

<b>DATE OF DETERMINATION</b>	17 June 2024
<b>DATE OF PANEL DECISION</b>	16 June 2024
<b>DATE OF PANEL MEETING</b>	11 June 2024
<b>PANEL MEMBERS</b>	Michael Wright (Chair), Stephen Gow, Penny Holloway and Ian Tiley
<b>APOLOGIES</b>	Dianne Leeson and Peter Johnstone
<b>DECLARATIONS OF INTEREST</b>	Greg Clancy declared a conflict of duties as he voted on a DA relating to the importation of fill to this site. He did not participate in the meeting.

Public meeting held by teleconference on 11 June 2024, opened at 10.00am and closed at 11.55am.

### **MATTER DETERMINED**

PPSNTH-195 – Clarence Valley – SUB2023/0001 at 52-54 Miles Street, Yamba – 284 lot subdivision - (277 low density residential lots, 1 medium density residential development lot, 1 commercial development lot, 1 low density development lot, 3 drainage reserve lots, 1 open space reserve lot) (as described in Schedule 1).

### **PANEL CONSIDERATION AND DECISION**

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspection listed at item 8 in Schedule 1.

The Panel notes that the 2022 NSW Independent Flood Inquiry found that:

- “using the 1% AEP for calculation of the flood planning level for planning purposes in NSW is not adequate, especially in the light of changing rainfall patterns”, and that “to understand risk, especially for major flooding events, knowledge of floods at a catchment-wide scale is needed”

The Panel also notes that the Inquiry recommended that:

- “in working out a tolerable risk-based flood planning level, consideration should be given to the PMF, 1% AEP, 0.02% AEP, existing development, approved but not yet constructed development, and existing and approved but not yet constructed evacuation routes”
- “Ministerial Directions on hazards and natural disasters are updated to reflect the new risk-based approach to flood planning levels”

The Panel is also mindful of the recently released Planning Circular PS 24-001, which recommends “applying a risk-based approach when addressing flooding in planning decisions” and that this “should take into account the flood risk profile of each proposal which considers the flood characteristics of the location, the nature and type of development and any impacts on the existing community and surrounding properties.” PS 24-001 also states that in determining the flood risk profile consideration should be given to a number of matters including:

- whether the proposal provides for safe occupation and efficient and effective evacuation in flood events and how it is to be achieved
- in high-risk catchments, whether the proposal is likely to result in a significant increase to the risk to life in other parts of the catchment in a PMF flood
- any known evacuation constraints
- whether there may be adverse flooding impacts on surrounding properties
- potential impacts of cut and fill and other building works on flood behaviour

PS 24-001 goes on to state that these matters should be considered across a range of flood scenarios for high-risk proposals including the PMF event.

The Panel has approached its consideration of the proposal through the risk-based lens recommended for adoption by consent authorities in PS 24-001. The Panel is of the view that, in the context of PS 24-001, the proposed development has an elevated risk profile in a “high-risk catchment” and should ideally be considered against more extreme flood events including the PMF event.

However, Clarence Valley Council has advised the Panel that given this DA was submitted in January 2023, under the applicable LEP provisions the proponent is only required to consider the proposed development against a 1% AEP flood. Accordingly, the proposed minimum finished surface level for the project is based on a modelled 1% AEP flood event with allowance for climate change.

Nevertheless, the Panel notes that in more extreme flood events (refer SEE “Extreme: 7.2m AHD (previously 3.8m AHD)”) future residential development in the proposed subdivision, even with a design freeboard, would be inundated. Permissible residential development on the land may include sensitive uses such as group homes and seniors housing now defined for heightened attention in extreme flood events under PS24-001.

The Panel remains concerned about potential impacts to life and property for the modelled 1% AEP flood event, and even more so for more extreme flood events up to the PMF event. This has provided important context for the Panel’s consideration of whether the proposal provides for “safe occupation and efficient and effective evacuation in flood events” as per PS 24-001.

