



Land and Environment Court  
New South Wales

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Case Name: Clifton Yamba Land Pty Ltd as Trustee for Yamba Land Trust v Clarence Valley Council

Medium Neutral Citation: [2025] NSWLEC 1406

Hearing Date(s): Conciliation conference on 17 July 2024

Date of Orders: 06 June 2025

Decision Date: 6 June 2025

Jurisdiction: Class 1

Before: Washington C

Decision: The Court orders:  
(1) The clause 4.6 request prepared by Catalyze Planning dated October 2024 to vary the Height of buildings development standard pursuant to Clarence Valley Local Environmental Plan 2011 clause 4.3, is upheld.  
(2) The appeal is upheld.  
(3) Development consent is granted to Development Application No. 2023/0241 for a 146 dwelling manufactured home estate with ancillary communal building and facilities, vehicle parking, tree removal, earthworks and civil works at 110 and 120 Carrs Drive, Yamba NSW (Lot 32 in DP 1280863 and Lot 2 in DP 733507), subject to the conditions set out in Annexure A.

Catchwords: DEVELOPMENT APPLICATION – manufactured home estate – conciliation conference – agreement between the parties – orders

Legislation Cited: Biodiversity Conservation Act 2016, pt 6, ss 7.7, 7.13  
Environmental Planning and Assessment Act 1979, ss 4.5, 4.16, 4.46, 8.7  
Land and Environment Court Act 1979, ss 34, 39

Water Management Act 2000, s 91

Biodiversity Conservation Regulation 2017, ss 6.8, 7.1

Clarence Valley Local Environmental Plan 2011, cl 4.3,  
4.6, 5.21, 5.22, 6.2, 6.3, 7.1, 7.8

Environmental Planning and Assessment Regulation  
2021, s 38

State Environmental Planning Policy (Biodiversity and  
Conservation) 2021, s 4.9

State Environmental Planning Policy (Housing) 2021, Pt  
8, ss 122, 125

State Environmental Planning Policy (Resilience and  
Hazards) 2021, Ch 2, ss 2.10, 4.6

State Environmental Planning Policy (Transport and  
Infrastructure) 2021, s 2.48

**Texts Cited:**

Clarence Valley Community Participation Plan 2022  
Clarence Valley Residential Zones Development  
Control Plan 2011

**Category:**

Principal judgment

**Parties:**

Clifton Yamba Land Pty Ltd as Trustee for Yamba Land  
Trust (Applicant)  
Clarence Valley Council (Respondent)

**Representation:**

Counsel:  
I Hemmings SC (Applicant)  
M Cottom (Solicitor) (Respondent)

Solicitors:  
Allens (Applicant)  
Local Government Legal (Respondent)

**File Number(s):**

2023/453140

**Publication Restriction:**

No

## **JUDGMENT**

- 1 **COMMISSIONER:** These Class 1 proceedings arise as a result of the deemed refusal, by Clarence Valley Council, of Development Application DA2023/0241. This application seeks consent for a 216 dwelling manufactured home estate with ancillary communal building and facilities, car parking, tree removal and

civil works at 110 and 120 Carrs Drive, Yamba, Lot 32 in DP 1280863 and Lot 2 in DP 733507.

- 2 These proceedings have been brought to the Court pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act).
- 3 The Court arranged a conciliation conference under s 34(1) of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on 2 June 2025.
- 4 At the conciliation conference, the parties reached agreement as to acceptable terms of a decision in the proceedings. This decision involved the Court upholding the appeal and granting development consent to the development application subject to conditions. As the application is declared to be a regionally significant development pursuant to s 4.5(b) of the EPA Act, the Council is subject to the control and direction of the Northern Regional Planning Panel.
- 5 With leave of the Court, the development application was amended twice in March and December 2024. Further, in this conciliation conference, pursuant to s 38 of the Environmental Planning and Assessment Regulation 2021, the Council agreed to the applicant further amending the development application a third time to resolve the Council's contentions. Subsequently, the application that is now before the Court (the proposed development) seeks consent for:
  - (1) A 146 dwelling manufactured home estate;
  - (2) A communal building, including lounge, cinema, craft room, games room, gym and multi-purpose spaces;
  - (3) 41 visitor parking spaces and vehicle wash down bays
  - (4) Communal facilities including a swimming pool, bowling green and 8 RV storage spaces;
  - (5) Tree removal; and
  - (6) Earthworks and civil works.
- 6 Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision if that decision is one that the Court could have made in the proper exercise of its functions. The parties' decision involves the Court exercising the function under s 4.16 of the EPA Act to grant consent to the

development application, however there are jurisdictional prerequisites that must be satisfied before this function can be exercised. The parties have identified and explained how the relevant prerequisites have been satisfied, and from this I note the following points.

