



**MAJOR PROJECT ASSESSMENT  
BLUE DOLPHIN REDEVELOPMENT  
LOT 1 AND 2 IN DP 706628  
YAMBA ROAD, YAMBA  
Proposed by BLUE DOLPHIN  
DEVELOPMENT JOINT VENTURE**

Director-General's Environmental Assessment  
Report  
Section 75I of the  
Environmental Planning and Assessment Act 1979

April 2007



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NSW Department of Planning  
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# 1 EXECUTIVE SUMMARY

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This is a report on an application seeking approval for a concept plan.

Blue Dolphin Development Joint Venture (the Proponent) is proposing to redevelop the Blue Dolphin Holiday Park at Yamba Road in Yamba (Lot 1 and 2 DP 706628) ("the proposal"). The proponent proposes demolition of existing buildings on the site, remediation, an indicative total of 256 residential units, 12 residential villas, 63 holiday accommodation units, tourist facilities, retail, recreation facilities, basement car parking, roads, landscaping, infrastructure and services to be constructed in 3 stages.

The Proponent has split the project into 3 components for the purposes of concept approval assessment. The application seeks approval for:

- Concept approval for the use, building envelopes, a total maximum GFA of 59,700m<sup>2</sup>, indicative number of apartments, height, building footprint, road layout, services and landscaping over the entire site;
- Project approval for a Community Title subdivision creating one common lot and 3 development lots to enable staged completion of the project; and
- Project approval for Stage 1 of the development including construction of 55 residential apartments (GFA 8,920m<sup>2</sup>), basement car parking, ancillary infrastructure, landscaping and strata subdivision of Stage 1.

The proponent requests that the Minister determine that no further application assessment or report is required when giving approval to the community title subdivision, Stage 1 (including strata subdivision) of the concept plan and to determine those aspects of the project under Section 75P(1)(c) of the *Environmental Planning and Assessment Act 1979*.

The estimated project cost of the development is \$175 million. The estimated project cost of Stage 1 is \$27 million. The proposal will create 228 full time equivalent construction jobs and 40 full time equivalent operational jobs.

During the exhibition period, the Department received a total of 6 submissions from public authorities and 7 submissions from the public. Key issues considered in the Department's assessment included:

- Future character
- Built form (height and setbacks)
- Overshadowing
- Visual impact
- Aboriginal Cultural Heritage
- Bushfire
- Groundwater
- Provision for public access to foreshore
- Management of Yamba Bay Foreshore Reserve
- Traffic and access

The Department has assessed the merits of the project and is satisfied that the impacts of the proposed development have been addressed via the Preferred Project Report, Proponent's Statement of Commitments and the Department's recommended conditions of approval. This can be suitably mitigated and/or managed to ensure a satisfactory level of environmental performance. All statutory requirements have been met.

On these grounds, the Department is satisfied that the site is suitable for the proposed development and that the project will provide environmental, social and economic benefits to the region, including:

- Improved foreshore access;
- Improved management of the Yamba Bay Foreshore Reserve;

- Medium and high density housing and increased housing choice;
- Increased choice of tourist accommodation;
- Improved access and parking arrangements on the site;
- Improved traffic arrangements at the Shores Drive and Yamba Road intersection with the construction of a roundabout;
- A contribution of \$300,000 to Council to be spent for the benefit of youth in the Yamba area (via a Voluntary Planning Agreement); and,
- Improved stormwater control and management.

The Department recommends that the project be **approved**, subject to the effective implementation of the Proponent's Statement of Commitments and the Department's recommended Instruments of Approval.

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## 2 BACKGROUND

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### 2.1 THE SITE

#### 2.1.1 Site Context And Location

The Blue Dolphin Holiday Resort at Yamba Road in Yamba, (Lot 1 & 2 DP 706628), is located within the local government area of Clarence Valley Council and is owned by 6 members of the Mitchell family and the Trust Company of Australia Limited.

The site is located on the upper mid-north coast of New South Wales in Yamba, a coastal town. Yamba is the Clarence Valley's major growth area and principal coastal resort. Yamba is the current focus of coastal development in the Clarence but its continued development may be limited due to physical and ecological constraints. The town is situated at the mouth of the Clarence River, which is the biggest river on the east coast of Australia.

The centre currently has a population of approximately 7,000 permanent residents. Yamba has a significant influx of tourist and visitors in holiday periods.

The subject site is located on the northern side of Yamba, approximately 2 kilometres to the west of Yamba Town Centre. **Figure 1** shows the location of the subject site. An aerial photograph of the site is provided in **Figure 2**.

The site has an area of approximately 5.75 hectares and is located on the northern side of Yamba Road. Yamba Road is the main access road to Yamba, West Yamba, and the coastal villages of Angourie and Woolweyah.



Figure 1: Site Location (Source: Blue Dolphin Redevelopment EA, Planning Workshop, 2006)



Figure 2: Aerial Photograph of the Blue Dolphin Holiday Resort (Source: Blue Dolphin Redevelopment EA, Planning Workshop, 2006)

### 2.1.2 Existing Site Features

The site contains a tourist facility, known as the Blue Dolphin Holiday Resort. The existing site layout is shown in **Figure 3**.

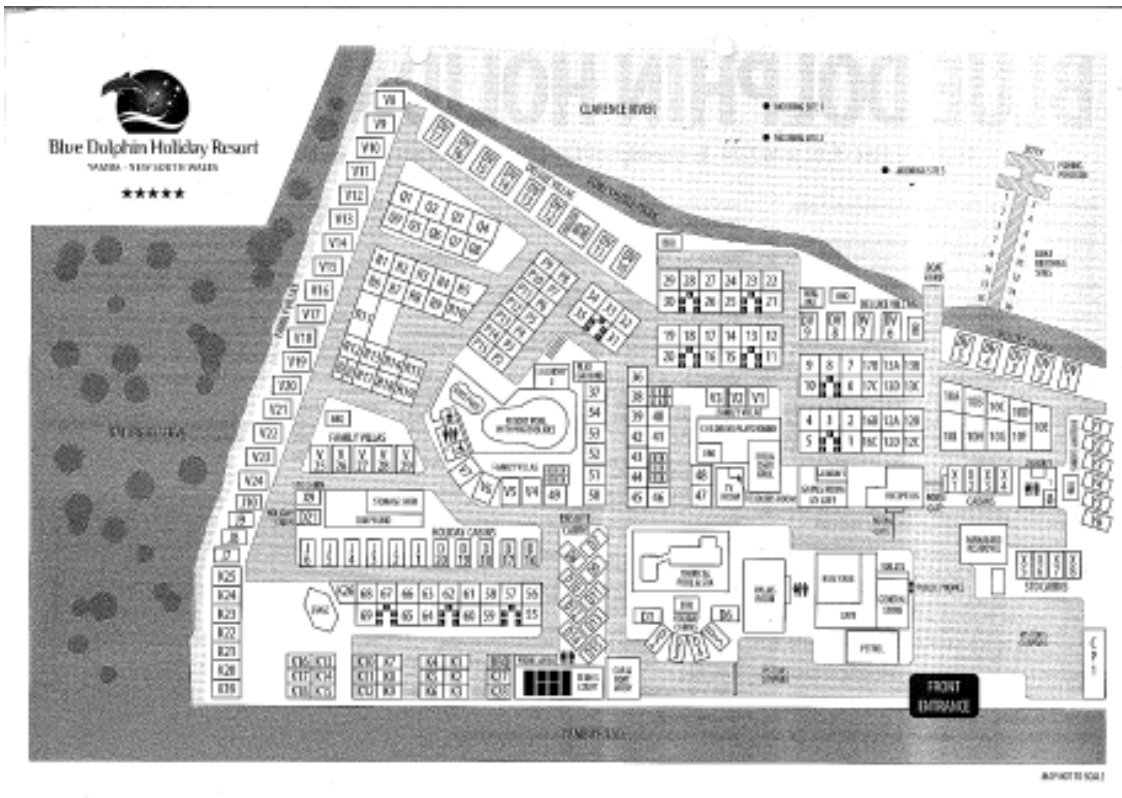


Figure 3: Existing Site Layout



The site is presently in use as a tourist facility and comprises 235 tourist sites being powered caravan sites, camping sites and holiday cabins (92 manufactured 1 and 2 bedroom cabins). **Figure 4** and **Figure 5** show the existing typical development on the site. In peak periods the existing facility accommodates 1,200 tourists. The topography of the land is generally flat with levels ranging from 1.0 – 2.0m AHD and is a mix of concrete vehicle access way, grass and scattered trees. It is probable that Swamp Sclerophyll Forest on a Floodplain (SSFF), an Endangered Ecological Community (EEC), occurred over much of the site. However, the site is now highly modified with the most abundant species being exotic palm trees however some remnant trees, characteristic of a SSFF, have been retained on the site.



Figure 4: Cabins and concrete vehicle access ways



Figure 5: Cabins adjacent to foreshore reserve

Facilities include swimming pools, children's playgrounds, tennis court, concrete vehicle and pedestrian access ways and landscaped garden beds. The site also includes a service station and convenience store; a take-away food store and restaurant area; a resort office and residential complex; conference rooms; and outdoor recreational facilities (refer **Figure 6** and **Figure 7**). The site is currently actively in use.



Figure 6: Existing service station



Figure 7: Entrance driveway and reception building

The site adjoins the southern foreshore of the Clarence River approximately 2 kilometres from the opening of the Clarence River to the Pacific Ocean. The site is therefore flood prone with the 1 in 100 year flood level at the site estimated at 2.3 – 2.4m AHD. Existing floor levels at the site vary between RL 2.4m and 2.7m. The site is also listed on Council's records as bushfire prone land. Existing buildings are setback between 2 and 4 metres from the Clarence Estuary Nature Reserve which presents a serious fire hazard to the development.

### 2.1.3 Surrounding Development

The site is bound to the north and north east by a 20 metre wide Crown Land reserve known as the Yamba Bay Foreshore Reserve (refer **Figure 8**). The reserve separates the site from the Clarence River. One and two storey detached dwellings exist on the opposite side of Yamba Road (to the south), the 2 storey Moby Dick Hotel is located to the south east and the Clarence Estuary Nature Reserve to the west. The Reserve contains a known Aboriginal

campsite known as the 'Reedy Creek campsite'. This is a significant Aboriginal cultural heritage site. **Figures 9 and 10** show the surrounding development.

Yamba Bay Foreshore Reserve is licensed to the Blue Dolphin Holiday Park. The Clarence Coast Reserve Trust derives annual income from the license. Under the conditions of the license the cost of management and capital costs will be met by the licensees.



Figure 8: Yamba Bay Foreshore Reserve



Figure 9: Moby Dick Hotel to the south of the site



Figure 10: Low scale residential development on Yamba Road

The Blue Dolphin site has a 300 metre frontage to Yamba Road and a 33 metre frontage to the Yamba Bay Foreshore Reserve.

Yamba Town Centre is located to south east, and is approximately 2 kilometres from the site and is accessed via Yamba Road. The town centre and surrounding area provide a wide range of services and facilities, which include:

- Local shopping centres;
- The Yamba sports complex, tennis courts and local parks;
- The Yamba gold club and bowling club;
- Yamba medical centre and ambulance station;
- Private and public primary schools;
- A range of coastal and river foreshores including public boat access; and
- A cycleway and pedestrian paths linked to the Yamba CBD.

### 2.1.4 Zoning

The site is zoned 2(t) Residential (Tourism) under the *Maclean Local Environmental Plan (LEP) 2001*. The primary aim of this zone is to enable the provision of tourist facilities and high density residential accommodation and associated facilities (see **Figure 11**).

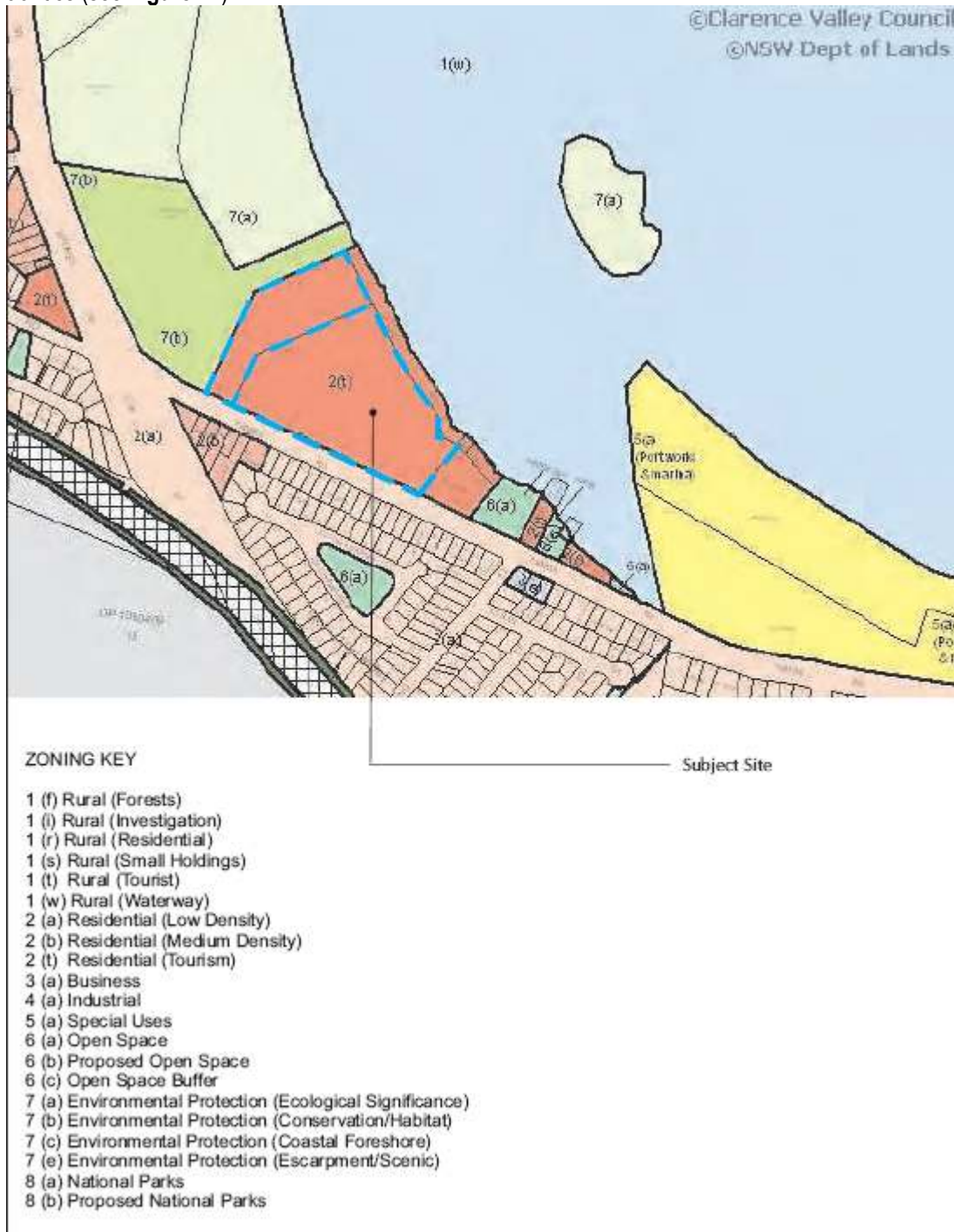


Figure 11: Maclean Local Environmental Plan 2001 Zoning Plan (Blue line denotes current lot boundaries of the site)

## 3 PROPOSED DEVELOPMENT

### 3.1 THE PROPOSED DEVELOPMENT

#### 3.1.1 Concept Plan Approval

This is an application for approval of a concept plan to carry out a project. Concept Plan approval is sought for the distribution of uses and development envelope (including GFA, height, building footprints), road layout, basement car parking, landscaping and indicative services and infrastructure for the proposed development of residential flat buildings, residential dwellings, tourist facilities including accommodation, shops, refreshment rooms and a hotel (licensed premises). **Figure 12** illustrates the proposed concept plan layout.



