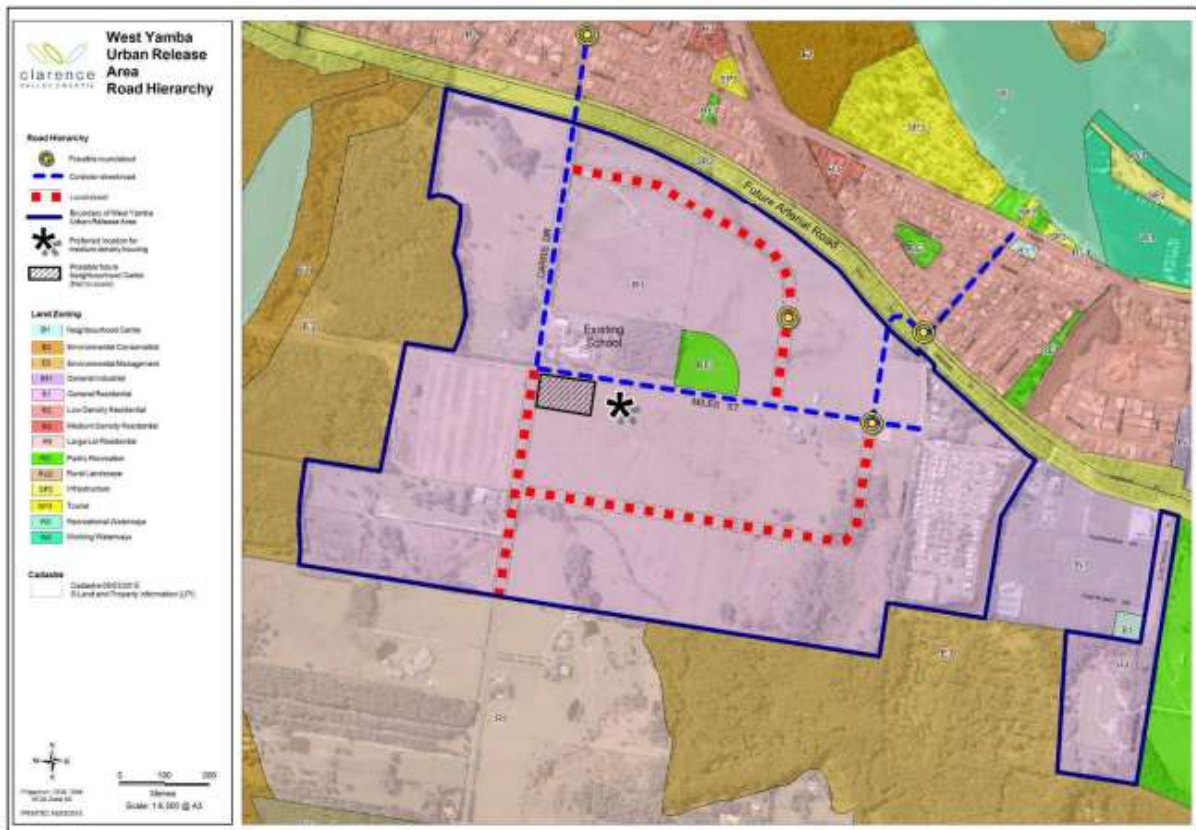


Figure 7 – Indicative road hierarchy plan (Source: Figure X1.2 extracted from Clarence Valley Residential Zones Development Control Plan).