#### **Development application**

The Panel determined to refuse the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was 3:1 in favour, against the decision was Penny Holloway.

#### **REASONS FOR THE DECISION**

The Panel determined to refuse the application for the following reasons:

1. The proposed development relies upon significant additional filling of the subject site. There is some discrepancy between the assessment report and the submitted application documents in relation to the intended minimum finished surface levels. Insufficient information was evident as to the quantity of additional (not yet approved) fill material, an approved source for this and the required method of transport to the site. Accordingly, the Panel could not be satisfied as to the environmental and amenity impacts of this required filling activity as part of the project, having regard to the provisions of cls. 5.21(2)(e) and 7.2 of the Clarence Valley LEP 2011 and s.4.15(1)(b) of the Environmental Planning and Assessment Act 1979.
2. The site is in a high-risk flood catchment, where flood planning is in transition. The proposed residential subdivision would necessitate evacuation in major flood events and is not intended to provide a flood refuge for residents who may otherwise be isolated for significant periods of time. Some of these are likely to be vulnerable persons.

Mindful of the need to apply a precautionary, risk-based approach to the determination of development applications in flood-affected locations, the Panel did not have evidence that there would be adequate capacity or facilities for additional evacuees in safe evacuation centres. Nor did the SES email response to the proposal provided to the Panel address this issue or its capacity to support an evacuation of this subdivision, only noting that the warning triggers for evacuation in the applicants' Flood Evacuation Plan were consistent with those in the local Flood Emergency sub-Plan. Accordingly, the Panel was not sufficiently satisfied in relation to safe evacuation measures for the purposes of cls. 5.21 of the Clarence Valley LEP 2011 and having regard to s.4.15(1)(b), (c) and (e) of

the Environmental Planning and Assessment Act 1979.

3. Having regard to s.4.15(1)(d) of the Environmental Planning and Assessment Act 1979, the Panel has also noted the level of community concern and anxiety about flooding issues and associated insurance costs, the complexities of riverine and stormwater flood impacts, as well as problems experienced with flood warning, evacuation and potential resident isolation in Yamba.
4. The Panel was not satisfied that an adequate Acid Sulphate Soils Management Plan for the development had been supplied to the Council, as required under cls. 7.1(3) of the Clarence Valley LEP 2011, noting that Council had required such a Plan to be submitted as a condition of any consent.

Accordingly, the Panel was not satisfied that the granting of consent would be in the public interest, having regard to s.4.15(1)(e) of the Environmental Planning and Assessment Act 1979.

Penny Holloway disagreed with the majority decision for the following reasons:

- The proposed development is located within the West Yamba Urban Release Area (WYURA). The site is zoned R1 General Residential in *Clarence Valley Local Environmental Plan 2011* and the proposed development is permissible with consent.
- The proposed development satisfactorily addresses the key issues of urban design, flooding, stormwater and biodiversity.
- Flood management measures proposed within and external to the site have been verified as satisfactory through independent review. Flood modelling has demonstrated that the proposed development will 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.
- The proposed design of the subdivision is generally consistent with the objectives and prescriptive controls of the *Clarence Valley Residential Zones Development Control Plan 2011 (DCP)*.
- The proposed Stormwater Management Plan has been deemed to demonstrate that the targets set in the DCP can be achieved.
- The Biodiversity Development Assessment Report and Vegetation Management Plan for retention of existing vegetation have been deemed satisfactory.
- The NSW Rural Fire Service granted their General Terms of Approval to address bushfire risk applicable to the site and development.
- The Department of Planning and Environment – Water granted General Terms of Approval for works on waterfront land (within 40m of a natural watercourse) and filling in of a Class 1 Stream.