Figure 12: Preferred Project Concept Plan Site Layout (Source: Planning Workshop, 2007)

The proponent proposes an indicative total of 256 residential units, 12 residential villas, 63 holiday accommodation units, tourist facilities, retail, recreation facilities, basement car parking, roads, landscaping, infrastructure and services. The redevelopment is proposed to occur in 3 stages:

- Stage 1 – residential Buildings 1 and 2 containing 55 residential units (GFA 8,920 m<sup>2</sup>) plus 99 basement car parking spaces, 11 at grade car parking spaces, swimming pool / landscaping, internal public access from Yamba Road to the waterfront reserve;
- Stage 2 – tourist resort (Buildings 9, 11 and 12) containing 63 apartments (GFA 11,540 m<sup>2</sup>), residential buildings (Buildings 13 - 15) containing 49 apartments (GFA 12,325 m<sup>2</sup>), and 212 basement car parking spaces plus hotel (pub), shop, recreation facilities (tennis court, pools), spa, restaurant/cafes, public access road from Yamba Road to the waterfront reserve and 40 visitor parking spaces; and,
- Stage 3 – residential Buildings 3 - 8 and 10 containing 152 apartments plus 12 residential villas (GFA 26,915 m<sup>2</sup>), 227 basement car parking spaces, swimming pool, roadways and landscaping.

The timing and order of Stages 2 and 3 of the development will be subject to market forces. That is, Stage 3 may occur before Stage 2, the numbering of the stages 2 and 3 does not necessarily denote the sequence of development.

The concept plan application seeks approval for:

- Concept approval for the use, building envelopes (including GFA of 59,700m<sup>2</sup>, indicative number of apartments, height, building footprint), road layout, services and landscaping over the entire site;
- Project type approval for Stage 1 of the development including construction of 55 residential apartments, basement carparking, ancillary infrastructure, landscaping and strata subdivision of the residential apartments; and,
- Project type approval for a Community Title subdivision creating one common lot (comprising of mainly the internal access road) and 3 development lots to enable staged completion of the project.

A summary of the key development data for the proposal is outlined below in **Table 1** and **Table 2**.

**Table 1: Development Data – Concept Plan**

	Existing	Proposed (Exhibited)	Preferred Project	Relevant Control	SEPP, REP, LEP, DCP	Compliance
Site Area	57,880m <sup>2</sup>					
Max Height	1 storey / 6.5m	5 storeys / 17.5m	<b>4 storeys / 14.4m</b>	9m*	DCP	No (refer merit assessment in <b>Section 6.1.1</b> )
GFA	6,834m <sup>2</sup>	61,838m <sup>2</sup>	<b>59,700m<sup>2</sup></b>	N/A	N/A	N/A
FSR	0.12 : 1	1.08 : 1	<b>1.03 : 1</b>	N/A	N/A	N/A
Setbacks	0 – 1m	3m for a 14.4m building	<b>5m for a 14.4m building</b>	3m for a 12m building	DCP	Yes
Landscaping	44,300m <sup>2</sup>	28,380m <sup>2</sup> / 49%	<b>28,380m<sup>2</sup> / 49%</b>	35% site area	DCP	Yes
Site Coverage	6,834m <sup>2</sup>	22,000m <sup>2</sup> / 38%	<b>22,000m<sup>2</sup> / 38%</b>	N/A	N/A	Yes
Car parking	628 spaces	714 spaces	<b>716 spaces</b>	Various	DCP	Yes

\* Height is measured from the 1 in 100 year flood level of 2.4m AHD to the highest point on the roof.

### 3.1.2 Stage 1 Development

The concept plan seeks project type approval (under Section 75J of the Act) for the following works relating to Stage 1 of the development:

- Removal of 19 existing cabins (to be relocated to another caravan park off-site)
- Site preparation, including bulk earthworks subject to sediment and erosion controls;
- Construction of 2 residential flat buildings (Buildings 1 and 2) consisting of 4 storeys comprising 55 residential units with 1 level of basement car parking (GFA of 8,920m<sup>2</sup>);
- Landscape works and swimming pool;
- Construction of an Internal access road (part of Community Property Lot 1 in the Community Subdivision Plan);
- Construction of a detention basin and other such ancillary services and infrastructure; and,
- Strata subdivision of the Stage 1 residential apartments.

The existing caravan park will continue to operate during construction and operation of Stage 1.

**Table 2: Development Data – Stage 1**

	Existing	Proposed (Exhibited)	Preferred Project	Relevant Development Standard	SEPP, REP, LEP, DCP	Compliance
Site Area	7,620 m <sup>2</sup> (being proposed lot <sup>2</sup> in the community plan plus that part of the access road to be built as part of Stage 1, which is part of lot 1 in the community plan).					
Height	1 storey / 6.5m	4 storeys /	<b>4 storeys / 14.4m</b>	9m *	DCP	No (refer merit assessment in <b>Section 6.1.1</b> )
GFA	1,117 m <sup>2</sup>	8,920m <sup>2</sup>	<b>8,920m<sup>2</sup></b>	NA	N/A	N/A
FSR	0.15 : 1	1.18 : 1	<b>1.18 : 1</b>	NA	N/A	N/A
Site coverage	1,117 m <sup>2</sup>	3,030m <sup>2</sup> / 40.1%	<b>3,030m<sup>2</sup>/ 40.1%</b>	NA	NA	Yes
Setbacks	0-1m	3m to southern & foreshore	<b>5m to side, 3m to foreshore</b>	3m for a 12m building	DCP	Yes
Landscaping	Unknown	3,491m <sup>2</sup> / 46.3%	<b>3,491m<sup>2</sup> / 46.3%</b>	35%	DCP	Yes
Car parking		108	<b>110</b>	Various	DCP	Yes

### 3.1.3 Community Title Subdivision

The concept plan also seeks subdivision of the development (under Section 75J of the *Act*) under the provisions of the *Community Land Development Act 1989* to create a Community Scheme. The Conceptual Draft Community Subdivision Plan at **Figure 13** defines the 4 lots which will be comprised within the Community Scheme.

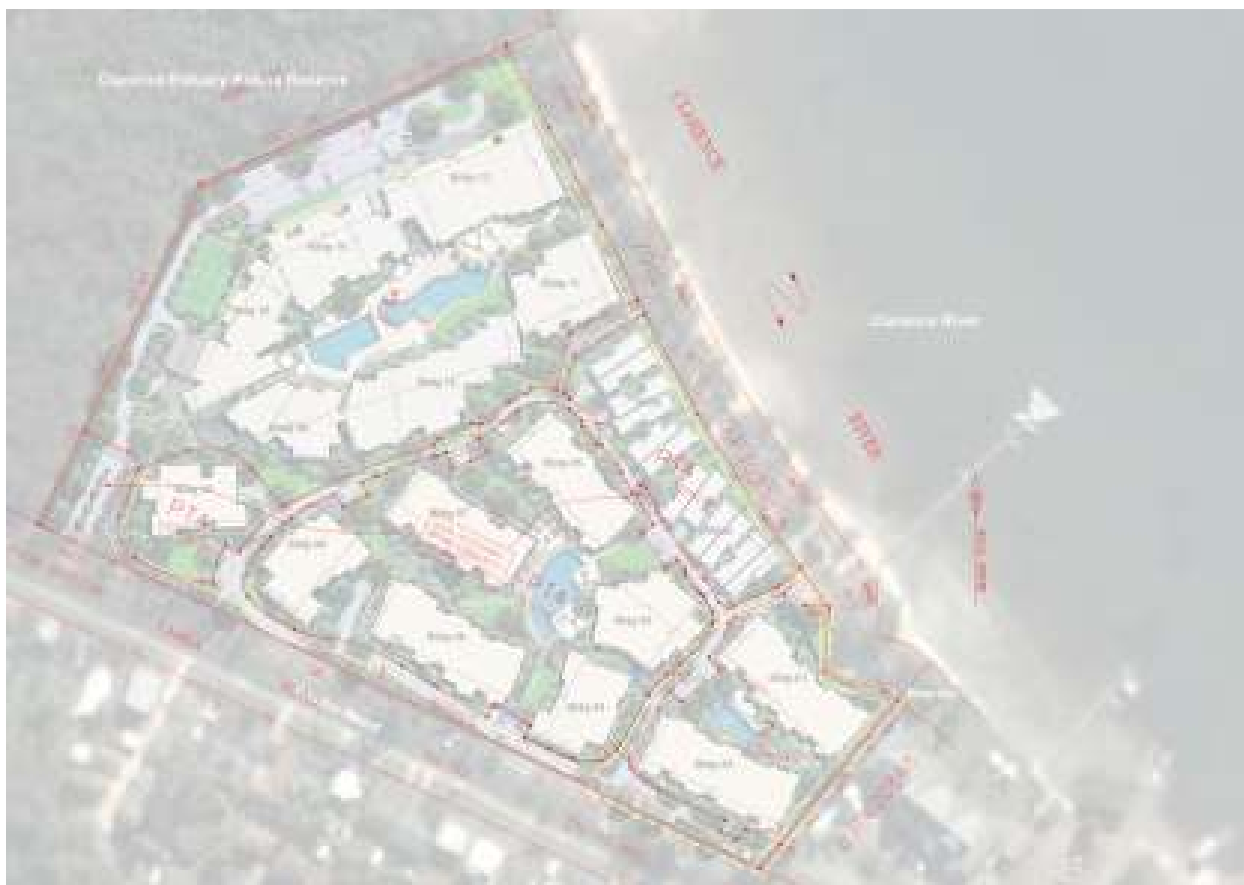


Figure 13: Proposed Community Title Subdivision Plan (Source: Planning Workshop, 2006)

The draft Community Subdivision Plan creates 4 lots as described below in **Figure 14**.

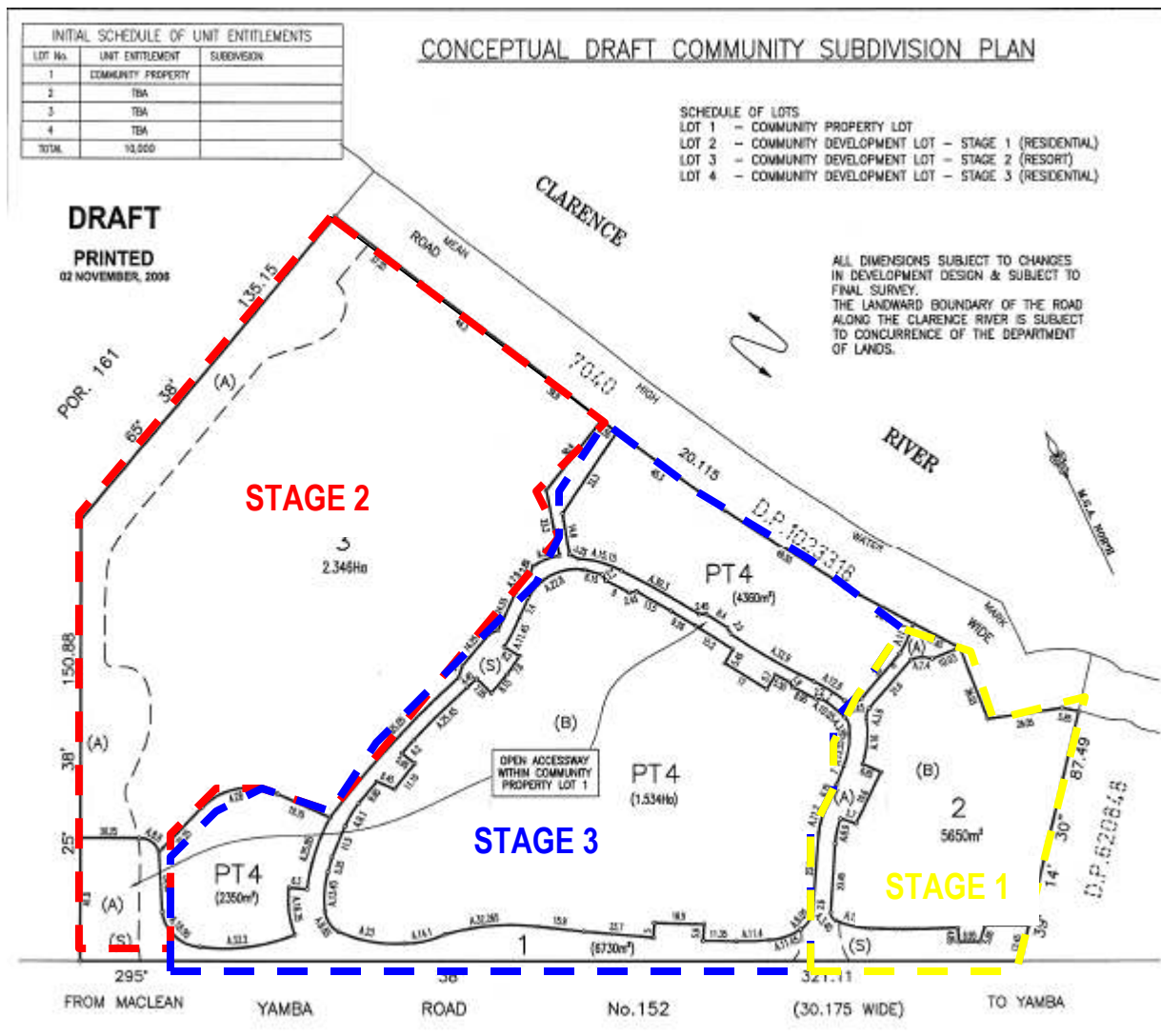


Figure 14: Conceptual Draft Community Subdivision Plan (Source: Planning Workshop, 2007)

**Community Property Lot 1**

Contains those parts of the development that contain shared / common facilities, including:

- The main entry road into the resort component;
- The residential ring road into the residential component, including public and pedestrian access to the foreshore as adjoining the Stage 1 units;
- Car parking / visitor parking bays (associated with the residential units) adjacent to the ring road;
- Common footpaths and walkways;
- Common facilities including substation, gas storage facilities and switch rooms; and,
- Common services.

**Community Development Lot 2**

Contains those residential buildings in Stage 1 of the development, including:

- Building 1 and Building 2; and,
- Landscaped open space.

Development Lot 2 will be subject to a strata subdivision (part of this approval).

### Community Development Lot 3

Contains those tourist resort and residential buildings in Stage 2 of the development, including:

- Building 9 and 11 to 15;
- Landscaped open space;

Development Lot 3 may be subject to further community and strata subdivision during the course of the project (subject to future approvals).

### Community Development Lot 4

Contains those residential buildings in Stage 3 of the development, including:

- Building 3 to 8, 10 and the villas;
- Landscaped open space; and
- An easement for public pedestrian and vehicular access from Yamba Road to the Foreshore Reserve, including a car park area for approx 50 cars.

Development Lot 4 may be subject to further community and strata subdivision during the course of the project (subject to future approvals).

The development is to be constructed in three stages, as follows:

- (1) Stage 1 will comprise Development Lot 2 of the Community Title Subdivision, being residential buildings 1 & 2, together with part of Community Property Lot 1 containing that part of the loop road which provides access to the basement car park and to the Stage 1 visitor parking bays. Stage 1 includes an easement for public pedestrian and bicycle access to the Foreshore Reserve. That part of the loop road in proposed lot 1 and the works being the residential flats in proposed lot 2 will be completed prior to the registration of the community plan. It is proposed that the Community Plan be completed and registered as part of the Stage 1 works.
- (2) Stage 2 will comprise Development Lot 3, being the resort buildings 9, 11 and 12 and residential buildings 13, 14 and 15, together with part of Community Property Lot 1 containing the main resort entry road and an easement for public vehicular and pedestrian access through to the Foreshore Reserve including a car parking area for the public for approx 50 vehicles.
- (3) Stage 3 will comprise Development Lot 4, being the residential buildings 3 to 8 and 10, together with part of Community Property Lot 1 containing the remainder of the residential loop road not constructed during Stage 1 works.