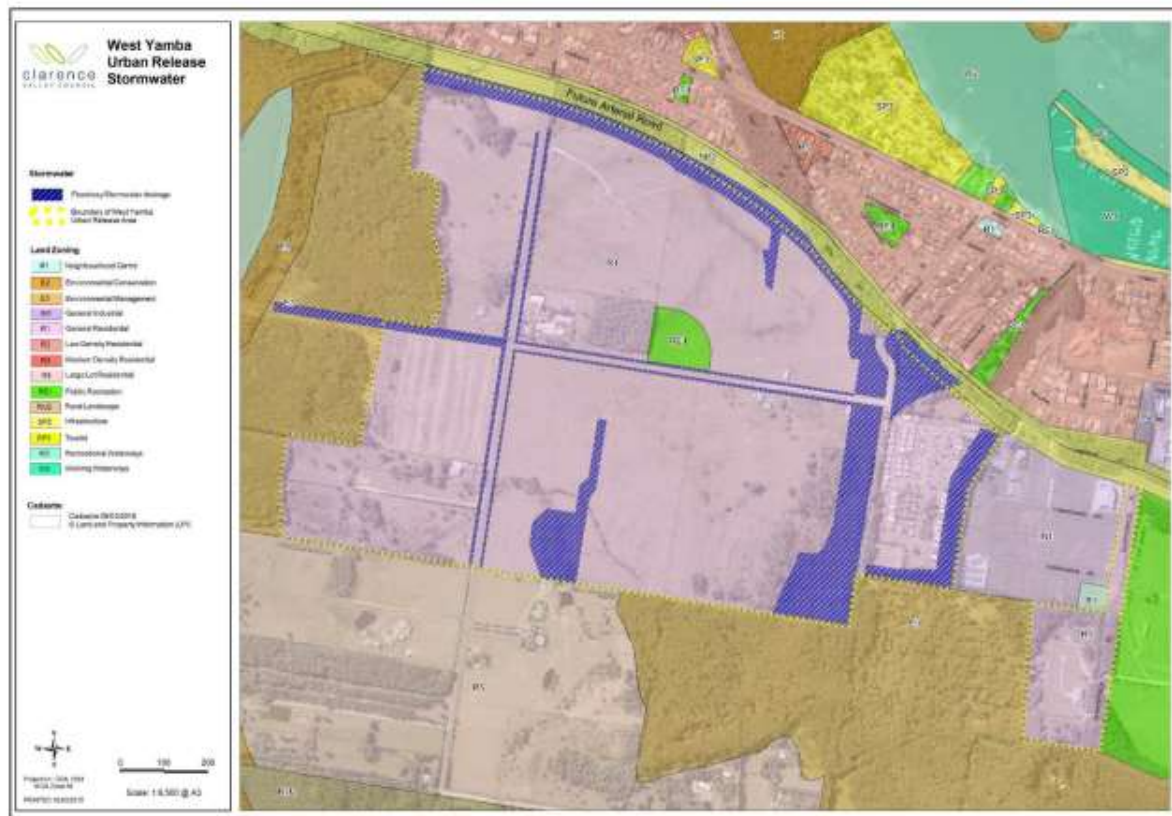


Figure 8 – Conceptual Stormwater Network Plan (Source: Figure X1.3 extracted from Clarence Valley Residential Zones Development Control Plan).

Key controls:

As detailed in the assessment tabled contained within Attachment B, there are a number of non compliances with the planning controls relevant to the site, namely Part D Floodplain Management Controls, Part H Sustainable Water Controls and Part X Urban Release Area controls which contain specific provisions for West Yamba.

Part D. Floodplain Management Controls

Refer to more detailed comments regarding impacts of the development under the Key Issues section of this report.

The Flood Impact Assessment submitted with the application shows there to be increases in flood velocities, flood levels, flood hazard and duration of inundation as a result of the development of WYURA in a range of events up to the PMF on land in close proximity to the development site. Some of these impacts may not be attributable to this development however the level of detail provided with the development application is insufficient and prevents Council's development engineers from undertaking a comprehensive evaluation in accordance with Council's engineering specifications and the respective provisions. Council is unable to grant consent unless provided with an updated Flood Evacuation Flood Emergency Management Plan which is to be undertaken in consultation with the NSW State Emergency Service.

Part H. Sustainable Water Controls

Refer to more detailed comments regarding impacts of the development under the Key Issues section of this report.

The Storm Water Management Plan inadequately addresses several key issues including the necessary upgrades to the Carrs Drive culverts and changes in upstream catchment configurations resulting from the proposed development. Additionally, it inaccurately assumes all existing catchments drain to the stream, fails to assess the impact of redirecting post-development flows to the stream, lacks details on managing water quality in OSD tanks, and fails to provide a maintenance plan for stormwater devices. In conclusion, there is insufficient information available for Council staff to accurately determine whether the existing hydrological and water quality conditions are maintained.

Part X Urban Release Area Controls

On balance, the proposed development is inconsistent with the prescriptive controls under Schedule 1 which relate to West Yamba. 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*, with little regard to this DCP resulting in a lack of diversity in housing provided on the site, character and amenity when considered in the broader context of West Yamba. 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. As detailed in the Key Issues section, Council is not satisfied that flooding, stormwater and biodiversity have been suitably addressed by the applicant.