### **Jurisdictional matters**

- 7 The development application was made with the written consent of the owner of the land.
- 8 The proposed development is integrated development pursuant to s 4.46 of the EPA Act as it requires a controlled activity approval under s 91 of the *Water Management Act 2000* (NSW). General Terms of Approval (GTAs) have been issued for the application as amended in March 2024, and the parties submit, and I accept that the proposed development is consistent with those GTAs, which are referred to in the agreed conditions of consent. Pursuant to s 39(6)(a) of the LEC Act, the Court has power to grant consent to the proposed development without the provision of further GTAs.
- 9 The proposed development exceeds the threshold of native vegetation clearing under s 7.1(1)(a) of the Biodiversity Conservation Regulation 2017 (BC Regulation), and therefore the biodiversity offset scheme threshold is triggered under the *Biodiversity Conservation Act 2016* (BC Act). Accordingly, under s 7.7 of the BC Act, a Biodiversity Development Assessment Report (BDAR), prepared in accordance with Div 3 of Pt 6 of the BC Act and s 6.8 of the BC Regulation accompanies the application. Pursuant to s 7.13 of the BC Act, the consent authority is to take into consideration the likely impact of the proposed development on biodiversity values as assessed in the BDAR. From the BDAR, the parties' submission, the amended application and the agreed conditions of consent, I accept that the likely impacts of the proposed development on biodiversity values have been considered, that no serious and irreversible impacts on biodiversity values were identified, and that adequate biodiversity credits will be retired to offset the residual impact on biodiversity values, meeting the requirements of the BC Act.
- 10 As the site is within the Clarence Valley Council local government area and is not subject to any approved Koala Plan of Management, s 4.9 of the State

Environmental Planning Policy (Biodiversity and Conservation) 2021 applies to the site. A Koala Assessment Report by Ecosure dated 20/02/2024 accompanies the application, and confirms that the site does not contain core koala habitat and accordingly that the provisions of this section are met.

- 11 The subject site is zoned R1 General Residential under the Clarence Valley Local Environmental Plan 2011 (CVLEP), within which development for the purposes of a caravan park is permissible with consent. Pursuant to s 122 of the State Environmental Planning Policy (Housing) 2021 (Housing SEPP), development for the purposes of a manufactured home estate may be carried out pursuant to Pt 8 on any land on which development for the purposes of a caravan park may be carried out. The proposed development is therefore permissible with consent.
- 12 From the parties' submissions and the information contained in the Statement of Environmental Effects by Catalyze Property Consulting Pty Ltd dated 5 December 2024 (the SEE), I accept that the matter listed at s 125(2) have been considered, and that the development meets the requirements of s 125(1) of the Housing SEPP.
- 13 The site is mapped as being within the coastal zone, and therefore Ch 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP RH) applies. The part of the land upon which the development is proposed is mapped as 'coastal environment area'. From the information contained in the amended application and the parties' submission, I accept that the consent authority has considered whether the proposed development is likely to cause an adverse impact on the items listed at s 2.10(1). I further accept that the proposed development is designed, sited and will be managed to avoid an adverse impact on any of the matters listed in 2.10(1), and that where those adverse impacts cannot be avoided, the applicant has incorporated measures to minimise or mitigate those impacts (s 2.10(2)).
- 14 Section 4.6 of the SEPP RH requires the consent authority to consider whether the site is contaminated, and if so, whether it is or will be made suitable for the intended use. From the geotechnical investigations by Geotech Investigations Pty Ltd; the Preliminary Site Investigation, Detailed Site Investigation and

Remediation Action Plan by Easterly Point Environmental; the conditions of consent, and; the parties' submission, I accept that the site can be made suitable for the intended use.

