

**CONCEPT PLAN APPLICATION
AND ENVIRONMENTAL ASSESSMENT**

“DOLPHIN BLUE” DEVELOPMENT

YAMBA ROAD, YAMBA

Prepared for
NSW Department of Planning

on behalf of
Blue Dolphin Development Joint Venture

ACKNOWLEDGEMENT

The authors of this concept plan application and environmental assessment acknowledge the work undertaken in relation to this project by Sustainable Futures Australia and the assistance provided by Sustainable Futures Australia in the preparation of this application and report.

CERTIFICATION

SUBMISSION OF ENVIRONMENTAL ASSESSMENT prepared under the ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979, SECTION 75F

This Environmental Assessment has been prepared on behalf of **Blue Dolphin Development Joint Venture**.

The proposed project is to redevelop the site for predominantly residential flat buildings with some tourist facilities including areas of retail, recreational facilities, open space and hotel.

The proposed project is to be carried out on land shown on the maps included in the EA consisting of:

- Lot 1 in DP 706628
- Lot 2 in DP 706628

Environmental Assessment

The reports and documentation comprising the Environmental Assessment and accompanying the Concept Plan Application include those listed in the List of Appendices on Page 9 of this report.

This assessment also relies upon the *Dolphin Blue Residential and Holiday Accommodation Development Application and Environmental Assessment Report*, prepared by Sustainable Futures Australia (August 2006) and previously submitted to the Minister for Planning, in particular:

- Executive Summary;
- Section 1: Introduction;
- Section 4: Engagement and Consultation;
- Background Report 16: Project ESD Framework and Approach; and
- Background Report 17: Community Consultation Report.

Certificate

The EA contains all available information that is relevant to the environmental assessment of the activity to which the EA relates.

The information contained in this EA is neither false nor misleading.

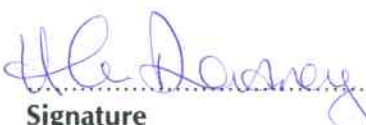
I certify that I have prepared the contents of this report (Concept Plan Application and Environmental Assessment), based on the reports cited above, which have been certified by these parties as being true in all material particulars and do not by presentation or omission of information materially mislead.

I hereby certify that I have prepared the contents of this Statement in accordance with **Section 75F of the Environmental Planning and Assessment Act 1979.**

PREPARED BY:


Signature Date

Christy Watson (BPlan (Hons))
Associate
Planning Workshop Australia
Level 3, 7 Bridge Street, Sydney


Signature Date

Helen Devaney (BA(Hons)
MSc(Town Planning) MRTPI)
Town Planner
Planning Workshop Australia


Signature Date

Sofie Zivanovic (BSc MASC)
Environmental Planner
Planning Workshop Australia
Level 3, 7 Bridge Street, Sydney

REVIEWED BY:


Signature Date

David Ryan (BTP (Hons) Dip Law
Grad Dip Leg Prac)
Director
Planning Workshop Australia
Level 3, 7 Bridge Street, Sydney


Signature Date

Sonja Lyneham (BA MTCP FPIA
Visiting Prof FBE (UNSW)
Managing Director
Planning Workshop Australia
Level 3, 7 Bridge Street, Sydney

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3	Concept Plan	Woodhead and Scape
4	Community Title Subdivision Plans	Denny Linker
5	Strata Subdivision Plans	Denny Linker
6	Draft Statement of Commitments	Minter Ellison
7	Notification of draft Voluntary Planning Agreement & Legal Advice regarding Concept Plans	Minter Ellison
8	Economic Benefit Assessment	Urbis JHD
9	Bushfire Hazard Assessment	GHD
10	Flora Assessment	Anne Clements and Associates
11	Fauna Survey and Assessment	Ambrose Ecological Services
12	Phase 1 Geotechnical Report	Coffey Geotechnics
13	Merit Submission – Overshadowing	Planning Workshop Australia
14	Transport and Traffic Impact Study	ARUP
15	“Dolphin Blue” Development Design Statement	Woodhead
16	SEPP No. 65 Residential Flat Code Compliance Table	Planning Workshop Australia
17	Infrastructure Provisions	Norman Disney and Young
18	Report on Sustainable Water Management	ACOR Consulting
19	Clarence Valley Residential DCP Compliance Table	Planning Workshop Australia
20	Dewatering Management Statement	Coffey Geotechnics
21	Aboriginal Cultural Heritage Site Assessment	Ron Heron
22	Project ESD Framework	Sustainable Futures Australia
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1 EXECUTIVE SUMMARY

This environmental assessment report has been prepared by Planning Workshop Australia on behalf of Blue Dolphin Development Joint Venture and is part of a Concept Plan to be lodged with the Director-General of the Department of Planning, in accordance with **Part 3A Division 3 Section 75M(3)** of the **Environmental Planning and Assessment Act 1979** (the EP & A Act).