Contributions Plans

The *Clarence Valley Council Contribution Plans, Clarence Valley Council Carrs Drive West Yamba Contributions Plan 2020 and Maclean Shire Council Yamba Urban Bypass and Urban Intersections 2000* are relevant to the application pursuant to Section 7.18 of the EP&A Act. The Contributions Plan has not been considered further as the proposal is recommended for refusal.

(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

The provisions of the EP&A Regulation 2021 have been considered and addressed in the assessment of the application (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 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. However, due to a number of inconsistencies with the planning controls, the proposal is incompatible with the context of the site. Impacts associated with the development have not been adequately addressed with regard to traffic, stormwater and flooding.
- **Access and traffic** – The TIA submitted does not consider wider impacts of the development on the road network, concept plans for external upgrades have not been provided and there is a lack of connectivity to external footpath network.
- **Public Domain** – No public open space is proposed within the development area and the proposal is an inward facing development with no public access to any facilities proposed. A lack of information has been provided to assess footpath design and pedestrian linkages throughout the development and with adjoining areas.
- **Utilities** – Utilities will be available for the site. Essential Energy has raised objections to the proposed development with regard to safety concerns which have not been adequately addressed by the applicant. Council at its meeting on 28 April 2020 resolved to enter into a Memorandum of Understanding with the relevant land developers for the cost of construction for the trunk water and sewer infrastructure to service the West Yamba Urban Release Area.
- **Heritage** – 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.

An Aboriginal cultural heritage has been considered as part of the application and there are no likely adverse impacts to any known significant places or Aboriginal practices expected from the development. The Everick Heritage Report report concluded that in consideration of the degree and history of disturbance across the project area, no Aboriginal sites will be impacted by the proposed works. as stated within the prepared for the application.

- **Water/air/soils impacts** - There is the potential for impacts to water, air and soil from construction impacts. These could be adequately mitigated by conditions of consent, for example through Soil and Erosion Control Plans, requirements for watering down of works areas and so on. The Stage 2 Site Contamination Assessment submitted with the application has not adequately tested the whole of the site for potential contamination. This is required to be carried out before DA approval can be given.
- **Flora and fauna impacts** - The BDAR has not satisfactorily addressed all necessary matters in relation to biodiversity. 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**). Further, the vegetation clearing required for the proposed development will result in significant impact for two threatened ecological communities and two listed endangered species.
- **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** – Although not mapped as bushfire prone land, Council considers there to be a bushfire risk on-site due to the presence of a large stand of vegetation which has not been addressed by the applicant.

The entirety of the site is affected by the 1 in 100 year flood level. Council is not satisfied that the subject development will not have an adverse impact on the surrounds as detailed in the Key Issues section of the report.

The site is classified as Acid Sulfate Soils Class 2. Accordingly, an ASS Management Plan has been prepared and provided with the application however it has not been prepared in accordance with the correct guidelines therefore this issue remains outstanding.

- **Social impact** – The development does not promote interactions between the new development area and the existing Yamba community. No common community facilities or future lot for local services are provided which would provide informal gathering places for all residents of the urban release area. The lack of provision for dedicated public open space within the development works against the provision of positive health outcomes for the community. The community and open space facilities within the development foster a sense of belonging within the community, however may limit interactions with all future residents and the community.
- **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 Yamba. There will also be indirect economic benefits for the businesses in the local area. A development of this scale has the potential to increase business investment in the area due to the increased population brought in.
- **Site design and internal 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 of diversity in housing provided on the site. The proposed development is mostly uniform in size, lacking in character and amenity. 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.

- **Construction** – It is considered that potential impacts from construction, such as dust, noise, and vibration, could be adequately mitigated by conditions of consent.
- **Cumulative impacts** – Given the residential developments already approved in the WYURA, including a 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 stage released 58 lots), there is potential for significant adverse cumulative impacts to result from the proposed development given its lack of consistency with the planning controls. In particular, the precautionary approach must be followed as the potential for cumulative flooding and/or stormwater management impacts are critical unresolved matters.

Accordingly, it is considered that the proposal will result in significant adverse impacts in the locality as outlined above.

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

Whilst it is acknowledged that the site is located within the WYURA which is currently undergoing a transition from a greenfield area to residential, the proposal is not considered to be suitable for the site as there are issues of concern with the existing proposal and a number of unresolved matters still to be addressed.

Due to the complexity of filling and flooding with regard to the site as discussed in other sections of the report, Council cannot determine that the site is suitable for the proposed development.