## **3.2 VOLUNTARY PLANNING AGREEMENT**

The proponent has made an offer to Council to enter into a Voluntary Planning Agreement (VPA). The draft VPA makes the following offers:

- (i) Granting sufficient access rights through the site to the adjoining Yamba Bay Foreshore Reserve, subject to reasonable restrictions on the public use of this access outside daylight hours, control of animals, consumption of alcohol, anti-social behaviour and access to the jetty and boat ramp (at all stages of the development);
- (ii) Embellishment works on the Yamba Bay Foreshore Reserve; and,
- (iii) A contribution of \$300,000 to Council to be spent for the benefit of youth in the Yamba area to be paid as follows:
  - \$150,000 after the issue of the subdivision certificate for the Community Title Subdivision;
  - \$150,000 at the occupation of Development Lot 3 (Stage 2).

This offer is in addition to the normal Section 94 charges but is conditional upon the Minister approving the concept plan as submitted in the Preferred Project Report.

The VPA was advertised by Council for 28 days from 17 January to 14 February 2007. On 13 February 2007 Council's Environment and Planning Committee resolved to accept the draft VPA and on 20 February 2007, Council resolved to adopt the VPA subject to there being no substantive objections arising from the exhibition period. No such objections were received by Council.



A condition of approval requires the proponent to enter into a VPA with Council, in accordance with Division 6 of Part 4 of the EP&A Act, and the terms of the offer made to the Council on 12 January 2007 by the Proponent, prior to the issue of a Construction Certificate for Stage 1 of the development.

### 3.1.4 Yamba Bay Foreshore Reserve Agreement

Yamba Bay Foreshore Reserve is an open space area that is heavily utilized by the guests of the Blue Dolphin Holiday Park. It is generally a degraded area in need of some rationalization in order to allow areas of the foreshore to rehabilitate.

The proponents have offered to enter into an Agreement with the site owners, the Department of Lands (DoL) and the Clarence Coast Reserve Trust (Clarence Valley Council) to clarify issues and management responsibilities of the adjoining foreshore reserve. Yamba Bay Foreshore Reserve is licensed to the Blue Dolphin Holiday Park. The Clarence Coast Reserve Trust derives annual income from the license. Under the conditions of the license the cost of management and capital costs is met by the licensees.

The proponent has included in the Statement of Commitments that they will enter into an Agreement with the owners of the land, the Department of Lands and the Clarence Coast Reserve Trust to undertake the following:

- (a) Works and funding of \$20,000 (payable to the Department of Lands) toward the preparation of a new Plan of Management for the Yamba Bay Foreshore Reserve, which will include:
  - (a) A capital works and management program; and,
  - (b) A schedule of priorities setting out the timing of completion of the different capital works.
- (b) Fund capital works and management program for the adjoining Yamba Bay Foreshore Reserve and Crown land where it fronts the subject site.

The Agreement will be made prior to the issue of any Occupation Certificate for the Stage 1 residential apartments.

## 3.3 PROJECT CHRONOLOGY

- On 12 April 2006, the proponent lodged a request for clause 6 opinion with the Department.
- On 6 July 2006, the Minister declared the proposal is a Project and that Part 3A of the *Act* applies and authorised the submission of a concept plan for the project.
- On 12 April 2006, the Preliminary Assessment was lodged with the Department.
- On 18 July 2006, the Director-General's Environmental Assessment Requirements (DGRs) were issued to the proponent.
- On 3 August 2006, the Environmental Assessment (EA) was lodged with the Department.
- On 28 September 2006, the proponent advised that they wish to amend their concept application to include a community title subdivision and construction of the Stage 1 residential apartments.
- On 19 October 2006, additional DGRs were signed by the Director-General's Delegate and issued to the proponent.
- On 8 November 2006, the original EA was withdrawn and a revised EA lodged with the Department. The EA was deemed to be adequate.
- On 22 November 2006, the EA placed on public exhibition for a period of 30 days.
- On 16 January 2007, a summary of submissions and issues from the Department was provided to the proponent.
- On 16 February 2007, the proponent lodged a preferred project report with the Department.

## 3.3 PROJECT AMENDMENTS

The project application has been amended on a number of occasions:

- On 2 August 2006 the proponent lodged an Environmental Assessment (EA) for the proposed redevelopment of the Blue Dolphin site. The original submission included residential and tourist resort buildings in the range of 2 to 4 storeys across the site (refer **Figure 14**).



Figure 14: Original Submission as at 2 August 2006 (Source: Blue Dolphin Redevelopment EA, Sustainable Futures Australia, 2006)

- The Department had concerns with the height, bulk and scale of the proposed development and requested that the proponent amend the design. In particular the buildings along the foreshore created a “wall of buildings” as viewed from the Clarence River and foreshore.
- Subsequent meetings with the Department resulted in an amended design which included:
  - reducing the number of buildings fronting Yamba Road and reducing the height of the majority of these buildings from 4 storeys to 3 storeys,
  - increasing the residential buildings heights in the centre of the site from 3 storeys to 4 and 5 storeys,
  - increasing the tourist accommodation buildings in the north of the site from 2 and 3 storeys to 3 and 4 storeys, and
  - relocating the 2 storey buildings in the centre of the site to the Clarence River foreshore (refer **Figure 15**).



Figure 15: Submission as at 8 November 2006 (exhibited concept plan) (Source: Blue Dolphin Redevelopment EA, Planning Workshop Australia 2006)

- In amending design the proponent also amended their concept application to include a community title subdivision of the site and construction and strata subdivision of 55 apartments in the 2 residential buildings in the south of the site.
- On 19 October 2006 the Department issued additional DGRs for the proposal to address the community title subdivision and the Stage 1 components of the development.
- On 8 November 2006 the original EA was withdrawn and a revised EA lodged with the Department.
- The exhibited proposal redistributes the bulk and scale from the waterfront reserve to the central portion of the site and creates a lower scale of development along Yamba Road.
- Following the exhibition period, the Department, DEC, DoL, DNR, RFS, Council and the community had concerns with the height, density and setbacks of the proposed development, its impact on the surrounding environment, proximity of tourist buildings to the bushfire hazard, overshadowing of the Yamba Bay Foreshore Reserve, and public and visual amenity. The Department requested that the proponent amend the design.
- A preferred project report was submitted on 15 February 2007 incorporating the following amendments:
  - Setting back of Buildings 11 and 13 on the northern boundary by a further 2 metres (5 metre setback in total) and additional setback of 13 metres on the upper 2 levels;
  - Setting back of Buildings 1 and 2 at the southern boundary by an additional 2 metres (minimum 5 metre setback); and,
  - Reduction in height of Building 5 by 1 storey to 4 storeys (refer **Figure 16**).



Figure 16: Submission as at 15 February 2007 (preferred project) (Source: Preferred Project Report, Planning Workshop Australia 2007)

- The Department and RFS still had concerns with the proposed 30 metre APZ at the north of the site between tourist Buildings 13, 14 and 15 and the Clarence Estuary Nature Reserve. As Special Fire Purpose Protection Development, the APZ required by *Planning for Bushfire Protection* (2006) for a tourist building in this location is 44 metres (refer to **Section 6.6** of this report for further discussion of this issue).
- On 2 April 2007, following several meetings with the Department and the RFS, the proponent amended the use of Buildings 13, 14 and 15 from tourist use, serviced apartments to residential to ensure compliance with *Planning for Bushfire Protection* (2006).

## 4 STATUTORY CONTEXT

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### 4.1 MAJOR PROJECT DECLARATION

On 6 July 2006 the Minister formed the opinion that the project is a Major Project under *State Environmental Planning Policy (Major Projects) 2005* being development that provides for recreational or tourist development facilities for any number of persons that is wholly or partly in a sensitive coastal location (Schedule 2, 1(1)(f)(i) – Coastal Areas).

### 4.2 PERMISSIBILITY

The Maclean LEP 2001 zones the site 2(t) Residential (Tourism), permitting hotels, recreation facilities, refreshment rooms, tourist facilities and residential flat buildings. The objective of the zone is to enable the provision of tourist facilities and high density residential accommodation and associated facilities. The Proposal is consistent with the objectives of the 2(t) Residential (Tourism) Zone and is listed as a permissible use in Clause 46 and is therefore permissible subject to the Minister's approval.

### 4.3 MINISTER'S POWER TO APPROVE

The Department has exhibited the Environmental Assessment (EA) in accordance with section 75H (3) of the *Environmental Planning and Assessment Act, 1979*, as described in Section 6 below. The project is permissible and meets the requirements of the Major Projects SEPP.

The Director General is to provide a report on the project to the Minister for the purposes of deciding whether or not to grant approval to a project pursuant to Section 75O of the Act. Section 75I(2) sets out the scope of the Director General's report to the Minister. Each of the criteria set out therein have been addressed below, as follows:

(a) a copy of the proponent's environmental assessment and any preferred project report; and

The proponent's EA is included at Appendix F whilst the preferred project report is set out for the Ministers consideration at Appendix C.

(b) any advice provided by public authorities on the project; and

All advice provided by public authorities on the project for the Minister's consideration is set out at Appendix D.

(c) a copy of any report of a panel constituted under Section 75G in respect of the project; and

No independent hearing and assessment panel was undertaken in respect of this project.

(d) a copy of or reference to the provisions of any State Environmental Planning Policy (SEPP) that substantially govern the carrying out of the project; and

An assessment of each relevant State Environmental Planning Policies that substantially govern the carrying out of the project is set in Appendix B and is discussed below.

(e) except in the case of a critical infrastructure project – a copy of or reference to the provisions of any environmental planning instrument that would (but for this Part) substantially govern the carrying out of the project and that have been taken into consideration in the environmental assessment of the project under this Division; and

An assessment of the development relative to the prevailing EPI's is provided in Appendix B, and is discussed below.

(f) any environmental assessment undertaken by the Director General or other matter the Director General considers appropriate.

The environmental assessment of the project is this report in its entirety.

(g) a statement relating to compliance with the environmental assessment requirements under this Division with respect to the project.

The environmental assessment requirements under this Division, as amended are in Appendix A and are discussed below. The Department is satisfied that the requirements have been complied with.

The Department has met its legal obligations and the Minister has the power to determine this project.

#### 4.4 DIRECTOR GENERAL'S ENVIRONMENTAL ASSESSMENT REQUIREMENTS (DGRS)

The DGRs issued on 18 July 2006 required the following issues to be addressed for the concept approval for the use, building envelopes (including GFA of 61,838m<sup>2</sup>, indicative number of apartments, height, building footprint), road layout, services and landscaping over the entire site:

- Statutory and Other Requirements
- Built form and design
- Traffic and access
- Flooding
- Water
- Riparian corridor and public access
- Natural heritage
- Bushfire protection
- Economic impact
- Utilities and servicing

The revised DGRs issued on 19 October 2006 required the following issues to be addressed for the community title subdivision and Stage 1 components of the application:

- Subdivision layout, desired future character and sustainability
- Water management
- Watercourses and watercourse crossings
- Design, visual impacts and design quality principles
- Infrastructure provision
- Integrated water cycle management
- Flooding

The DGRs are in **Appendix A**.

#### 4.5 ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)

##### 4.5.1 Application of EPIs to Part 3A

To satisfy the requirements of section 75I(2)(d) and (e) of the Act, this report includes references to the provisions of the environmental planning instruments that govern the carrying out of the project and have been taken into consideration in the environmental assessment of the project. A summary of compliance with the relevant EPIs is in **Appendix B**.

The provisions, including development standards of local environmental plans, and development control plans are not required to be strictly applied in the assessment and determination of major projects under Part 3A of the Act. Notwithstanding, these standards and provisions are relevant considerations as the DGRs require the proponent to address such standards and provisions. Accordingly the objectives of a number of EPIs and the development standards therein and other plans and policies that substantially govern the carrying out of the project are appropriate for consideration in this assessment as follows:

##### 4.5.2 State Environmental Planning Policy (Major Projects) 2005

The MP SEPP applies to the project as discussed in Section 4.1 above.

##### 4.5.3 State Environmental Planning Policy No. 11 – Traffic Generating Developments

The proposed development was considered by the Northern Region Regional Advisory Committee of the Roads and Traffic Authority (RTA) of NSW, on Friday 15 December 2006, on the basis that the proposal includes development having ancillary accommodation for 200 or more motor vehicles.

The RDC recommended the following key traffic and access arrangements:

- construction of a roundabout at the Yamba Road / Shores Drive intersection;
- widening of Yamba Road on the northern side for both new accesses;
- a full length raised median between Shores Drive and Golding Street to prevent right turns into the development; and,
- one public vehicle entry be provided and signposted via the north western driveway from Yamba Road retaining the south western driveway for pedestrians and cyclists and vehicle use by residents only.

Discussions between the RTA, Council and the Department have identified appropriate traffic and access upgrade works. Conditions of approval require the proponent to undertake the agreed works.

#### **4.5.4 State Environmental Planning Policy No. 14 – Coastal Wetlands**

The site does not contain any coastal wetlands, however land subject to the policy is located to the northwest of the site. There are no impacts from the development on the wetlands.

#### **4.5.5 State Environmental Planning Policy No. 26 – Littoral Rainforest**

The site does not contain any littoral rainforest, however land subject to the policy is located to the northwest of the site. There are no impacts from the development on the wetlands.

#### **4.5.6 State Environmental Planning Policy No. 44 – Koala Habitat**

The Fauna Assessment includes an assessment of koala habitat on the site, according to the SEPP 44, was completed on 26-27 October 2006. The Assessment concludes that the subject site in the present study is not 'potential' or 'core' koala habitat.

#### **4.5.7 State Environmental Planning Policy No. 55 – Contaminated Land**

The site contains a service station and as a result, a contamination assessment was undertaken to assess the site for the presence and extent of potential petroleum hydrocarbon contamination, in accordance with SEPP55. The operation and use of the site has also included:

- Camping and caravan sites;
- Tourist facilities (including boat hire); and,
- Recreational facilities (including tennis courts and swimming pools).

This contamination assessment, for the service station portion, is referred to as a combined Stage 1 'Preliminary Investigation' and "Stage 2 – Detailed Investigation' in accordance with SEPP 55.

The Site Contamination Assessment identifies two potential Areas of Environmental Concern (AEC):

- (i) AEC1: comprises the areas associated with the service station infrastructure (which include areas surrounding the underground storage tanks in the eastern and western areas of the site, and the bowsers and existing pipelines in approximately the centre of the site.
- (ii) AEC 2: an above-ground storage tank used to store LPG, which is located east of the site, in a car-parking area of the BDR complex

The field investigation and laboratory analysis identified contamination in both the soils and groundwater, which were likely to have been caused by the underground fuel storage tanks (USTs) and bowsers. Notwithstanding, the report concluded that the site can be made suitable for the proposed development via remediation.

A condition of approval will require the Proponent to submit a Remedial Action Plan (RAP) and a Hazardous Materials Survey prior to the issue of a Construction Certificate for below ground works for the Stage 1 component. The Remedial Action Plan must be accompanied by a statement from a site auditor accredited by the Department of Environment and Conservation to issue site audit statements.

Upon completion of the remediation works on the site, a condition of approval requires the Proponent to submit a detailed Site Audit Summary Report and Site Audit Statement and Validation Report to the Certifying Authority, prepared in accordance with the *Contaminated Land Management Act 1997* and completed by a site auditor accredited by the Department of Environment and Conservation to issue site audit statements. The site audit must verify that the land is suitable for the proposed uses. The area contaminated by the service station is within Stage 3 of the development, hence the conditions of approval include the need for RAPs and site audits on completion for each other future stages, when approved as development applications.

#### 4.5.8 State Environmental Planning Policy No. 65 – Design Quality Of Residential Flat Buildings

The proposed development has been assessed in accordance with the provisions of SEPP 65 and in accordance with the *Residential Flat Design Code* accompanying the State Policy.