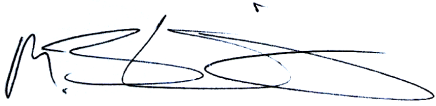
#### **CONSIDERATION OF COMMUNITY VIEWS**

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from all those wishing to address the Panel. The Panel notes that issues of concern included:

- Stormwater drainage
- Flooding and Flood evacuation
- Impacts associated with climate change
- Urban Design
- Impacts to biodiversity and natural environment
- Filling of land
- Infrastructure and services
- Environmental impacts associated with dredging
- Impact on town amenity

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report and that no new issues requiring assessment were raised during the public meeting.

**PANEL MEMBERS**



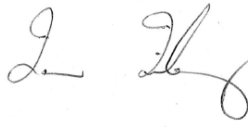
Michael Wright (Chair)



Stephen Gow



Penny Holloway



Ian Tiley

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSNTH-195 – Clarence Valley – SUB2023/001
2	PROPOSED DEVELOPMENT	284 lot subdivision - (277 low density residential lots, 1 medium density residential development lot, 1 commercial development lot, 1 low density development lot, 3 drainage reserve lots, 1 open space reserve lot)
3	STREET ADDRESS	52-54 Miles Street, Yamba
4	APPLICANT/OWNER	Garrard Building Pty Ltd Kahuna No 1 Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>• Environmental planning instruments: <ul style="list-style-type: none"> <li>○ Environmental Planning and Assessment Act, 1979</li> <li>○ Water Management Act, 2000</li> <li>○ Rural Fires Act, 1997</li> <li>○ State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>○ State Environmental Planning Policy (Planning Systems) 2021</li> <li>○ State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>○ Clarence Valley Local Environmental Plan 2011</li> </ul> </li> <li>• Draft environmental planning instruments: Draft Remediation of Land SEPP</li> <li>• Development control plans: <ul style="list-style-type: none"> <li>○ Clarence Valley Council Residential Zones Development Control Plan</li> </ul> </li> <li>• Planning agreements: Nil</li> <li>• Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</i></li> <li>• Coastal zone management plan: Nil</li> <li>• The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>• The suitability of the site for the development</li> <li>• Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>• The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>• Council Assessment Report: 1 June 2024</li> <li>• Written submissions during public exhibition: 330</li> <li>• Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>○ Ryan Scanlon, Bob Cairns, Lynne Cairns, Leslie Reeves, Greg Clancy, Stan Cousins, Marie Grant, Graeme Granleese, Sue Higginson, Helen Hajduk, Robin Sproule</li> <li>○ Council assessment officer – James Hamilton</li> <li>○ On behalf of the applicant – Damion Cavanagh, Luana Stefanon, Barry Rodgers, Brad Comley and Rob Donges</li> </ul> </li> <li>• Total number of unique submissions received by way of objection: 57</li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>• Briefing: 19 April 2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Dianne Leeson (Chair), Michael Wright, Stephen Gow, Ian Tiley and Peter Johnstone</li> <li>○ <u>Council assessment staff</u>: Murray Lane, James Hamilton and Ben Bancroft</li> <li>○ <u>Department Staff</u>: Carolyn Hunt</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>• Site Inspection: 22 February 2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Dianne Leeson (Chair), Michael Wright, Stephen Gow, Ian Tiley</li> <li>○ <u>Council assessment staff</u>: Chris Dear, Murray Lane, Adam Cameron, James Hamilton and Jessica Summerhayes</li> </ul> </li> <li>• Final briefing to discuss Council's recommendation: 11 June 2024 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Michael Wright (Chair), Stephen Gow, Penny Holloway and Ian Tiley</li> <li>○ <u>Council assessment staff</u>: James Hamilton, Murray Lane, Adam Cameron, Christopher Dear, Greg Mashiah, Monique Retallick and Heather Mitchell</li> <li>○ <u>Department Staff</u>: Carolyn Hunt and Lisa Ellis</li> </ul> </li> </ul>
9	<b>COUNCIL RECOMMENDATION</b>	Approval
10	<b>DRAFT CONDITIONS</b>	Attached to the Council Assessment Report