Servicing can be adequately provided, however there is insufficient information to determine the connectivity of the development to existing public transport and pedestrian networks. There is no open space provided in the proposed design. The site has been zoned for residential purposes, however the proposed development needs further consideration of site attributes to ensure that the development suits the site.

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 proposal is not considered to be in the public interest for the following reasons:

1. Potential impacts have not been adequately mitigated.
2. A number of aspects of the proposal are inconsistent with planning controls. The lack of open space provision and lack of connectivity with the Urban Release Area have negative impacts on sustainability and more dependence on cars because of the need to drive to off-site facilities. This increases the impacts of the proposal on climate change through greenhouse gas emissions.
3. The proposal is inconsistent with a number of planning controls, as discussed above.
4. While economic benefits would be provided by the development, beneficial social impacts are not demonstrated.

On balance the proposal is considered to be contrary to the public interest.

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.

The outstanding issues raised by Agencies are considered in the Key Issues section of this report.

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			
Electricity supply authority	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development near electrical infrastructure	Not satisfied that potential safety risks have been adequately addressed.	N
Department of Planning and Environment – Biodiversity, Conservation and Science Division	Referred under the <i>Biodiversity Conservation Act 2016</i> relating to Biodiversity Development Assessment Report.	The Biodiversity Development Assessment Report is to be revised. This requires additional information from the applicant.	No
Integrated Development (S 4.46 of the EP&A Act)			
Natural Resources Access Regulator	S91 – <i>Water Management Act 2000</i> 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.	Yes.

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	<p>Council's Engineering Officer reviewed the submitted information and does not support the application on the following grounds:</p> <ul style="list-style-type: none"> - Flooding – it has not been demonstrated that the proposed development will not result in adverse impacts in the locality - Stormwater – it has not been demonstrated that the development will not result in NorBe being met in the pre/post development scenarios for catchments on site, downstream and upstream of the development for water quality and quantity. - Traffic – the TIA submitted does not consider wider impacts of the development on the road network, concept plans for external upgrades have not been provided and lack of connectivity to external footpath network. - Earthworks – it has not been demonstrated that the proposed development will not have adverse impacts on nearby watercourses and the impact of filling has not been fully addressed. 	No
Building	No objections subject to recommended conditions.	Yes (conditions)
Environment Officer	Council's Environmental Officer reviewed the preliminary site contamination assessment and there are areas of the site that were not tested and require additional information from the applicant.	No
Public Health Officer	No objections subject to recommended conditions.	Yes (conditions)
Trade Waste	No objections subject to recommended conditions.	Yes (conditions)
Natural Resource Management	Council's Natural Resource Management Officer reviewed the Biodiversity Development Assessment Report and Vegetation Management Plan and requires additional information from the applicant.	No

The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

4.3 Community Consultation

The proposal was notified in accordance with the Council's Community Participation Plan from 14 March 2024 until 15 April 2024. The notification included the following:

- A sign placed on the site;
- Notification on the Council website and inclusion in Council's weekly newsletter;
- Notification letters sent to adjoining and adjacent properties (40 letters sent);

- Notification on the Council's website.

The Council received a total of 89 submissions, comprising 89 objections, 71 being form letters following a standard template and 18 being unique, individually written submissions and nil 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 not been satisfactorily addressed
Stormwater Submissions raised concerns about the impact of the development on stormwater.	Refer to detailed comments under Key Issues Section 5.2. Outcome: This issue has not been satisfactorily addressed
Biodiversity Submissions raised concerns about impacts to the natural environment including fauna and flora, wetlands and C3 zoned land.	Refer to detailed comments under Key Issues Section 5.3. Outcome: This issue has not been satisfactorily addressed
Climate change 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.
Flood Evacuation Submissions raised concern the development will adversely impact flood evacuation	Taking into account the PMF as applicable to the site when giving consideration to climate change, the proposed development and evacuation strategy for the site does not include an appropriate shelter in place facility should residents not be able to evacuate. It is therefore deliberated the proposed development would have an unreasonable impact on emergency services of the estate did require full scale evacuation.