The Stage 1 buildings are non-compliant in relation to the following:

- **Building depths**

- The *Residential Flat Design Code* rule of thumb recommends that an apartment building depth of 10 to 18 metres is appropriate, however, freestanding buildings may have a depth greater than 18 metres if they achieve satisfactory daylight and natural ventilation. A minimum of 70% of apartments should receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter. A minimum of 60% of residential units must be naturally cross ventilated.
- The proposed Stage 1 buildings range from 8.8 metres to 25.6 metres and thus in some cases exceed the recommended building depth of 18 metres. However, the development has been designed to ensure satisfactory amenity with over 84% of the units in buildings 1 and 2 having either dual or triple aspect, whilst over 84% of the apartments are naturally cross ventilated.
- Shadow Diagrams produced by Woodhead Architects indicates that 100% of the units in Building 1 will receive in excess of 3 hours sunlight in mid winter, whilst approximately 76% of the units in Building 2 will receive in excess of 3 hours daylight in mid winter. 86% of apartments in Stage 3 meet the Code's suggested minimum of 3 hours direct daylight between 9am and 3pm in mid winter.
- This non-compliance is therefore considered supportable.

- **Separation distance**

- The distance between balcony/habitable rooms of Buildings 1 and 2 ranges between 11 metres and 32 metres.
- The proponent has demonstrated that, although separation distances are marginally less than the recommended 12 metres at one point on the ground and first floors at the southern end of the two buildings, these rooms are bedrooms therefore do not involve a conflict between two highly trafficked areas of the units. This minor variation is supported.

#### 4.5.9 State Environmental Planning Policy No. 71 – Coastal Protection

SEPP 71 applies generally to land within the Coastal Zone. Clause 8 of the policy sets out matters for consideration by a consent authority when determining a development application to which the policy applies. Those matters generally reflect the key elements of the Coastal Policy of which the proposal generally accords. The proposal provides for the following, in accordance with SEPP71:

- retains and improves public access to the Clarence River foreshore;
  - the development is suitable given its type, location and design;
  - overshadowing of the foreshore has been minimised;
  - the design is sensitive to the scenic quality of the Clarence River foreshore;
  - there are no significant impacts on any threatened species;
  - the impacts of the development on flooding from the Clarence River have been assessed and mitigated
  - protects the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals have been protected;
  - protects the water quality of the Clarence River; and,
  - complies with BASIX requirements ensuring that water and energy usage by the proposed development is efficient.
- A complete assessment against SEPP71 is provided in **Appendix B** to this report.



#### 4.5.10 State Environmental Planning Policy (BASIX) 2004

The proponent has completed a BASIX certificate for the 2 residential buildings proposed in Stage 1. All water, thermal and energy targets have been met.

#### 4.5.11 North Coast Regional Environmental Plan

The North Coast REP provides a basis for policy development to protect the natural environment on a regional basis. Relevant clauses are as follows:

##### Clause 15 – wetlands or fishery habitats

The proposal complies with the intent of this clause, specifically in relation to the protection of fishery habitats, the provision of foreshore access and public open space and the protection of water quality.

##### Clause 32B – coastal lands

The proposal complies with the intent of this clause, specifically in relation to the consideration of the *NSW Coastal Policy 1997*, the *Coastline Management Manual*, and the *North Coast: Design Guidelines*. The development does not impede public access to the foreshore and does not result in overshadowing of public foreshore open space prior to 3pm mid-winter.

The development will result in some overshadowing of public foreshore open space from 4pm mid-summer. However, due to the orientation of the site, it is expected that some overshadowing of the Yamba Bay Foreshore Reserve will occur despite significant setbacks and reduced heights of buildings. Even the existing single storey buildings overshadow the foreshore open space from 5pm mid-summer. It is considered that the staggered position, setting back and proposed heights of buildings along the foreshore results in an acceptable amount of overshadowing of foreshore open space. The Department of Lands has also agreed that the overshadowing impacts are acceptable.

##### Clause 43 – residential development

The proposal complies with the intent of this clause, specifically in relation to the density of dwellings, impacts on environmental features and the management of sediment and erosion on site.

##### Clause 51 – Director's concurrence for tall buildings

The proposal exceeds 14 metres in height and therefore the assessment has taken into consideration the likely regional implications of the development as regards its social, economic and visual effect and the effect which it will or is likely to have on the amenity of the area. The proposed heights of the buildings are considered appropriate for the location (see **Section 6.2.1** of this report).

##### Clause 66 – Adequacy of community and welfare services

The proposal complies with the intent of this clause, as the site is located in the Yamba urban area in close proximity to the wide range of community and welfare services in the town centre.

##### Clause 75 – Tourism development

The proposal complies with the intent of this clause, specifically in relation to the adequate provision of infrastructure, services and transport and is not considered to be detrimental to any significant features of the natural environment.

##### Clause 76 – Natural tourism area

The development is adjacent to the Clarence Estuary Nature Reserve and the Yamba Bay Foreshore Reserve (Crown land). The development will result in improved access to the foreshore reserve and will not have any adverse impacts on either of the two reserves as natural tourism areas.

##### Clause 81 – Development adjacent to an ocean or waterway

The proposal complies with the intent of this clause, specifically in relation to the provision of foreshore open space and amenity of the Clarence River.

#### 4.5.12 Maclean Local Environmental Plan 2001

The site is zoned 2(t) Residential (Tourism) in the *Maclean Local Environmental Plan (LEP) 2001*. The primary aim of the 2(t) zone is to enable the provision of tourist facilities and high density residential accommodation and associated facilities. Residential flat buildings and tourist facilities are permissible with consent.

No general concurrence provisions apply in relation to the proposed land use at the subject site. The development generally meets the objectives and provisions of the Maclean LEP 2001.

##### Clause 10 Bushfire Hazard

Adequate provision has been made for the reduction of bushfire hazard to people and property via the provision of a 30m APZ to the residential buildings 13, 14 and 15. The RFS has confirmed that they are satisfied with the proposed APZ.

##### Clause 11 (2) Flood Liable Land

The existing site is subject to flooding due to the effects of the Clarence River peak flows coinciding with a tidal surge. The EA was therefore supported by a site specific flood study that assessed the impact of the development on the risk of flooding of surrounding properties and the development itself.

The report concluded that the filling of the Blue Dolphin Caravan Park Site independently had a non worsening effect of flood levels, based on the 100 year and 20 year ARI modelling results. Similarly, results show the combined filling of the Blue Dolphin Caravan Park with the neighbouring development in West Yamba reduces the minor impacts resulting from West Yamba development.

The proposal has been designed to fill the site to 2.4m AHD and to set all floor levels at or above the flood planning level provided by Council, i.e. 2.7m AHD. Building basements are to be effectively "flood proofed" by raising entry levels to at least RL 2.7m AHD around all building entries.

A condition of approval requires that all floor levels and building basement entry levels are set at or above the flood planning level of 2.7m AHD.

##### Clause 12 Development in the vicinity of waterways

In determining a distance for the purposes of this clause, the Council shall have regard to:

- a) the preservation of the scenic quality of foreshores, and
- b) minimising the risk of pollution of waterways, and
- c) the protection of foreshore ecosystems.

The development is set back approximately 25 metres from the Clarence River. The proposed building design and site layout ensure that the scenic quality of the Clarence River foreshore is preserved. Furthermore, the proposed approach to stormwater management on the site ensures that there are no adverse impacts on water quality or foreshore ecosystems.

##### Clause 13 Development within the coastal zone

The principles of the NSW Coastal Policy 1997 have been taken into account and the proposal is generally compliant.

##### Clause 14 Foreshore Building Lines

No foreshore building line applies to the subject site.

##### Clause 18 Development on land identified on Acid Sulfate Soils Planning Maps

A preliminary Acid Sulfate Soil Management Plan (ASSMP) for any works below the surface has been prepared and forms part of the 'Phase 1 Geotechnical Assessment'. A detailed ASSMP for Stage 1 is required as a condition of approval. Future applications for Stage 2 and Stage 3 are to be supported by detailed ASSMPs for each stage.

## 4.6 OTHER PLANS AND POLICIES

The Proposal has been considered against the following non-statutory documents:

### 4.6.1 Clarence Valley Council DCP – Development in Residential Zones

The Development in Residential Zones DCP is a shire-wide DCP. The proposal is generally compliant with the provisions of the DCP with the exception of building heights.

#### Building Height

The DCP sets the maximum building height on the site at 6.5m to the top plate and 9m to the ridgeline, which generally equates to 2 storeys plus a pitched roof. Height is measured from the 1 in 100 year flood level of 2.4m AHD to the highest point on the roof.

However, as the particular design of the proposed buildings on the Blue Dolphin site incorporates a relatively flat skillion roof with no ridge or peak, the 9m limit is taken to generally equate to a 3 storey building.

Ten of the 21 proposed buildings exceed the 3 storey height limit. This variation is considered reasonable given that the majority of the 4 storey buildings are located in the centre of the site, setback significantly from Yamba Road and the Yamba Bay Foreshore Reserve.

As the DCP is largely designed to deal with infill developments within existing residential zones, Council has agreed that the concept plan should be considered in lieu of a site specific DCP. The Department has therefore considered the concept plan application as such. In making its assessment, the Department considered the height limits for other residential flat buildings and 2(t) Residential (Tourist) zones within Yamba as well as regional planning instruments and policies relevant to the site.

In addition, having regard to the resultant impacts in terms of amenity, public and private open space, overshadowing and visual appearance, additional height on this large redevelopment is supported. A maximum height limit of 4 storeys is considered appropriate for the site.

Further discussion regarding the issue of building height is provided in **Section 6.2.1** of this report.

### 4.6.2 NSW Coastal Policy 1997

The proposal complies with the provisions of the policy, particularly in relation to stormwater, contamination, acid sulfate soils, sea level change, flooding and the *NSW Coastal Design Guidelines*.

### 4.6.3 NSW Coastal Design Guidelines

It is considered that the proposal is generally compliant with the *Guidelines* and the desired future character of Yamba as a coastal town.

The proposed development has been assessed against these controls in **Appendix C** to this report.

## 4.7 CONSIDERATION OF ECOLOGICALLY SUSTAINABLE DEVELOPMENT

While this report generally represents an assessment of ecologically sustainable development (ESD), it is considered appropriate to consider how the Concept Plan addresses the issues of ESD.

A *Project ESD Framework Report* has also been prepared by the proponent in support of the proposal. This report outlines the proposed ESD Framework for the site and provides information in terms of the initial planning and design phase as a basis for the development and also information regarding the operational and management phases of the project. The report looks at various site systems and components and identifies the aims, strategies and good practice options in relation to each. This includes integrated water systems, communication systems, resource use and landscaping systems.

The Proponent also proposes that the Concept Plan will achieve the following sustainable development principles and has made commitments to this effect in the Statement of Commitments or have been made a requirement of the development via a condition of approval:

- The proposal has been designed to provide high density development whilst also seeking to reduce the impact on the surrounding area through careful siting of buildings.
- Rainwater will be collected on building roofs and harvested for reuse on site for toilet flushing and the irrigation of landscaped areas. In addition, the provision of a stormwater management system to effectively treat onsite, and minimise stormwater disposal will minimise stormwater run-off.
- Demand for potable mains water will be reduced within the development through water efficient fixtures and appliances, and using alternative sources or water based on matching water quality to uses on a "fit-for-purpose" basis.

The principles of ESD have been considered as follows:

#### **4.7.1 Precautionary Principles**

The EA submitted has identified and assessed the range of environmental impacts of the proposal. The proposal includes the following:

- A detailed ASS management plan will be prepared
- An erosion and sedimentation control plan will be prepared.
- Integrated native landscaping to protect soils and reduce erosion
- Buildings are to be integrated with landscaping and constructed generally with wide setbacks from boundaries to reduce visual impacts related to adjoining waterway and Yamba Road corridor
- A stormwater management system is proposed using swales onsite with pollutant and sediment traps to help protect water quality and provide buffers to the adjoining waterway.
- Water reuse is proposed to reduce impact on potable water supply
- Use of permeable surfaces, reducing building footprints and native landscaping with mulches will assist in groundwater recharge
- Enhancement of riparian buffers (river foreshore) will be carried out
- Respect for cultural heritage of waterways is a key design theme.

The proponent has demonstrated that the building design and appropriate mitigation measures will be implemented to prevent any potential environmental impacts. Mitigation measures are outlined in the proponent's Statement of Commitments and/or the recommended conditions of approval.

#### **4.7.2 Intergenerational Equity**

The development provides additional tourist and residential development opportunities now and into the future in Yamba. The project will maintain high standards of sustainability in its concept planning, construction and operational phases. The project will seek to minimize its ecological footprint, and provide a relative degree of local and regional self-reliance and capacity for future adaptability, through:

- appropriate planning and design approaches
- suitable choice of construction materials and techniques,
- design and management of energy, water, communication transport & resource use systems
- overall site management and operational policies and practices

#### **4.7.3 Protecting Biodiversity**

The proponent has provided an assessment of the impacts on existing flora and fauna on and adjacent to the site. Appropriate mitigation measures and management strategies will be implemented to prevent any potential environmental impacts, such as:

- Retention of approx. 90% of existing native vegetation on site;
- All invasive or inappropriate exotic vegetation to be removed;
- Integrated landscaping will be carried out based on the concept of local forest and wetland habitat systems, using predominantly local native species, enhancing site and locality biodiversity; and,
- Environmental education and interpretation is planned for the site.

#### 4.7.4 Improved Valuation

The proponent has provided an assessment of economic impacts within the EA. The proposal provides for the following:

- A wide range of business opportunities, both existing and new, based around social servicing, recreation, tourism, hospitality etc.
- Background economic study indicates positive multiplier effect, locally and regionally, and investment value.
- A strong focus on environmental sustainability to support healthy lifestyles and positive social development onsite and in Yamba.
- A wide range of employment in all phases, including skilled and training based opportunities - youth and special needs.

The proposal will provide high quality higher density residential accommodation, tourist accommodation and recreation facilities. The provision of this facility will help to strengthen the local economic base of the area. This assessment concluded that the proposal will increase the employment opportunities during both the construction and operational phase of the development for the Northern Rivers region.

Accordingly, the proposed development is likely to have a significantly positive impact upon the local economy

#### 4.7.5 Integration

In making its recommendation on the proposed development, the Department has taken into consideration the environmental, social and economic matters. Appropriate environmental management plans, the proponent's Statement of Commitments and conditions of approval ensure that the development will not have an adverse impact on the environment. The development will have a positive impact on the local economy through the creation of new employment opportunities and high density residential accommodation close to Yamba Town Centre.

The sustainability response at the project development level involves eight key systems and the engagement of embodied energy and lifecycle analysis across these systems, where relevant, and phases of the project. The eight key systems are:

- Integrated Water Systems
- Integrated Energy Systems
- Communications
- Integrated Transport & Movement Systems
- Resource Recovery and Waste Management
- Buildings and Structures
- Landscaping Systems
- Social Systems

#### 4.7.6 Community Involvement

The project planning and design process undertaken by the proponent involved a wide range of local people with the project team responding to issues and ideas. The proponent also developed a community engagement and consultation program, the first two stages of which were completed in May 2006 and included:

- Public workshops;
- Holidaymaker workshops;
- Focus group of conservation group representatives; and
- Face to face interviews with local residents, including residents along Yamba Road adjacent to the development site.
- Information regarding the initial design development of the proposal was also distributed to the local community via two newsletters.

The EA was placed on public exhibition for a period of 30 days, a total of 7 public submissions were received.

Consequently, the Department is satisfied that the proposal is consistent with the principles of ESD.