- 15 Pursuant to s 2.48 of the State Environmental Planning Policy (Transport and Infrastructure) 2021, the parties submit, and I accept, that the consent authority has given written notice to the electricity supply authority and has incorporated the received comments into the conditions of consent.
- 16 Pursuant to CVLEP cl 4.3, a maximum building height of 9m applies to the subject site. The proposed development exceeds this development standard with a maximum height of 10.216m.
- 17 As a result of the building height, cl 4.6(3) of the CVLEP allows the applicants to request a contravention of this development standard through the submission of a written request. This document must demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify the contravention. To that end, the applicants have submitted a request prepared by Catalyze Property Consulting Pty Ltd dated October 2024 (cl 4.6 request). Pursuant to CVLEP cl 4.6, I am satisfied that:
  - (1) The cl 4.6 request demonstrates that compliance with the height of building standard is unreasonable and unnecessary because the proposal complies with the relevant objectives of the R1 General Residential Zone and the development standard notwithstanding the non-compliance.
  - (2) The Height of Building cl 4.6 request establishes sufficient environmental planning grounds to justify contravening the development standard by demonstrating that the breach of the height limit is the result of the provision of an upper level to the community centre to facilitate an accessible last-resort flood refuge for residents in the event of a major flood. The breach will not result in any adverse amenity impacts.
- 18 The site located within the flood planning area. From the SEE, the Flood Risk Assessment and Flood Emergency Response Plan by Martens Consulting dated 24 March 2025, I accept that the flood planning matters set out in CVLEP cl 5.21(3) have been considered, and the matters set out in cl 5.21(2)

are satisfied. The special flood considerations at cl 5.22 do not apply to the development.

- 19 Pursuant to CVLEP cll 6.2 and 7.8, from the amended application, the relevant conditions of consent and the parties' submission I accept that the provision of both public utility infrastructure and essential services, including: the supply of water and electricity; disposal and management of sewage; stormwater drainage or on-site conservation, and; suitable road access, will be provided as necessary.
- 20 CVLEP cl 6.3 requires that consent must not be granted to the proposed development unless a development control plan that provides for the matters specified in the clause has been prepared for the land. Part X – Urban Release Area Controls in the Clarence Valley Residential Zones Development Control Plan 2011 meets this requirement.
- 21 Pursuant to CVLEP cl 7.1, the site is identified as Class 2 on the Acid Sulfate Soils Map. An Acid Sulfate Soils Management Plan by Precise Environmental Consulting dated 1 November 2024 has been provided, and compliance with this plan is required by the conditions of consent.
- 22 From the information contained in the amended application and the parties' submission, I accept that the earthworks-related matters listed in CVLEP cl 6.2 have been considered, and the earthworks of the proposed development are acceptable.
- 23 The application was adequately notified in accordance with the Clarence Valley Community Participation Plan 2022, firstly from 14 March 2024, and again in response to amendments to the application from 13 January 2025. 89 submissions were received in response to the first notification and 224 submissions in response to the second. Based on the amended application, the parties have provided a comprehensive response to these submissions and from this, I accept that the development as amended adequately responds to the concerns raised in these submissions.

## Conclusion

- 24 For these reasons, I am satisfied that the parties' decision is one that the Court could have made in the proper exercise of its functions, as required by s 34(3) of the LEC Act and subsequently, I am required under s 34(3) of the LEC Act to dispose of the proceedings in accordance with the parties' decision.
- 25 The Court notes:
- (1) Clarence Valley Council, under the control and direction of the Northern Regional Planning Panel has agreed, pursuant to s 38(1) of the Environmental Planning and Assessment Regulation 2021, to the applicant further amending Development Application No. 2023/0241 to rely on the documents listed below:
    - (a) Biodiversity Development Assessment Report prepared by Ecosure (Revision 13), dated 8 April 2025; and
    - (b) Flood Risk Assessment and Flood Emergency Response Plan prepared by Martens Consulting (Issue 5) dated 24 March 2025.
- 26 The Court orders:
- (1) The clause 4.6 request prepared by Catalyze Planning dated October 2024 to vary the clause 4.3 (Height of buildings) development standard of the Clarence Valley Local Environmental Plan 2011, is upheld.
  - (2) The appeal is upheld.
  - (3) Development consent is granted to Development Application No. 2023/0241 for a 146 dwelling manufactured home estate with ancillary communal building and facilities, vehicle parking, tree removal, earthworks and civil works at 110 and 120 Carrs Drive, Yamba NSW (Lot 32 in DP 1280863 and Lot 2 in DP 733507), subject to the conditions set out in Annexure A.

## E Washington

### Commissioner of the Court

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Annexure A.1.52 MB.pdf

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