	<p>There is no evidence that the Applicant has consulted with the State Emergency Services with respect to safe and orderly flood evacuation pursuant to Part D, Schedule D4, Evacuation of the Residential Zones DCP.</p> <p>Outcome: This issue has been not satisfactorily addressed</p>
Lack of masterplan for West Yamba	<p>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.</p> <p>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. The DCP provides for the overall masterplan/desired character of the WYURA and an assessment against these controls is within Attachment B.</p> <p>Outcome: This issue has been satisfactorily addressed.</p>
Urban Design	<p>The proposed development has been designed to be consistent with the <i>Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021</i>, however there is a lack consistency with Part X of the DCP 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.</p> <p>Outcome: This issue has not been satisfactorily addressed</p>
Traffic Submissions raised concerns about the impacts of the development on traffic.	<p>Council has not received sufficient information to assess impacts to traffic in terms of the broader network impacts associated with the proposal. The TIA has not assessed the capacity of the surrounding road network carriageway widths including Carrs Drive and Yamba Road. Provision of infrastructure and upgrades would need to be taken into account. Details provided in relation to construction traffic impacts are insufficient. A Bike Plan and Pedestrian Access and Mobility Plan has not been provided as required.</p> <p>Outcome: This issue has not been satisfactorily addressed.</p>
Construction Impacts	<p>It is considered that potential impacts from construction, such as dust, noise, and vibration, could be adequately mitigated by conditions of consent.</p> <p>Outcome: This issue has been satisfactorily addressed.</p>
Inconsistent with amenity/locality of Yamba	<p>Planning for population growth in Yamba began in the 1990s. Numerous environmental, social, economic, cultural and feasibility studies followed, combined with peer reviews and consultation with</p>

<p>Submissions raised concerns about negative impacts on Yamba's ambience, small village atmosphere, tourism and employment opportunities.</p>	<p>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.</p> <p>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 <i>Maclean Local Environmental Plan 2001</i>. 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.</p> <p>The <i>Maclean Local Environmental Plan 2001</i> 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 <i>Clarence Valley Local Environmental Plan 2011</i>, however specific controls to limit lot sizes or residential densities is not possible under the State Government's planning policy for urban growth areas. West Yamba's residential areas are now zoned R1 General Residential with objectives to provide for housing needs and diversity.</p> <p>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.</p> <p>Notwithstanding the above, the proposal is not considered to be in the public interest for a number of reasons. Potential impacts have not been adequately mitigated and a number of aspects of the proposal are inconsistent with planning controls as detailed in this report.</p>
<p>Council Submission</p>	<p><i>At its Council meeting held 23 July 2024, Council resolved to make a submission to the Panel as follows:</i></p> <p>COUNCIL RESOLUTION - 07.24.120b <i>That Council</i></p> <ol style="list-style-type: none"> <i>1. note that a public determination meeting for Development Application DA2023/0241 will be scheduled by the Northern Regional Planning Panel on the 20 or 21 August; and</i> <i>2. make a submission not supporting the DA on the grounds of extensive community concern evidenced by the 89 submissions which covered stormwater, the lack of a masterplan, lack of parkland, floodplain development issues, the impact on wildlife and biodiversity, flood evacuation, inadequate assessment of climate change impacts, impacts on St James School and other concerns.</i>

	3. Forward the submission within 7 days of the final planning panel report being submitted to the NRPP.
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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

Given the proposed extent of fill, the applicant has submitted a Flood Impact and Flood Evacuation Flood Emergency Management Plan to consider the impacts of the proposed development. A summary of impacts is as follows.

Scenario 1 – Filling completed pre 2022 plus filling at 120 Carrs Drive (development site)

Flood Level:

- In the 10% AEP event an increase in flood levels between 10 and 20 mm was observed at the adjacent lots to the north and south of the Study Site.
- Between the 5% AEP event up to and including the 0.2% AEP event there are no observed increases in flood level above 10mm.
- During the PMF event, the proposed development results in an increase in flood levels between 10 and 20 mm on the southern adjoining lots and a decrease of 10 to 20 mm in a larger area to the northeast of the Site.

Velocity:

- A localised increase in flow velocity between 0.1 m/s and 0.5 m/s is predicted along Carrs Drive, south of the Site for the 1% AEP Climate Change event.
- An increase in flow velocity between 0.1 m/s and 0.5 m/s is predicted in the southern and eastern adjacent lots to the Site, as well as along Carrs Drive, south of the Site for the PMF event.

Flood Hazard

- No increase in flood hazard category were observed for the 5% AEP event and up to the PMF event.
- Scattered increases in flood hazard from H1 (generally safe for people, vehicles and buildings) to H2 (unsafe for small vehicles) and H2 to H3 (unsafe for vehicles, children and the elderly) are observed within the adjacent lot to the south of the Site in the 10% AEP event.