## 5 CONSULTATION AND ISSUES RAISED

### 5.1 PUBLIC EXHIBITION DETAILS

The major project application was exhibited from 22 November to 21 December 2006 for a period of 30 days and was published in the Yamba Lower Clarence Review and Grafton Examiner. The EA was made available to the public in the Department's Information Centre, Yamba Library and at the Maclean and Grafton offices of Clarence Valley Council.

A Preferred Project Report was lodged on 15 February 2007. As the changes to the nature of the project were not considered significant, it was not re-exhibited but was placed on the Department's website from 16 February 2007.

### 5.2 SUBMISSIONS RECEIVED ON ENVIRONMENTAL ASSESSMENT

The Department received a total of 14 submissions comprising 7 public submissions and 7 submissions from public authorities being:

- Roads and Traffic Authority
- Rural Fire Service
- Department of Natural Resources
- Department of Environment and Conservation
- Department of Primary Industries
- Clarence Valley Council
- Department of Lands

The 7 submissions from the public included 7 letters of objection from residents (refer **Figure 17**) and 0 letters of support. All public authorities raised issues and requested additional information.



Figure 17: Location of objectors

## 5.3 PUBLIC SUBMISSIONS

### 5.3.1 SUMMARY OF ISSUES RAISED IN PUBLIC SUBMISSIONS

The following issues were raised in the public submissions:

- Building heights
- Precedent
- Economic impacts
- Impact on local character
- Traffic and car parking
- Insufficient services

Discussion on the key issues which include those raised in submissions is in **Section 6** of this report. A detailed summary of all submissions received can be found at **Appendix D**. The proponent responded to these submissions on 15 February 2007 and can be found at **Appendix E**.

## 5.4 SUBMISSIONS FROM PUBLIC AUTHORITIES

The following submissions were received from public authorities:

### 5.4.1 Clarence Valley Council

Clarence Valley Council opposed the proposed building heights of the concept plan and advised the Department the height restrictions contained in *Council's Residential DCP* be adhered to. No particular reason for this opposition was given. In informal discussions with council's officers it was understood that the officers supported the notion of the concept plan being a site specific DCP, such that on detailed assessment, heights could be varied. However, this was not reflected in the formal resolution from the Council. Council did not raise any other issues.

### 5.4.2 Rural Fire Service

RFS recommended a 75 metre APZ under the provisions of *Planning for Bushfire Protection 2001* for Special Fire Protection Purpose (SFPP) development. The RFZ issues have been addressed.

### 5.4.3 Roads and Traffic Authority

- RTA require widening of Yamba Road on the northern side for both new accesses to provide:
  - A footpath that has a combined off-road shared path for cyclists
  - 3.0m left turn deceleration lane 42m long
  - 3.0m parking lane
  - 3.5m through lane
  - 1.2m raised median incorporating a refuge from Shores Drive to the Golding Street roundabout east of the development to prevent right turns into the development.
- RTA require review/upgrade of street lighting on Yamba Road
- RTA recommend only one vehicle entry for the public be provided and signposted via the western driveway from Yamba Road. The eastern access should be available for pedestrians and cyclists only.

### 5.4.4 Department of Natural Resources

The DNR requested that a number of issues relating to groundwater and acid sulfate soils be addressed prior to any approval. Clarification on the minimum floor level requirement for buildings within the development was also requested.

### 5.4.5 Department of Primary Industries

The DPI raised no issues with the development as proposed and requested that any access for fisherman along the foreshore be maintained or improved as a feature of the proposal.

#### **5.4.6 Department of Environment and Conservation**

DEC recommends a 50 metre vegetated buffer between the development and the Clarence Estuary Nature Reserve. This was not adopted by the Department as the site had already been cleared and the foreshore reserve of 20 metres had already been established. It is noted that the DEC did not flag this requirement in the DGR requirements, such that it could be considered as a point of negotiation with the proponent – it was raised only after the exhibition period.

The DEC also advised that a comprehensive preliminary Aboriginal cultural heritage assessment for the development was required. DEC advised that it was unable to support the proposal subject to satisfactory resolution of any Aboriginal cultural heritage issues on site and amendments to the Statement of Commitments.

#### **5.4.7 Department of Lands**

The Department of Lands:

- strongly supports the establishment of public access easements to facilitate foreshore access.
- seeks a much stronger contribution to the coastal environment / Crown estate
- seeks wider setbacks to the foreshore reserve
- provision of a comprehensive landscape management plan for the foreshore reserve
- seeks clarification of future tourist accommodation / residential management structures in terms of commitments to stewardship partnerships with adjoining Crown reserve management



## 6 ASSESSMENT OF ENVIRONMENTAL IMPACTS

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Key issues considered in the Department's assessment of the Environmental Assessment and the Preferred Project Report and consideration of the proponent's draft Statement of Commitments include the following:

- Future character
- Built form (height and setbacks)
- Overshadowing
- Visual impact
- Aboriginal Cultural Heritage
- Bushfire
- Groundwater
- Provision for public access to foreshore
- Management of Yamba Bay Foreshore Reserve
- Traffic and access

### 6.1 FUTURE CHARACTER

The community had concerns that the development would change the existing character of Yamba as a low key holiday destination. As the existing site contains a budget accommodation caravan park and the proposal will convert it into a luxury holiday resort and apartments, the Department requested that further consideration be given to the character of the proposed development and its consistency with the existing and desired future character of Yamba.

The proponent argued that the development is appropriate from both a regional and local perspective. This is discussed in more detail below.

#### Regional Controls

As a 'coastal town', the *NSW Coastal Design Guidelines* recommend that development in Yamba should be low-scale and appropriate to the form and scale of surrounding development. Predominant building types in suburban areas include small apartment buildings, town houses and semi-detached and detached dwellings.

The more recent *Far North Coast Regional Strategy* nominates Yamba as a 'town', namely a larger settlement on the coast. The strategy identifies Yamba as having the current focus of coastal development in the Clarence but notes its continued development may be limited due to physical and ecological constraints. The strategy emphasises the need to ensure that the character and appeal of coastal towns, villages and their hinterland, which are drawcards for tourists in the mid-north coast, is not lost through inappropriate development.

As the Region grows it will be necessary for the character of the area to evolve to reflect other demands such as the need for jobs, better services and need to provide a range of housing types appropriate to the location. Increased densities within key centres and towns such as Yamba will help to achieve these goals. The Strategy clearly recognises that Yamba is going to experience population growth associated with both permanent resident and tourist populations.

The proponent argued that Yamba is currently dominated by budget accommodation options such as caravan parks, accounting for 70.1% of supply. The development meets the need of an identified gap of high quality tourist accommodation and strengthens the town's appeal from a tourism perspective.

Council notes that 'tourism is a core economic driver and is expected to play a far greater role in the Clarence economy in the coming years'. 'The tourism sector remains largely under-developed with a strong need to augment the existing accommodation and attraction base with higher yield options if the region is to grow in its competitiveness in a rapidly changing and aggressive market place.'

### Local Controls

The development is also consistent with the aims and objectives of the 2(t) Residential (Tourist) zone responding to the need for tourist facilities and high density residential accommodation. The first two objectives of this zone are:

- '(a) development of a diverse tourism industry to strengthen the local economic base of the local government area of Maclean, which does not detract from the natural, social and built environment, and*
- (b) provision of tourist facilities, recreation facilities and high density residential development and associated uses without adverse impact on surrounding development.'*

In order to achieve this objective, whilst respecting the character of the area, the development has been designed to be sympathetic to its surroundings in terms of building materials, built form and density. The preferred project provides a mix of 2, 3 and 4 storey buildings with the low rise buildings along the site edges with adequate setbacks.

The Department considers that the proposed redevelopment of the Blue Dolphin Holiday Park responds to the future character of Yamba. Specifically as it will provide for an increased range of housing types, tourist accommodation and increased housing densities within Yamba. It will also provide employment opportunities both during construction and its ongoing use. The development will alter the existing character of Yamba, however, it:

- ensures the protection of the surrounding natural environment;
- provides improved access to the Clarence River foreshore;
- complements the surrounding built form, visual setting and local character in terms of design; and,
- responds to the evolving character of the mid-north coast region.

## **6.2 BUILT FORM**

The key local controls guiding built form for development in the 2(t) Residential (Tourist) zone in Yamba are *Clarence Valley Council DCP - Development in Residential Zones* and the *Maclean LEP 2001*. The primary aim of the 2(t) Residential (Tourist) zone in the Maclean LEP is to enable the provision of tourist facilities and high density residential accommodation and associated facilities.

### **6.2.1 Building Height**

The height controls specified in the DCP are that buildings should be a maximum of 6.5 metres high to the top plate and 9 metres to the ridgeline, which generally equates to 2 storeys plus roof (both heights are measured from the 1 in 100 year flood level of 2.4m AHD). This is equivalent to a three storey building overall, in the case of the design of the proposed Blue Dolphin development as the buildings incorporate relatively flat skillion roofs with no ridge or peak.

As originally submitted, number of the proposed buildings were five storeys, three storey's over the two storey limit and two storey's over the interpreted limit considering the overall height control. The proponent had submitted a detailed merit submission for the proposed building height variation based on orientation, siting, existing tree heights and visual impact when viewed from Yamba Road, Yamba Hill, the Clarence River and foreshore. The proponent had argued that the buildings were designed to achieve high density development as per the objective of the Maclean LEP 2001 for the 2(t) Residential (Tourist) zone. As there are no density limits defined by Floor Space Ratio controls for the site, the height limit and landscaped open space give effect to the density. Therefore, having regard to the objectives of the 2(t) zone, the height limit should be defined by reference to the visual impact of the development.

The community, the Department of Lands (DoL), Council and the Department raised concerns with the heights and resultant impacts and requested that the proponent provide further consideration of the impacts of the taller buildings on overshadowing, visual amenity as viewed from the Richmond River and foreshore and the desired future character of Yamba. In particular, the Department had concerns with the resultant impacts of the 5 storey central residential building and the two 4 storey buildings in the north of the site (Buildings 11 and 13) adjacent to the Yamba Bay Foreshore Reserve.

### Preferred Project

The proponent responded to the concerns of Council, the community and the Department by:

- reducing the height of Building 5 from 5 storeys to 4 storeys (14.4 m in height), a reduction of 1.9m; and,

- setting back the upper 2 storeys of the 2 buildings (Building 11 and 13) at the north end of the site by 13m, reducing the height of part of these buildings to 2 storeys, creating two 2 / 4 storey buildings.

It should be noted that a condition has been recommended to ensure that the 13 metres setback shown on the preferred plans is interpreted as being a setback to the line of the balconies and/or glass line of the units of these buildings (if they have no terrace or balcony), such that no built structure such as balustrades or walls will encroach in the setback area.

#### Assessment

The Department agrees that building heights should be of a scale that compliments the surrounding development and visual setting of the development. It is also recognised that the DCP is not site specific, and is largely designed to deal with infill developments within existing residential zones. As such, given that fact that the proposal is a concept plan, that sets the parameters for future development, it is appropriate that consideration be given variation to the DCP height limits, if warranted.

In addition, the Department considered the height limits for other residential flat buildings and 2(t) Residential (Tourist) zones within Yamba as well as regional planning instruments and policies relevant to the site. In Yamba Hill, a visually prominent area of Yamba, buildings are allowed to be a maximum height of 12 metres in certain areas which equates to a 4 storey building. In this location height is measured to the highest point on the roof, measured from any point at existing ground level. The *North Coast Design Guidelines* classify Yamba as a 'coastal town' and state that coastal towns are less able to accommodate large-scale new buildings than cities. The Guidelines specify that the recommended height limit for a suburban area in a coastal town such as Yamba is 2 storeys and up to 4 storeys in the town centre.

Having regard to the resultant impacts in terms of amenity, public and private open space, overshadowing and visual appearance, additional height on this large redevelopment is supported. A maximum height limit of 4 storeys is considered appropriate for the site. Notwithstanding, this maximum height is not necessarily appropriate for all buildings on the site, depending on their location, proximity to the Clarence River, Yamba Road and the Moby Dick Motel.

The amendments made in the preferred project have reduced the overall visual impact from the Clarence River and foreshore and reduced the impacts on overshadowing of the foreshore reserve. The proposed building heights of the preferred project are summarised in **Table 3** below.

**Table 3: Proposed Building Heights for Preferred Project**

Building No.	No. of Storeys	Height to Roof (RL)	Height to Roof as Defined by DCP (m)	Height Above DCP Control (m)
1	4	16.8	14.4	5.4
2	4	16.8	14.4	5.4
3	4	16.8	14.4	5.4
4	3	14.2	11.8	2.8
5	4	16.8	14.4	5.4
6	3	14.2	11.8	2.8
7	4	16.8	14.4	5.4
8	3	14.2	11.8	2.8
9	3	14.2	11.8	2.8
10	3	14.2	11.8	2.8
11	2 / 3.5	11.4 / 16.2	9.0 / 13.8	4.8
12	4	16.2	13.8	4.8
13	2 / 3.5	11.4 / 16.2	9.0 / 13.8	4.8
14	4	15.4	13.0	4.0
15	4	15.4	13.0	4.0
Villas (12 no.)	2	11.1	8.7	NA

With the exception of residential Building 1 (Stage 1), all buildings adjacent to the Clarence River foreshore are 2 storeys in height. Residential Building No.1 is set back approximately 30 metres from the Clarence River, and it is therefore considered acceptable for this building to be constructed to 4 storeys in this location.

The Department considers that the buildings still achieve a good variation in height across the site, meet the objective for high density development of the 2(t) Residential (Tourist) zone of the Maclean LEP and is of a scale that compliments the surrounding development.

### 6.2.2 Building Setbacks

The DoL and the Department had concerns that the setbacks to the Clarence River foreshore and the southern site boundary (adjacent to the Moby Dick Motel) of the exhibited proposal were insufficient. In particular, the Department was concerned that the setbacks to the:

- Clarence River foreshore for Buildings 1, 11 and 13 were insufficient (3 metres) considering the height of the proposed buildings and their proximity to the Clarence River foreshore reserve.
- Southern boundary for Building 1 and 2 (3 metres) is insufficient considering the height of these buildings and their proximity to the Moby Dick Motel.

The DoL had concerns that the development had the potential to contribute significantly to the ongoing coastal erosion in this locality resulting in diminishing of the reserve with the subsequent loss of environmental value and public amenity. DoL considered that the 3 metre setback was inconsistent with the intent of the North Coast REP and coastal planning principles and failed to provide a sufficient buffer given the environmental sensitivity of the adjoining foreshore land.

In accordance with Council's DCP for *Development in Residential Zones*, a setback of 3 metres from the side and rear boundaries is appropriate for buildings with a height of 12.0 metres (measured from any point at existing ground level to the highest point on the roof). Although the DCP does not anticipate heights greater than 12 metres, it is considered reasonable that as the height of a building increases the side and rear setbacks should also increase. Therefore, the Department requested that the proponent provide a greater side and rear setback for Buildings 1, 2 11 and 13, as they are greater in height than 12.0 metres. In particular, the Department requested that Building 1 achieve the appropriate building separation distances to the Moby Dick Motel, as set out in SEPP 65.

#### Clarence River Foreshore

The preferred project increases the setback of the Buildings 11 and 13 to the Yamba Bay Foreshore Reserve by an additional 2 metres to 5 metres. In addition, the upper two storeys of these buildings have been set back by 13 metres. Therefore, the building reads as a 2 storey building from the foreshore reserve.

The Department considers that setting back Buildings 11 and 13 by an additional 2 metres and the setting back of the upper 2 storeys of these buildings will adequately reduce the overall impact of these buildings on users of the foreshore reserve, views from the Clarence River and overshadowing of the foreshore reserve.

#### Southern Boundary (Moby Dick Motel)

The Preferred Project increases the setback of Building 1 and 2 by a further 2 metres, creating a 5 metre setback to the southern boundary. Building 1 is setback a minimum of 5.5 metres angled back to 6 metres, while Building 2 is setback a minimum of 5 metres angled back to 9 metres from the southern boundary.