Duration of inundation

- Increase in duration for 1% AEP event at the intersection of Miles and Carrs Drive.

Scenario 2 – Filling completed pre 2022 plus filling at 120 Carrs Drive (development site) and the WYURA

Flood Level:

- In the 10% AEP event a localised increase in flood level of between 10 mm and 20 mm is observed in the adjacent lots to the north and south.
- An increase in 10% AEP flood levels of 20mm is also observed in the drain located along the south-east boundary of Golding Street MHE – caused by WYURA filling.
- 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 comparison against Post-development Scenario 3 shows these impacts exist without the development of the Site.

- A localised increase in flood levels of 28mm is 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. A comparison against Post-development Scenario 3 shows these impacts exist without the development of the Site.
- An increase in 0.2% AEP flood levels of 13mm was observed on the property surrounding St James Catholic Primary School located at 87 Carrs Drive. The increase in 0.2% AEP flood levels mainly affected the property surrounding the school and did not affect the school building footprint - the flood hazard classification affecting the school did not change between the pre- and post-development scenarios.
- St James Catholic Primary School was also affected by an increase in flood levels of 24mm in the 1% AEP CC1 event. A comparison between the Post-development scenario 2 and scenario 3 (refer Figure 5.6 and Figure 5.7) indicate the change in flood level at this location is not influenced by the proposed development at the Study Site (i.e. at 120 Carrs Drive)

Velocity:

- Increases in flow velocity ranging between 0.1m/s and 0.3m/s were observed along the drain located on the northern boundary of the Yamba Parklands and Lot 18 DP1090409 & Lot 2 DP790910 developments in the 1% and 0.5% AEP events. A comparison against Post-development Scenario 3 shows these impacts exist without the development of the Site.
- An increase in flow velocity of 0.18m/s was observed along Carrs Drive in the section which was upgraded as part of the Yamba Parklands development in the 0.5%, 0.2%, 1% AEP CC1 and PMF events. However, no changes in flood hazard category affected this section of Carrs Drive between the pre- and post-development scenarios. A comparison against Post-development Scenario 3 shows these impacts exist without the development of the Site.
- An Increase in flow velocity up to 0.4 m/s along a section of Miles Street was observed in the 1% AEP CC1 and PMF events. However, this section of the road is affected by a reduction in flood hazard category from H4 in the pre-development scenario to H3 in the post-development scenario as the level of the road has increased resulting in a lower flood depth. A comparison against Post-development Scenario 3 shows these impacts exist without the development of the Site.

Hazard Level

- 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 comparison against Post-development Scenario 3 shows these impacts exist without the development of the Study Site.

Inundation

- An increase in duration of inundation of 15% was observed along Golding Street (P1) in the 1% AEP event. It is noted that the duration of inundation affecting this road in the pre-development conditions ranges between 48 and 60 hours. It is noted that this road is affected by flood hazard category H3 (i.e., unsafe for vehicles, children and the elderly) in both the pre- and post development scenarios. A comparison against Post-development Scenario 3 shows these impacts exist without the development of the Study Site.

In summary, the FIA submitted with the application shows there to be increases in flood velocities, flood levels, flood hazard and duration of inundation as a result of the development of WYURA in a range of events up to the PMF on land in close proximity to the development site. Some of these impacts may not be attributable to this development however the level of detail provided with the development application is insufficient and prevents Council's development engineers from undertaking a comprehensive evaluation in accordance with Council's engineering specifications and the respective provisions.

Council is unable to grant consent unless provided with an updated Flood Evacuation Flood Emergency Management Plan which is to be undertaken in consultation with the NSW State Emergency Service.

Resolution: The issue has not been resolved.

5.2 Stormwater

A Stormwater Management Plan and Downstream Drainage Assessment was submitted with the DA which details treatment/management of stormwater as follows:

A conventional stormwater pit and pipe system drainage network will be provided to convey minor system flows up to the 1 in 5- year event with larger flows, up to the 1 in 100 year event, conveyed via overland flow paths contained within the V profile concrete pavements. All flows will be directed to a number of stormwater bio basins and buried infiltration tanks (Atlantis Flo Tank or equivalent) situated at the southern and western extents of the development. All of these detention and treatment devices discharge via a controlled outlet to the existing second order stream location along the Southern boundary of the site.