The Moby Dick Motel is sited approximately 2.2 metres from its property boundary and sits adjacent to Building 1. This therefore allows for a separation distance between habitable and non-habitable rooms of these two buildings of between 7.2 metres and 8.2 metres. SEPP65 specifies a separation distance of 9 metres between habitable and non-habitable rooms so there are encroachments into the required separation distances on both of these buildings.

The Department has concerns regarding the visual and acoustic privacy of the new residents of Building 1 and whether adequate daylight access can be achieved. The Department asked the proponent to provide justification for this non-compliance or for increased separation distances to be achieved.

The proponent argues that SEPP 65 relates to residential flat buildings and was established to provide standards between residential to residential developments as opposed to standards between residential and commercial developments. Notwithstanding that, as set out above, the separation distances between Building 1 and 2 and the Moby Dick Motel range between 7.2 and 8.2 metres, unlike the current situation where the existing cabins on the Dolphin Blue site are located on the site boundary. Certain design features have been incorporated to ensure the privacy of the residents in Buildings 1 and 2 and the guests of the Moby Dick Motel, including the provision of louvers which will allow light and privacy.

Furthermore, the proponent argues that the rooms on the western elevation of the Moby Dick comprise bedroom and bathroom windows with the living spaces located to the north east towards Clarence River or the south east towards Yamba Road and as a result any loss of privacy is minimized as a result of the combination of the location of habitable rooms in the motel, the setbacks provided, the proposed louvers on Buildings 1 and 2 and the proposed landscaping.

### Assessment

For buildings over 3 storeys, it is recommended that building separation increase in proportion to building height to ensure appropriate urban form, daylight access, adequate visual and acoustic amenity and privacy for building occupants. Buildings which are too close together also create amenity problems inside the building, for the space between and for neighbouring buildings. Developments that propose less than the recommended distances apart must demonstrate that daylight access, urban form and visual and acoustic privacy has been satisfactorily achieved

The Department considers that the proponent's first argument regarding SEPP 65 and the fact that the Moby Dick Motel is a commercial development is not relevant. SEPP 65 applies to the construction of any new residential flat building. It sets out design quality principles for residential flat development and does not provide exceptions for any specific locations.

The Department considers that the proponent has, however, provided an adequate justification for the non-compliance for the reduced building separation distance.

### **6.2.3 Density**

The Department, DoL and the community had concerns that the density of development in Stage 1 and Stage 3 of the development is out of context with the surrounding properties. The Department requested the following details to assist with its assessment:

- The FSR for the overall concept plan (all 3 Stages);
- The FSR for each Stage of the development;
- Further consideration to the future desired character of Yamba in the context of the *NSW Coastal Design Guidelines* and objectives (a) and (b) of the 2(t) Residential (Tourism) Zone within the *Macleay LEP*.

The FSR of the overall development is 1.03 : 1 and 1.18 :1 for Stage 1. As there are no density controls for the site, height, landscaped open space, building separation and the desired future character of Yamba determine the density suitable for the site. In **Section 6.1.1** it has been demonstrated that a maximum height of 4 storeys is appropriate for the site. The required landscaped open space as stipulated by the DCP is 35%. The concept plan includes a total of 49% of the site area as landscaped open space. Stage 1 incorporates 46.3% of the site area as landscaped open space.

The *Residential Flat Design Code (2002)* provides guidance in terms of determining an appropriate FSR for a site. The Code recommends determining an FSR by calculating it at 80 percent of the building envelope in denser urban areas and at 75 percent in suburban areas. Where there are no site-specific envelopes, controls are coordinated so that height, setbacks and FSR are consistent with each other and with the desired built form outcome. Therefore, taking into consideration the FSR guidelines in SEPP 65, the FSR for the entire site is calculated to be approximately 1.14 : 1 and for Stage 1, 1.19 : 1 (refer **Table 4**).

**Table 4: FSR Calculations for Blue Dolphin as per SEPP65 Guidelines**

	Concept Plan	Stage 1
Site Area	57,880 sq m	7,546 sq m
Building Envelope	22,000 sq m	3,030 sq m
Height	4 storeys	4 storeys
Total Envelope Area	88,000 sq m	12,120 sq m
75% of Total Envelope Area	66,000 sq m	9,090 sq m
FSR	66,000 / 57,880 = 1.14 : 1	9,090 / 7,546 = 1.18 : 1

Therefore, as open space requirements have been exceeded and a height of 4 storeys is considered appropriate for the location, it is considered that the proposed density of the development is acceptable.

The GFA and FSR for Stages 2 and 3 will also be conditioned to be as proposed in the preferred project plan as summarised in **Table 5** below:

**Table 5: Maximum FSRs for Stages 1, 2 and 3**

Stage	Description	Site Area	Maximum GFA	Maximum FSR
Stage 1	- Proposed Community Development Lot 2	7,546 sq m	8,920 sq m	1.182 : 1
	- Part internal access road in Community Property Lot 1			
Stage 2	- Proposed Community Development Lot 3	24,961 sq m	23,865 sq m	0.956 : 1
	- Part internal access road in Community Property Lot 1			
	- Buildings 9, 11, 12, 13, 14 15			
Stage 3	- Proposed Community Development Lot 4	25,373 sq m	26,915 sq m	1.060 : 1
	- Buildings 3, 4, 5, 6, 7, 8 & 10 plus residential villas			
<b>TOTAL SITE</b>	<b>NA</b>	<b>57,880 sq m</b>	<b>59,700 sq m</b>	<b>1.03:1</b>

### 6.3 OVERSHADOWING

The *North Coast REP* specifies that development should not result in beaches or waterfront open space being overshadowed before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time). The exhibited proposal results in overshadowing of the Yamba Bay Foreshore Reserve, which is Crown land, from 3pm in mid-summer. The development does not result in overshadowing of public foreshore open space prior to 3pm mid-winter.

#### Proponent's Argument

The proponent provided a merit submission on the issue of overshadowing. The proponent argued that a degree of overshadowing would occur in the summer after mid-afternoon, however, overshadowing already occurs as a result of

existing evergreen trees. Therefore, any additional overshadowing caused by the proposed development would be marginal when compared to the existing shadows cast by the trees. Further the proponent argues that the concept plan includes substantial areas of waterfront open space along the western boundary of the subject site.

### Assessment

Firstly, to compare shadowing by existing trees to overshadowing by the built environment misrepresents this issue. Shadows cast by trees present a mottled affect and still allow for the sun to penetrate through to the open space below. Secondly, the western boundary of the subject site runs perpendicular to the Clarence River foreshore and therefore does not constitute waterfront open space. This area provides public open space and cannot be considered to be a substitute for the loss of amenity of waterfront open space, particularly when this land belongs to the Crown.

Due to the orientation of the site, it is expected that some overshadowing of the Yamba Bay Foreshore Reserve will occur despite significant setbacks and reduced heights of buildings. Even the existing single storey buildings overshadow the foreshore open space from 5pm mid-summer. It is considered that the staggered position, setting back and proposed heights of buildings along the foreshore reduces the amount of overshadowing of foreshore open space. Notwithstanding, the Department and Department of Lands requested that the proponent increase setbacks and building heights adjacent to the foreshore reserve to minimise the impacts of overshadowing.

### Preferred Project

The preferred project sets back the upper two storeys of Buildings 11 and 13 by 13 metres, increases their setbacks to the foreshore reserve from 3 metres to 5 metres and reduces the height of Building 5 from 5 storeys to 4 storeys. The amendments reduce the overshadowing of the foreshore reserve to an acceptable degree. Overshadowing will still occur from around 5pm, however, this will be staggered along the foreshore.

**Figure 18** and **Figure 19** show the extent of overshadowing caused at 3pm and 4pm mid-summer by the exhibited proposal and preferred project, respectively. The setbacks of the upper levels of Buildings 11 and 13 further reduce the extent of overshadowing in the north eastern corner of the development. The Department of Lands has also agreed that the overshadowing impacts are acceptable.



Figure 18: Overshadowing caused by exhibited proposal at 3pm & 4pm mid-summer (orange line)



Figure 19: Overshadowing caused by preferred project at 3pm and 4pm mid-summer (orange line)

## 6.4 VISUAL IMPACT

Objectors and the Department had concerns that the development was excessive in terms of its impact on views from the Clarence River and foreshore and the adjacent Moby Dick Motel. In particular the Department had concerns with the impact of the central 5 storey building, Building 5, and Buildings 11 and 13 in the north of the site adjacent to the Yamba Bay Foreshore Reserve.

Objectors also raised concern about the visual impact of the development as viewed from Yamba Road and the Clarence River. **Figure 20** shows a photomontage of the proposal as viewed from the Clarence River and **Figure 21** shows the view from Yamba Road heading south into Yamba.

### Yamba Road

The proponent argues that in order to reduce the visual impact of the development from the western boundary (Yamba Road), the proposed buildings have been set back by 6 metres to comply with the Residential DCP and building heights have been staggered and varied in height. This also allows for views of the river through the development from Yamba Road both for the public and for residents of the development. Design features have been put in place to reduce the impact, such as the use of glass in the balconies to allow visual permeability through the buildings and the setting back of the upper storeys of the buildings. Dense landscaping has also been incorporated into the setback along Yamba Road. The Landscape Management Plan incorporates a mix of native plant and tree species and existing mature trees will be retained.

The Department considers that the visual impact of the development as viewed from Yamba Road has been mitigated by the proposed landscaping, setbacks and building design.

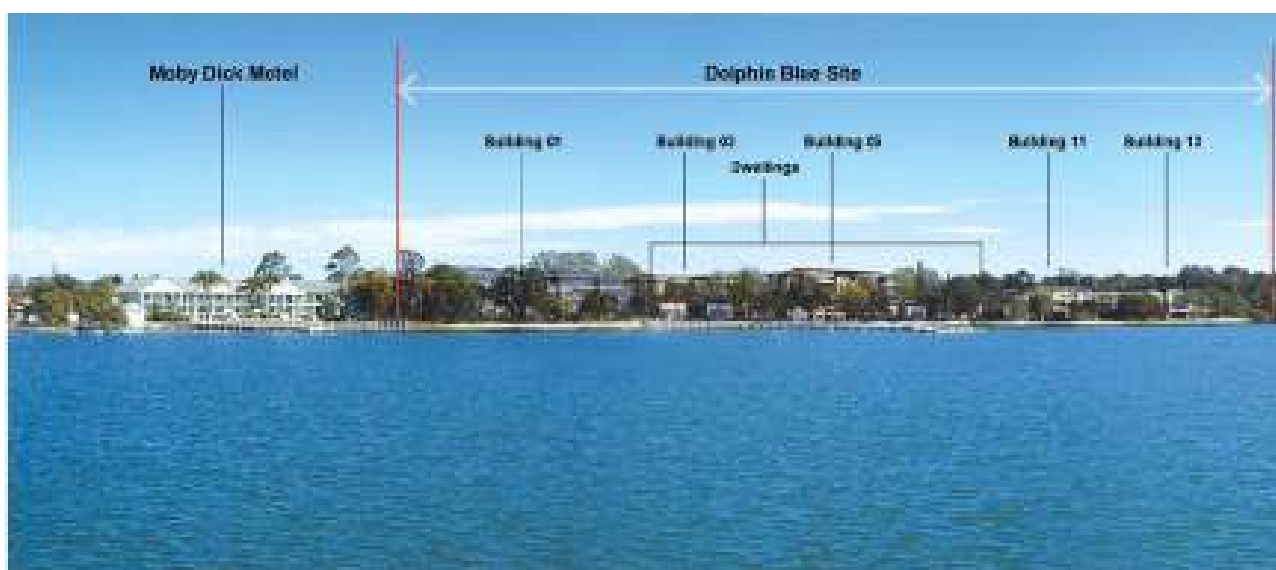


Figure 20: Waterfront view of proposed Blue Dolphin Redevelopment (Source: Planning Workshop, 2006)





Figure 21: Yamba Road west view of 3 storey residential Building Nos. 4, 6, 8 and 10 and 4 storey Building No.2  
(Source: Blue Dolphin Redevelopment EA, Planning Workshop, 2006)

### Clarence River

Similarly, the proponent argued that along the waterfront, building materials, such as glass balustrades, increase the visual permeability through the site and the Landscape Management Plan incorporates additional planting whilst retaining existing mature trees.

The Department considered that the visual impact of the proposed development, particularly the 4 and 5 storey buildings, as viewed from the Richmond River and foreshore have not been mitigated by existing trees, building design and setbacks. The Department therefore requested that the proponent increase the setbacks of Buildings 11 and 13 from the eastern site boundary adjacent to the Yamba Bay Foreshore Reserve, reduce the height of these buildings and reduce the height of residential Building 5.

### Preferred Project

The preferred project responds to the Department's concerns with the following design changes:

- Reduction in the height of the central Building 5 by 1 storey, which equates to a reduction in height of 1.9m to 4 storeys (14.4m). Building 5 is now four storeys.
- Setting back the upper two stories of Buildings 11 and 13 by 13 metres. The buildings are two storeys plus two storeys above set back (refer **Figure 22**). The set back will be conditioned to be exclusive of balconies or terraces.
- Increasing the side set back of Buildings 11 and 13 from the eastern boundary, adjacent to the Foreshore Reserve by an additional 2 metres.

The yellow lines in **Figure 22** illustrate the change from the exhibited proposal to the preferred project for the upper levels of Buildings 11 and 13. A condition of approval requires there to be no structures, including balconies, within the 13 metre setback.



Figure 22: Waterfront west view of residential Building No.5 and Buildings 11 and 13 (Source: Planning Workshop, 2007) (yellow lines depict building design as per the exhibited proposal)

## 6.5 ABORIGINAL CULTURAL HERITAGE

The DEC raised concerns that the Aboriginal cultural heritage assessment submitted with the EA was unsatisfactory. The DEC requested that the proponent undertake a more comprehensive preliminary Aboriginal cultural heritage assessment for the development, consistent with the DEC Draft Guidelines for *Aboriginal Cultural Heritage Impact Assessment and Community Consultation* (DEC 2005).

The proponent submitted a revised Aboriginal Cultural Heritage Assessment in April 2007 that addressed DEC's concerns. This assessment concluded that "any Significant Aboriginal Cultural Heritage sites were on adjoining land of the Clarence Estuary Nature Reserve as well as a small area inside the boundary of the Blue Dolphin Holiday Resort property". As such the Department is satisfied that the Concept Plan and Stage 1 can be approved as it is in the opposite corner to this north western area which is adjacent to the drainage area where there has been previous midden activity found. Further, the Department has required that prior to any project approval for works in this area the future consent authority is required to see evidence of preliminary testing.

The Department is satisfied that the development can proceed and that Aboriginal Cultural Heritage will not be affected by the development, based on the information available. A condition of the approval is that an experienced Aboriginal Cultural heritage expert be on a watching brief throughout the construction process, and to ensure that work will cease should any relics of significance or cultural heritage be discovered.

## 6.6 BUSHFIRE

The Department and the Rural Fire Service (RFS) had concerns with the width of the Asset Protection Zone (APZ) proposed at the north end of the site between tourist Buildings 13, 14 and 15 and the Clarence Valley Nature Reserve. The proponent proposes a 30 metre APZ comprising a 20 metre Inner Protection Area (IPA) and a 10 metre Outer Protection Area (OPA).

At the time of lodgement, the relevant policy document relating to bushfire protection for the development was the *Planning for Bushfire Protection (2001) (PBP, 2001)*. Since the lodgement and exhibition of the EA, the RFS has released the new *Planning for Bushfire Protection (2006)* that advocates a performance based approach to bushfire hazard management. Therefore, in addition to prescribing set APZs the document also identifies objectives and detailed performance criteria to satisfy desired outcomes. The performance criteria can be satisfied in one of two different ways:

- use of acceptable solutions; OR

- demonstrating another solution satisfying the specific objectives and performance criteria.

Under both documents, a tourist development is considered to be a Special Fire Protection Purpose (SFPP) development. These types of development require a greater APZ than a residential development for the purpose of providing sufficient space for fire fighters and other emergency services personnel, ensuring radiant heat levels permit operations under critical conditions of radiant heat, smoke and embers, while supporting or evacuating occupants.

Under the new PBP (2006), the RFS advises that an APZ of 44 metres is required for SFPP development and 18 metres for residential development. In the case of SFPP developments the corresponding key performance criteria relating to APZs is that 'radiant heat levels of greater than 10kw/m<sup>2</sup> will not be experienced by occupants or emergency services workers entering or exiting a building'. Acceptable solutions include:

- an APZ is provided in accordance with the document (in the case of the Blue Dolphin site this equates to 44m);
- exits are located away from the hazard side of the building; and,
- the APZ is wholly within the boundaries of the development site.

The Department and RFS considered that the Bushfire Hazard Assessment within the EA documentation provided insufficient justification for an APZ of 30 metres (instead of 44 metres) at the north-western end of the development. The justification was considered insufficient for the following reasons:

- Stage 2 of the application seeks approval for tourist accommodation not residential accommodation, despite the construction of the buildings being similar to that of other residential buildings within the development;
- The assessment did not include reliably tested evidence that the proposed construction techniques for tourist buildings 10, 13, 14 and 15 will satisfy a radiant heat level of 10kW/m<sup>2</sup> for occupants or emergency services workers outside of buildings.
- Exceptional circumstances have not been demonstrated for any reduction in the APZ.
- Unlike residential subdivisions, which can be built to a construction standard to withstand the fire event, enabling occupants and emergency service workers to provide property protection after the passage of fire, occupants of SFPP developments may not be able to assist in property protection. They are more likely to be adversely affected by smoke or heat while being evacuated.

The Department requested that a more detailed bushfire hazard assessment be undertaken or that the use of Buildings 13, 14 and 15 be amended to residential purposes.

#### Proponent's Argument

The proponent proposed the following to address the concerns of the RFS and the Department:

- locate emergency exits from those tourist buildings adjacent to the APZ on the south east of the buildings, away from the bushfire hazard (approximately 60 metres from the hazard);
- maintain the APZ in accordance with PBP (2006);
- prepare an Asset Protection Zone Maintenance Plan and an Emergency Response Plan to prepare for the safe evacuation and assembly of residents, visitors and staff in a bushfire emergency; and,
- construct roads to comply with the requirements of PBP (2006).

The proponent also argued that the *Rural Fires Act 1997*, *Rural Fires Regulations 2002* and PBP (2006) do not specifically categorise 'serviced apartments' (the proposed 'tourist' use in Buildings 13, 14 and 15) as a tourist use. *Section 100B (6)* of the *Rural Fires Act* defines SFPP development, and includes "a hotel, motel or other tourist accommodation." The proponent considers that it may be arguable that 'serviced apartments' fall within the meaning of 'residential flat buildings' in the EP&A Regulations (and as referred to in SEPP 65).

#### Assessment

PBP (2006) states that the performance criteria for SFPP development relates to a derived radiant heat exposure experienced by emergency service workers, not the radiant heat levels at any point on a building.

The performance criteria relating to the radiant heat levels at any point on a building relate to residential development whereby APZ distances are designed to meet the "deemed to satisfy" arrangement for a particular construction level under the BCA.

The Department and the RFS were not satisfied with the measures proposed by the proponent for the following reasons:

- the acceptable solutions within the new PBP are not met;
- any fire hazard experienced by tourists, staff and emergency workers in tourist buildings 13, 14 and 15 is not appropriately mitigated;
- the intent and requirements of PBP (2006) are not met.

Furthermore, the short-term nature of the occupants of serviced apartments, and the unfamiliarity with emergency escape routes of those occupants, is characteristic of a tourist development, rather than a residential flat building.

#### Amended Preferred Project

The amended preferred project amends the use of Buildings 13, 14 and 15 from tourist to residential purposes.

Therefore the 30 metres APZ proposed exceeds the 18 metre APZ required by *Planning for Bushfire Protection* (2006) for this type of development in this location.

Conditions of approval on the concept plan ensure the following:

- that the use of Buildings 13, 14 and 15 is amended to residential purposes;
- that Buildings 13, 14 and 15 are not to be used for tourist purposes at any time; and,
- the Community Management Statement includes an Asset Protection Zone Maintenance Plan, this includes identifying a list of suitable species of replacement vegetation and separation distances for planting within the Asset Protection Zone.

## **6.7 GROUNDWATER**

The proponent's EA indicates that the current groundwater level would need to be drawn down about 1.5m to 2m to allow construction, requiring extraction of significant volumes of water and resulting in drawdown of groundwater levels in the vicinity of the site. Groundwater drawdown due to dewatering can lead to settlement of houses and other structures near the site during construction. Drawdown impacts are contained largely within the site with off-site impacts limited to a drawdown of about 0.7m.

The most critical area for the potential of settlement for dewatering would be to the existing Moby Dick Motel to the east of the site, which is located within 9 metres of the proposed Stage 1 buildings. Furthermore, groundwater dependent ecosystems within the Clarence Estuary Nature Reserve will also be situated within the area of influence of the dewatering.

The Department of Natural Resources (DNR) had concerns that the proposed Dewatering Management Statement did not satisfactorily address the issue of dewatering on the site. In particular, the DNR requested that the proponent:

- (i) Clarify stabilisation methods, the depth of proposed excavations and average groundwater inflow rates;
- (ii) Further develop of a groundwater monitoring program including water levels and water quality;
- (iii) Investigate the impacts of saltwater on groundwater dependent ecosystems; and,
- (iv) Clarify the impacts of groundwater level changes on other users.

The DEC also raised concern that as vegetation in the Clarence Estuary Nature Reserve is largely dependent on a high water table, particularly the Salt Marsh, Swamp Oak and Swamp Sclerophyll Endangered Ecological Communities (EECs), the proposed dewatering will negatively impact on the health of these communities.

Furthermore, the focus of the EA regarding the Nature Reserve is about restoring groundwater levels after they are drawn down and does not consider that soils beneath the Nature Reserve are likely to contain potential acid sulphate

soils (PASS). This means that even a temporary drop in groundwater levels may cause the soil chemistry to change, converting the PASS to actual acid sulphate soils (AASS), rendering them likely to release acid into the groundwater when re-wetting occurs (via rainfall infiltration or re-injection of groundwater). This has the potential to threaten the Reserve's vegetation, including both threatened flora and Endangered Ecological communities.

#### Preferred Project

The proponent's revised draft Statement of Commitments includes the preparation of a detailed Groundwater Monitoring Plan (GMP) to be developed for each stage of the development, which includes a program of settlement and groundwater level and quality monitoring.

A condition of approval also requires a detailed site-specific Groundwater Management Plan (GMP) to be prepared prior to the issue of a Construction Certificate for Stage 1 below ground works submitted to and approved by the DNR. Similarly, a condition of approval requires future applications for Stage 2 and Stage 3 to be accompanied by a detailed GMP to ensure that these matters are addressed in detail prior to any approval being granted.

### **6.8 PROVISION FOR PUBLIC ACCESS TO FORESHORE**

There will be two new proposed public points through the site from the Yamba Road through to the Yamba Bay Foreshore Reserve and the Clarence River as a result of the development. These access points are marked as the dark green roads on Figure 14.

A public **pedestrian** right of way will be created along the internal access road (part of proposed lot 1) adjoining Stage 1 of the development (the residential flat buildings). A condition of approval will require that this access be signposted at the Yamba Road gateway, inviting public access through the site. This is because otherwise, the public access will not be readily apparent as being a public right of way through what will appear as being part of a private development. This access will be available following the completion of Stage 1.

A more significant **pedestrian and vehicular accessway** will be created via an easement on the north-western side of the site, along the boundary adjoining the Clarence Valley Estuary Nature Reserve. This will be a two lane entrance from Yamba Road with vegetated medium strip and then narrowing to approximately 5 metres wide to connect to the car park, which provides spaces for 50 cars for use by the public. Trailers will not be permitted, as it is not intended to provide a boat launching facility nor will the parking be able to cater for trailers.

This is part of Stage 2 of the development, and will be subject to a separate development application and the timing of creation of the access point will depend on the timing of lodgement of the applicable DA for Stage 2.

This entrance will also be required to be sign posted, inviting public access through the site to the river foreshore.

The provision of new public access through the site and upgrading of the Foreshore Reserve (see below) as positive outcomes of the development.

### **6.9 MANAGEMENT OF YAMBA BAY FORESHORE RESERVE**

The DoL had concerns that the proposed development would have significant implications for the adjoining Crown foreshore land known as Yamba Bay Foreshore Reserve. Council is the appointed manager of the Clarence Coast Reserve Trust that is charged with its care, control and management. The Reserve is subject to a statutory Plan of Management (PoM) that emphasises the environmental sensitivity of the foreshore reserve and focuses on the need to actively protect and regenerate this public asset. In its present state, the Yamba Bay Foreshore Reserve is accessible along the foreshore from Yamba Bay Park, which is to the south east of the Moby Dick Motel.

The DoL had concerns that the exhibited proposal would impact significantly on the foreshore reserve for the following reasons:

- overshadowing, loss of ambience and public amenity;
- no allowance has been made for coastal recession and climate change; and,

- the development has the potential to contribute significantly to the ongoing coastal erosion in this locality resulting the diminishing of the Reserve with subsequent loss of environmental value and public amenity.

To address these and all other matters of concern to the DoL with respect to the management and maintenance of the Reserve, the proponent has agreed to enter into an Agreement with the DoL, owners of the land and the Clarence Coast Reserve Trust to update and contribute to the ongoing care, control and management of the Yamba Bay Foreshore Reserve.

Through the Statement of commitments, the Proponent is to enter into an Agreement, with the land owners, the Department of Lands and the Clarence Coast Reserve Trust to undertake the following:

- Works and funding of \$20,000 (payable to the Department of Lands) toward the preparation of a new Plan of Management for the Yamba Bay Foreshore Reserve, which will include:
  - (a) A capital works and management program; and,
  - (b) A schedule of priorities setting out the timing of completion of the different capital works.
- Fund capital works and management program for the adjoining Yamba Bay Foreshore Reserve and Crown land where it fronts the subject site.

The Agreement is to be made prior to the issue of any Occupation Certificate for the Stage 1 residential apartments.

## 6.10 TRAFFIC AND ACCESS

### 6.10.1 Traffic and Access

The exhibited proposal included two vehicle access points to Yamba Road, one at the site of the existing resort entrance to serve the residential buildings, and one at the north western corner adjacent to the northern boundary to serve the tourist facility. Other works proposed included:

- Acceleration / deceleration lanes on the northern side of Yamba Road;
- 1.2 metre raised median opposite both access points to ensure a left-in, left-out only access; and,
- 2.5 metre wide shared bike and pedestrian path along the site frontage.

The RTA had concerns that the proposed works would not prevent right hand and u-turns onto and across Yamba Road and therefore recommended the widening of Yamba Road on the northern side for both new accesses to provide:

- A footpath that has a combined off-road shared path for cyclists;
- 3.0m left turn deceleration lane 42m long;
- 3.0m parking lane;
- 3.5m through lane;
- 1.2m raised median incorporating a refuge from Shores Drive to the Golding Street roundabout east of the development to prevent right turns into the development; and,
- A roundabout at the Shores Drive / Yamba Road intersection.

The requirement for a median strip and roundabout is not based on traffic generation, as the development does not increase peak traffic generation. The need relates to the requirement for safe access to the development and maintains the efficiency of Yamba Road. The RTA also requested that the proponent review/upgrade street lighting on Yamba Road and recommends that only one vehicle entry for the public be provided and signposted via the western driveway from Yamba Road, with the eastern access available for pedestrians and cyclists only.

Council has no objection to any reasonable conditions proposed by the RTA subject to those conditions not imposing a financial cost on Council or the community.

### Preferred Project

The preferred project includes the following arrangements for traffic management on Yamba Road:

- A new roundabout at the intersection of Shores Drive and Yamba Road;
- A "BB" painted double barrier line in the centre of Yamba Road between Shores Drive and Golding Street;

- Left-in, left-out only traffic access at the two proposed site entrances;
- Auxiliary deceleration lanes at each of the two proposed site entrances;
- New 2.5m wide concrete shared pedestrian / cycle path along the length of the Yamba Road site frontage;
- Existing kerb lines are maintained, with the exception of the deceleration lanes above; and,
- Driveway entry treatment, design and signage will reinforce that left-in left-out access only is permitted.

Council, as the Road Authority, will approve the new accesses and plans for road works with the RTA's concurrence. The proponent's Statement of Commitments includes a commitment to undertake these works. However, conditions of approval ensure that these arrangements are constructed prior to the Stage 2 Occupation Certificate being issued.

A condition of approval requires the construction of a roundabout at no costs to the Council or the RTA at the junction of Yamba Road and Shores Drive prior to the Stage 2 Occupation Certificate being issued. The roundabout is to be designed to AUSTRROADS standards and provide for long term traffic management arrangements for the Yamba Bypass.

The proposal for double barrier lines is not acceptable as a treatment to safely manage right-turning traffic. Any other treatment such as right-turning lanes and fragmented medians would impact on residents and encourage unsafe u-turns. A condition on the concept approval requires the proponent to provide an appropriate treatment to safely manage right-turning traffic prior to the Stage 2 Occupation Certificate being issued.

#### Assessment

The above arrangements represent an acceptable outcome for all stakeholders for the following reasons:

- The impact on the surrounding local residents with Yamba Road frontage of any particular traffic control device can be assessed with the detailed project application for Stage 2 of the development;
- The Shores Drive roundabout will provide for U-turn movements and will assist residents during peak periods to access their driveways more safely; and,
- The traffic capacity of Yamba Road in the vicinity of the site will be increased through a lower total site traffic generation than existing, reduced turning movements through the safer left-in, left-out access that removes all right turning traffic currently associated with the existing Blue Dolphin caravan park and service station.

In relation to the staging of road works, works on Yamba Road would not be required until the occupation of Stage 1 commences. Council support construction of acceleration and deceleration lanes as part of Stage 1 of the development, but support construction of roundabout and any other works deemed appropriate with Stage 2.

#### **6.10.2 Construction Traffic Management**

Construction works are to be managed by a Traffic Control Plan in the interim. A condition of approval requires the preparation of a Traffic and Pedestrian Management Plan prior to the issue of a construction certificate for Stage 1 works.

## 7 CONCLUSION

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### 7.1 CONCLUSION

The Department has assessed the EA and considered the submissions in response to the proposal. The key issues related to:

- Future character
- Built form (height and setbacks)
- Overshadowing
- Visual impact
- Aboriginal Cultural Heritage
- Bushfire
- Groundwater
- Provision for public access to foreshore
- Yamba Bay Foreshore Reserve
- Traffic and access

The Department has considered these issues and a number of conditions are recommended to ensure the satisfactory addressing of these issues and minimal impacts as a result of the proposal. The proposed development will:

- Improved access to the Clarence River foreshore;
- Medium and high density residential housing and increased housing choice;
- \$300,000 to youth facilities in Yamba (via a VPA);
- Improved management of the Yamba Bay Foreshore Reserve (via a VPA);
- Improved stormwater management and stormwater quality discharge to the Clarence River;
- Improved bushfire hazard management;
- Improved access and parking arrangements on the site; and,
- High quality (5 star) tourist accommodation.

Furthermore, the concept plan application has largely demonstrated compliance with the existing environmental planning instruments.

On these grounds, the Department considers the site to be suitable for the proposed development and that the project is in the public interest. Consequently, the Department recommends that the project be **approved**.