Bio basins and buried infiltration tanks positioned adjacent the existing second order stream will be located in the outer 50% of the dedicated riparian corridor. Use of this area for stormwater detention is permissible under a controlled activity approval..... The basins and infiltration tanks will both serve a dual purpose of providing stormwater detention and treatment functions. Open basins will incorporate both a low flow piped outlet arrangement as well as a high flow weir to limit post development flows to the predeveloped rates. Buried infiltration tanks will be provided with both a low and high flow outlet pipe, which again have been designed to achieve predevelopment discharge rates.

Analysis of upstream excludes post development stormwater configuration at 52-54 Miles Street therefore the upstream catchment has not been appropriately considered regarding changes to discharge. The current SWMP assumes all existing catchments will drain to the stream which would not be accurate – the proposal then redirects most of the post development catchment to the stream (excluding batters). There is discrepancy with peak discharge from OSD tank 2 between DRAINS and SWMP Report. Carrs Drive Culvert at frontage of site requires upgrade to 4 x 1200mm x 450mm box culverts. Maintenance and management plan/details for the stormwater devices has not been provided in the Stormwater Management Plan.

The Storm Water Management Plan inadequately addresses several key issues including the necessary upgrades to the Carrs Drive culverts and changes in upstream catchment configurations resulting from the proposed development. Additionally, it inaccurately assumes all existing catchments drain to the stream, fails to assess the impact of redirecting post-development flows to the stream, lacks details on managing water quality in OSD tanks, and fails to provide a maintenance plan for stormwater devices. In conclusion, there is

insufficient information available for Council staff to accurately determine whether the existing hydrological and water quality conditions are maintained.

Resolution: The issue has not been resolved.

5.3 Biodiversity

A Biodiversity Development Assessment Report (BDAR), dated February, was submitted with the application. The proposed development seeks consent to remove 8.3hecatres of native vegetation in varying states of condition. The BDAR states the following:

Plot-based vegetation surveys identified four Plant Community Types across the site, as defined under the legacy classification, three of which occur within the development footprint. Two Plant Community Types recorded within the development footprint are associated with Threatened Ecological Communities listed under the NSW Biodiversity Conservation Act 2016 and Commonwealth Environment Protection and Biodiversity Conservation Act 1999... Coastal Swamp Sclerophyll Forest and Coastal Swamp Oak..... Impacts on vegetation comprising Paperbark swamp forest of the coastal lowlands of the NSW north coast and Sydney Basin bioregion (legacy Plant Community Type 1064) and Swamp oak swamp forest of the coastal lowlands of the NSW north coast bioregion (legacy Plant Community Type 1235) generate an offset requirement of 224 ecosystem credits.

Five candidate threatened species, comprising the squirrel glider, three microbat species and the grey-headed flying fox were detected on the site during surveys. Assessment of habitat suitability for threatened species, along with targeted flora and fauna surveys undertaken between September 2021 to January 2024, identified two threatened candidate species (squirrel glider recorded during surveys and eastern [common] planigale assumed present) generating a total offset requirement of 358 species credits. Habitat constraints were determined not to be present for the three species of microbat and the grey-headed flying fox and therefore did not generate species credit offset requirements.

The BDAR was also referred to the Department of Planning and Environment – Biodiversity, Conservation and Science Division and Council’s Natural Resource Management Officer reviewed the BDAR and Vegetation Management Plan and identified that the BDAR has not assessed all impacts associated with the proposed development.

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**).

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.

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).

The Applicant has not demonstrated that the proposed development complies with Objective O4 of Part X - Section 4 of the Residential Zones DCP:

Strategies and measures will be needed providing for the protection of EECs and the retention of good condition native vegetation....

O4. Plan, develop, rehabilitate and revegetate native communities and areas of biodiversity significance and enhance their preservation through Vegetation Management Plan/s (VMPs).

The Vegetation Management Plan has not been prepared to a level of detail to the satisfaction of the consent authority and inadequately addresses the following matters:

- (a) Tree and root protection during construction including adequate fencing to protect vegetation from excavating equipment.
- (b) The requirement that a Controlled Activity Approval be obtained prior to works commencing.
- (c) The need for local provenance plants to be used to revegetate the riparian zone, and only species specific to the TEC's are to be planted in this zone.

In conclusion, 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.

Resolution: The issue has not been resolved.

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 cannot be supported.