### 7.2 NATURE OF THE RECOMMENDED APPROVAL

On 6 July 2006 the Minister authorised the submission of a concept plan for the project. The Proponent has now requested that the Minister determine that no further environmental assessment is required, pursuant to Part 3A Division 3 Section 75P(1)(c) of the EP&A Act, to enable a full project approval (as opposed to a concept approval) to be granted, for the following stages of the project:

- Community Title Subdivision creating 1 common lot and 3 development lots to enable staged completion of the project and identifying the common property as well as easements for public access (vehicular and pedestrian but not boat and trailer) to the waterfront reserve;
- Stage 1 of the concept plan, including construction of two 4 storey residential buildings comprising 55 residential apartments, basement car parking, landscaping works, internal access road, detention basin, other such ancillary services and infrastructure and the strata subdivision of the Stage 1 apartments.



The Department considers that the Proponent has provided sufficient information such that an adequate level of assessment of these components of the project could be undertaken, and subsequently recommends that the Minister form the view that no further environmental assessment of these components of the concept application is necessary.

The Department, on review of the information included in the Environmental Assessment of the proposal, is of the opinion that further information and assessment is required in relation to Stage 2 and Stage 3 of the concept application. In this instance, it is recommended that further assessment be undertaken under Part 4 of the Act. These aspects of the development do not raise matters of State or regional environmental planning significance and therefore do not necessitate further Ministerial involvement in the assessment and approvals processes.

The Department therefore recommends that the Minister exercise his power under the *Environmental Planning and Assessment Act 1979* to:

1. grant concept approval to the proposal in its entirety;
2. grant project approval for the Community Title Subdivision of the entire site into 1 common lot and 3 development lots;
3. grant project approval for the construction of Stage 1 of the concept plan;
4. grant project approval for the strata subdivision of the Stage 1 residential apartments; and,
5. require further assessment and approval of the construction of Stages 2 and 3 to be under Part 4 of the Act.

For Stages 2 and 3 of the proposed development, Clarence Valley Council would be the relevant consent authority.

To reflect this approach, the Department has drafted two recommended instruments of approval:

1. An instrument of concept approval that grants approval to the proposal in its entirety and describes the subsequent assessment and approval requirements for each of the component projects of the proposal.
2. An instrument of project approval that grants full project approval to the community title subdivision, Stage 1 construction and Stage 1 strata subdivision project components and details conditions that establish stringent environmental standards, mitigation measures, environmental controls and monitoring requirements for the residential and tourist development.

## 8 RECOMMENDATION

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It is recommended that the Minister:

- (A) consider the findings and recommendations of this report;
- (B) approve the concept plan for the project, under section 75O *Environmental Planning and Assessment Act, 1979*; subject to modifications of the concept plan; and sign the determination of the Major Project (**Tag A**).
- (C) approve the carrying out of the project, under Section 75P(1)(c) of the *Environmental Planning and Assessment Act 1979*, for construction of the construction of 55 residential apartments (GFA 8,920m<sup>2</sup>), basement car parking, ancillary infrastructure, landscaping and strata subdivision of Stage 1, subject to conditions and sign the determination of the Major Project (**Tag B**);
- (D) approve the carrying out of the project, under Section 75P(1)(c) of the *Environmental Planning and Assessment Act 1979*, for strata subdivision of Stage 1, subject to conditions and sign the determination of the Major Project (**Tag B**);
- (E) approve the carrying out of the project, under Section 75P(1)(c) of the *Environmental Planning and Assessment Act 1979*, for the Community Title subdivision of the site creating one common lot and 3 development lots, subject to conditions and sign the determination of the Major Project (**Tag B**).
- (F) pursuant to Section 75P(1)(b) of the *Environmental Planning and Assessment Act 1979*, determine that all subsequent stages of the development be subject to Part 4 of the *Environmental Planning and Assessment Act 1979* (**Tag A**).

## **APPENDIX A: DIRECTOR-GENERAL'S ENVIRONMENTAL ASSESSMENT REQUIREMENTS**

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## **APPENDIX B: COMPLIANCE WITH ENVIRONMENTAL PLANNING INSTRUMENTS INCLUDING STATE ENVIRONMENTAL PLANNING POLICIES THAT SUBSTANTIALLY GOVERN THE CARRYING OUT OF THE PROJECT**

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## **APPENDIX C: COMPLIANCE WITH DCPS AND OTHER PLANS AND POLICIES**

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## APPENDIX D: SUMMARY OF SUBMISSIONS

### Blue Dolphin Redevelopment MP06\_0133

Table D1: Summary of all public submissions received for this application

Topic	Details / Comment	No of references in submissions
Building height	- Building heights do not comply with Council's DCP maximum height control of 9m	7
Precedent	- If approved this development will set a precedent for Yamba	5
Economics	- Economic growth would only be short term and negative in the long term - Employment limited to menial roles resulting in a downturn in wages - Question accuracy of economic benefits to the town and Clarence Valley - Concerned that Stage 2 may not be developed if not economically viable for the developer - Not enough demand for such a huge amount of high density high cost accommodation in Yamba	4
Loss of local character	- Loss of available low cost accommodation, aka Angourie Rainforest Resort facility - Fear of losing the identity of Yamba through overdevelopment - Development is unsuitable for the town	3
Insufficient services / infrastructure	- Water supply is unpredictable as it is reliant on weather patterns - Insufficient capacity for sewerage, even for the existing population - Insufficient services in the area	2
Basement car park	- Impact of high tides and stormwater flooding on basement car park - Obstruction of groundwater flows as a result of basement car park	2
Traffic	- Worsening of traffic congestion on Yamba Road - Development should only have one access in the western end of the site	2
Building scale & density	- Does not conform to scale of surrounding buildings - Building density in Stage 1 is excessive	2
Noise	- Noise transfer from external infrastructure, i.e. lift motors and cooling towers - Noise impacts from rubbish collectors and LPG tankers - Noise impacts on wildlife in adjoining nature reserve - Concerned about amenity issues associated with living opposite a construction site for several years due to staging	1

**Table D2: Summary of all agency submissions received for this application**

Agency	Agency comment
<p><b>Clarence Valley Council</b></p>	<p><u>Bushfire</u></p> <ul style="list-style-type: none"> <li>- Adequate provision must be made to reduce the hazard to the proposed development</li> </ul> <p><u>Flood Liable Land</u></p> <ul style="list-style-type: none"> <li>- Consent must not be granted unless habitable floor levels of the proposed residential buildings are at least 0.3m above the 1 in 100 year flood level adopted by Council</li> <li>- Council will require a flood study to be submitted to Council for approval prior to the issue of any building Construction Certificate and preparation and approval of a flood evacuation study</li> </ul> <p><u>Acid Sulfate Soils</u></p> <ul style="list-style-type: none"> <li>- An appropriate assessment will be required prior to commencement of works</li> </ul> <p><u>Clarence Valley Council Residential DCP</u></p> <ul style="list-style-type: none"> <li>- Council strongly opposed the proposed building heights of the concept plan and advised the Department the height restrictions contained in <i>Council's Residential DCP</i> be adhered to.</li> </ul> <p><u>Traffic and Access</u></p> <ul style="list-style-type: none"> <li>- Council would have no objection to any reasonable conditions proposed by the RTA subject to those conditions not imposing a financial cost on Council or the community</li> </ul> <p><u>Section 94 Contributions</u></p> <ul style="list-style-type: none"> <li>- Contributions will be discounted to make allowance for the existing 235 tourist sites</li> </ul> <p><u>Foreshore access</u></p> <ul style="list-style-type: none"> <li>- Council will require the provision of public access to the Reserve through the subject site and the provision of embellishments to improve access within the Reserve and protect the reserve from natural processes (erosion control)</li> </ul>
<p><b>Roads and Traffic Authority</b></p>	<ul style="list-style-type: none"> <li>- Require widening of Yamba Road on the northern side for both new accesses to provide: <ul style="list-style-type: none"> <li>• A footpath that has a combined off-road shared path for cyclists</li> <li>• 3.0m left turn deceleration lane 42m long</li> <li>• 3.0m parking lane</li> <li>• 3.5m through lane</li> <li>• 1.2m raised median incorporating a refuge from Shores Drive to the Golding Street roundabout east of the development to prevent right turns into the development.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>- Require review/upgrade of street lighting on Yamba Road</li> <li>- Recommend only one vehicle entry for the public be provided and signposted via the western driveway from Yamba Road. The eastern access should be available for pedestrians and cyclists only.</li> <li>- Proposed number of parking spaces is insufficient</li> </ul>
<b>Rural Fire Service</b>	
	<ul style="list-style-type: none"> <li>- RFS recommends a 75 metre APZ under the provisions of <i>Planning for Bushfire Protection 2001</i> for Special Fire Protection Purpose (SFPP) development.</li> <li>- RFS recommends a 70 metre APZ under the provisions of <i>Planning for Bushfire Protection 2006</i> for Special Fire Protection Purpose (SFPP) development.</li> </ul>
<b>Department of Natural Resources</b>	
	<p><u>Groundwater</u></p> <ul style="list-style-type: none"> <li>- It is unclear which wall stabilisation method will be used for the proposed excavations</li> <li>- The depth of the proposed excavations is unclear</li> <li>- It is recommended that the mitigation measures proposed for managing groundwater drawdown in the CENR be developed further in order to maintain water levels within the nature reserve</li> <li>- There has been no assessment of the impacts of saltwater on groundwater dependent ecosystems or other groundwater users</li> <li>- Water level impacts on other users are unclear</li> <li>- It is unclear where the average inflow rate has been derived</li> <li>- The proposed option for the disposal of extracted groundwater needs to be identified and supported with further detail</li> </ul> <p><u>Acid Sulfate Soil</u></p> <ul style="list-style-type: none"> <li>- There is an inadequate number of boreholes and number of samples per borehole to meet the requirements of the ASS Manual</li> <li>- The level of treatment of the ASS issue is generally not acceptable</li> <li>- It is not clear how the liming rate has been determined</li> <li>- The revised ASSMP must clearly indicate how it is proposed to prevent oxidation of surrounding ASS during the dewatering process</li> </ul> <p><u>Flooding</u></p> <ul style="list-style-type: none"> <li>- The minimum floor level is unclear and needs to be clarified with Council</li> <li>- The SES should be contacted with regard to the preparation of the site evacuation plan</li> </ul>
<b>Department of Primary Industries</b>	
	<ul style="list-style-type: none"> <li>- The DPI raised no issues with the development as proposed and requested that any access for fisherman along the foreshore be</li> </ul>



	maintained or improved as a feature of the proposal.
<b>Department of Lands</b>	
	<p><u>General</u></p> <ul style="list-style-type: none"> <li>- It is incorrect to infer that the Yamba Bay Foreshore Reserve is landlocked and only accessible by patrons of the development site</li> <li>- It is incorrect to infer that the land is leased as the current licence arrangements do not give the adjoining landholder any exclusive right of occupation and in no way compromise the existing rights of the general public to use the reserve</li> <li>- It is incorrect to infer that the adjoining land is a public road reserve as shown on DP706628 and the Community Subdivision Plan</li> <li>- The review fails to demonstrate any real commitment to stewardship or conservation of the adjoining natural values that make the site so valuable in a commercial sense</li> <li>- Strongly supports the establishment of public access easements to facilitate foreshore access.</li> <li>- Seeks a much stronger contribution to the coastal environment / Crown estate</li> <li>- Seeks wider setbacks to the foreshore reserve</li> <li>- Provision of a comprehensive landscape management plan for the foreshore reserve</li> <li>- Seeks clarification of future tourist accommodation / residential management structures in terms of commitments to stewardship partnerships with adjoining Crown reserve management</li> </ul> <p><u>Density</u></p> <ul style="list-style-type: none"> <li>- The significant increase in the intensity of the development is out of character with the site and inconsistent with progressive coastal planning principles and guidelines</li> </ul> <p><u>Height</u></p> <ul style="list-style-type: none"> <li>- The imposing height of the development is out of character with the existing development of the site and will impact significantly on the foreshore reserve with overshadowing, loss of ambience and public amenity</li> </ul> <p><u>Buffers and Setbacks</u></p> <ul style="list-style-type: none"> <li>- Concerned that the development has the potential to contribute significantly to ongoing coastal erosion</li> <li>- The 3m setback is inconsistent with the intent of the North Coast REP and coastal planning principles fails to provide a sufficient buffer</li> </ul> <p><u>Use of foreshore reserve</u></p> <ul style="list-style-type: none"> <li>- Any use of the reserve in conjunction with the development will require a comprehensive management / land use agreement with the Reserve Trust and will be subject to a departmental endorsement</li> </ul> <p><u>Foreshore access</u></p> <ul style="list-style-type: none"> <li>- Supports establishment of a registered easement in favour of the public and/or creation of a public road / laneway on the northern boundary of the site at the expense of the developer</li> </ul> <p><u>Landscape management</u></p>

	<ul style="list-style-type: none"> <li>- Does not support the removal of any vegetation or landscaping dominated by open grassed foreshores</li> </ul> <p><u>Future occupation of foreshore reserve</u></p> <ul style="list-style-type: none"> <li>- It is unclear from the information provided who or what legal entity will be in a position to hold any post-development tenure in respect of the adjoining Crown land and/or negotiate commitments to future Crown land stewardship partnerships</li> </ul> <p><u>Licensing of structures below MHWM</u></p> <ul style="list-style-type: none"> <li>- Will not consent to any foreshore structures other than the existing licensed jetty / pontoon facility</li> <li>- The existing boat ramp is unauthorised, the Department will not consent to a boat ramp in this location</li> </ul>
<p><b>Department of Environment &amp; Conservation</b></p>	
	<p><u>Statement of Commitments</u></p> <ul style="list-style-type: none"> <li>- Seek amendments to the Statement of Commitments regarding: <ul style="list-style-type: none"> <li>• Environmental buffer</li> <li>• Fencing</li> <li>• Dewatering</li> <li>• Retention of hollow bearing trees</li> <li>• Access</li> <li>• Drainage channel</li> <li>• Fire management</li> </ul> </li> </ul> <p><u>Environmental Buffer</u></p> <ul style="list-style-type: none"> <li>- Seek provision of a 50m environmental buffer on the site to the Clarence Estuary Nature Reserve (CENR)</li> </ul> <p><u>Fencing</u></p> <ul style="list-style-type: none"> <li>- Appropriate fence to deter informal human access into the CENR</li> </ul> <p><u>Dewatering</u></p> <ul style="list-style-type: none"> <li>- All dewatering impacts should be contained to the development site with regard to the boundary with the CENR and mitigation measures to be in place prior to construction</li> </ul> <p><u>Threatened Species</u></p> <ul style="list-style-type: none"> <li>- The three hollow bearing trees on the site should be protected and retained</li> </ul> <p><u>CENR</u></p> <ul style="list-style-type: none"> <li>- Informal access to the CENR should be minimised</li> <li>- Agree to maintain the boundary trail within the CENR for fire management purposes which would assist in the development meeting the APZ requirements.</li> </ul>

	<p><u>Aboriginal Cultural Heritage</u></p> <ul style="list-style-type: none"><li>- Aboriginal Cultural Heritage assessment is insufficient as it does not adhere to the DEC draft Guidelines for <i>Aboriginal Cultural Heritage Impact Assessment and Community Consultation</i> (DEC, 2005)</li><li>- The assessment notes the presence of a shell midden, partially exposed within the drain that separates the development site from the CENR</li><li>- The EA should provide a comprehensive consultation framework assessment that affords any Aboriginal person or group the opportunity to comment on the development should they choose to do so</li><li>- The assessment should include an assessment of:<ul style="list-style-type: none"><li>• The likelihood of sub-surface midden material within the development area, as the midden is visible at depth within the adjacent drain;</li><li>• The Aboriginal cultural values of the adjacent Crown reserve area; and</li><li>• The likely impacts on these from the development (and its subsequent use).</li></ul></li></ul>
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## **APPENDIX E: RESPONSE TO SUBMISSIONS**

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## **APPENDIX F: ENVIRONMENTAL ASSESSMENT**

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To be provided on disk.