Key outstanding issues include flooding impact, particularly in relation to the filling proposed for the site. The stormwater arrangements for the site have also not been resolved including capacity of the downstream drainage systems. The BDAR and Vegetation Management Plan have not adequately identified and mapped plant community types on-site. A number of urban design issues have not been resolved, including lack of open space, pedestrian access and mobility.

The site is not considered to be suitable for the proposal and it is not compatible with the locality in its current form.

It is considered that the key issues as outlined in Section 5 have not been resolved satisfactorily through amendments to the proposal.

7. RECOMMENDATION

That the Development Application DA2023/0241 for a 216 Dwelling Manufactured Home Estate and Communal Facilities at Lot 32 DP 1280863 and Lot 2 DP 733507 being No. 110 and 120 Carrs Drive Yamba NSW 2464 be refused pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979* subject to the reasons for refusal attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Draft reasons for refusal
- Attachment B: Tables of Compliance
- Attachment C: Statement of Environmental Effects prepared by Catalyze Property Consulting Pty Ltd February 2024
- Attachment D: Amended Architectural Plans for Community Facility, prepared by Mark Shapiro Architects, revision C (19 February 2024)
- Attachment E: Civil Drawings, prepared by Manage Design Engineer Pty Ltd (Revision 1) (19 February 2024)
- Attachment F: Community Amenities Area Calculation Table and Staging Plan, Sheet 1 of 1 (Drawing no. SK01), prepared by MDE (issue 0) (15 February 2024)
- Attachment G: Statement of Landscape Intent, prepared by Zone Landscape Architecture (revision E) (15 February 2024)
- Attachment H: Acid Sulfate Soil Investigation Management Plan, prepared by Precise Environmental Consulting Environmental Scientists (version 1.1) (21 February 2024)
- Attachment I: Biodiversity Development Assessment Report, prepared by Ecosure (version R6) (23 February 2024)
- Attachment J: Response prepared by Ecosure addressing comments from Department of Planning and Environment – Biodiversity and Conservation Division (February 2024)
- Attachment K: Vegetation Management Plan, prepared by Ecosure (version 03) (February 2024)
- Attachment L: Supplementary Report relating to *State Environmental Planning Policy (Biodiversity and Conservation) 2021*, prepared by Ecosure (version 01) (20 February 2024)
- Attachment M: Flood Impact Assessment Report (version 02), prepared by BMT (20 February 2024)
- Attachment N: Supplementary letter prepared by BMT (28 February 2024)
- Attachment O: Flood Risk Assessment and Flood Emergency Response Plan (issue 1), prepared by Martens (20 February 2024)
- Attachment P: Traffic Impact Assessment (version 003), prepared by Bitzios Consulting (5 September 2023)
- Attachment Q: Stormwater Management Plan, prepared by Manage Design Engineer Pty Ltd (revision 1) (31 January 2024)
- Attachment R: Earthworks Management Plan, prepared by Manage Design Engineer Pty Ltd (revision 1) (23 January 2024)
- Attachment S: Staged Soil and Water Management Plan, prepared by Manage Design Engineer Pty Ltd (revision 0) (31 January 2024)
- Attachment T: Stormwater Management Inspection and Maintenance Plan, prepared by Manage Design Engineer Pty Ltd (revision 0) (23 January 2024)
- Attachment U: Portable Water Supply Service Assessment, prepared by H2ONE (version 1) (8 November 2023)
- Attachment V: Pressure Sewer System Design Summary Report, prepared by Aquatec (revision 0) (11 August 2023)
- Attachment W: Essential Energy – Overhead Conductor Blowout Model, prepared by D&K Pruss Design (revision A) (19 July 2023)

- Attachment X: Clifton Yamba House Plans prepared by Cyber Drafting and Design (26 April 2022 and 3 May 2022)
- Attachment Y: Preliminary Site Investigation Revision 2 prepared by Easterly Point Environmental (15 August 2022)
- Attachment Z: Infrastructure and Servicing Strategy prepared by Manage Design Engineer Pty Ltd (6 September 2022)
- Attachment AA: Social Impact Assessment prepared by James Marshall & Co (October 2022)
- Attachment BB: Preliminary Geotechnical Investigation Report prepared by Geotech Investigations Pty Ltd (20 May 2022)
- Attachment CC: Crime Prevention through Environmental Design Report prepared by James Marshall & Co (September 2022)
- Attachment DD: Aboriginal Cultural Heritage Assessment prepared by Everick Heritage (Version 5) (17 May 2022)