The concept plan documents the preferred development option for the site involving redevelopment of the site for predominantly residential and tourist facility uses with some areas of retail, recreational facilities, open space and hotel.

The submission represents an amended concept plan application following feedback received from the Department of Planning regarding an original application, titled *"Dolphin Blue Residential and Holiday Accommodation Development Application and Environmental Assessment Report"* prepared by Sustainable Futures Australia and lodged with the Department of Planning on 2 August 2006.

Following consultation with the Department of Planning and design development undertaken by the proponent in September and October 2006, the concept plan was amended. The amended concept plan redistributes bulk and scale from the waterfront reserve to the central portion of the subject site and creates a modulated and reduced scale of buildings along Yamba Road.

Non-government stakeholders, including the local community have been consulted during initial design development and will have further opportunity to provide comments during the exhibition period of this application.

The site is legally described as Lots 1 and 2 in Deposited Plan No. 706628, is known as the Blue Dolphin Holiday Resort and is located within the Clarence Valley Local Government Area (LGA), New South Wales.

The proponent, Blue Dolphin Development Joint Venture, seeks the Minister's approval pursuant to **Division 3 Section 75O and 75P** of the EP & A Act, for the Concept Plan including:-

- Use, building envelopes (including GFA of 61, 838 m², indicative number of apartments, height, building footprints), road and services layout and landscape design concept;
- Community title subdivision creating one common lot and 3 development lots to enable staged completion of the project and identifying the common community property as well as easements for public access (vehicular and pedestrian) to the waterfront reserve; and
- Stage 1 of the concept plan (55 residential apartments) including internal apartment layouts and ancillary infrastructure 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 Concept Plan for the community title subdivision, Stage 1 of the concept plan and strata subdivision of Stage 1 of the concept plan and to determine those aspects of the project under **Section**

75P(1)(c) and approve under **Section 75J**. This will enable these aspects to proceed directly to application for registration of subdivision and construction certificate application.

The concept plan application includes:

- the plans and documentation for which Ministerial approval is sought, including the overall concept plan (**CP 004-CP007, LSK001, LSK003 and LSK004**), the Community Subdivision Plan (**Sheets 01 and 02**), and the Stage 1 development (**CP102-CP108 and LDA001**) and Stage 1 strata subdivision (**Sheets 1-12**);
- the environmental assessment, comprising this report and the assessment reports and documents referenced in the certification section of this report (see Page 2-3); and
- the statement of commitments, to suitably mitigate any significant potential adverse environmental impacts arising from the development.

In addition, a draft Planning Agreement having regard to the Council's Section 94 Contributions Plan is being prepared by the proponent in consultation with the Council. The notification of this draft voluntary Planning Agreement prepared by Minter Ellison is attached at **Appendix 7**.

A range of background information was reviewed to identify the key issues for environmental assessment, particularly those identified within the Director General's requirements issued in two parts (dated 18 July 2006 and 19 October 2006).

The form of this document has been taken from the Director-General's requirements. The key issues are addressed in the order in which they appear in the environmental assessment requirements to ensure that each issue is systematically addressed, as illustrated in the following table:

Aspect of Concept Plan	Date	Director General Requirements	Where addressed in this report
Concept plan	18 July 2006	built form and design, traffic and access, flooding, water, riparian corridor and public access, natural heritage, bushfire protection, economic impact and utilities and servicing	Section 7
Community title subdivision	19 October 2006	layout, desired future character and sustainability, water management, watercourses and watercourse crossings	Section 8
Construction and strata subdivision of Stage 1 residential apartments	19 October 2006	subdivision, design, visual impacts and design quality principles, infrastructure provision, integrated water cycle management and flooding	Section 9

The conclusion of this report is that the proposed concept plan including the operation and/or construction of community title subdivision, Stage 1 of the project and strata subdivision of Stage 1 of the project will have no significant adverse environmental impacts. The potential environmental impacts identified at **Sections 7, 8 and 9** are able to be effectively ameliorated by the mitigation measures recommended within this report and incorporated into the statement of commitments.

It is considered that the Minister for Planning may reasonably form the opinion that the proposed development satisfies the objectives of the EP&A Act, environmental planning instruments and the Development Control Plans of Clarence Valley Council.

2 INTRODUCTION

2.1 Legislative Context

Blue Dolphin Development Joint Venture (the proponent), seeks the Minister's approval pursuant to **Division 3 Section 75O and 75P** of the EP & A Act, for the concept plan as follows:-

- Distribution of uses and development envelopes (development footprints and heights);
- Community title subdivision into 3 development lots and one common lot; and
- Stage 1 of the project (residential) and ancillary infrastructure and strata subdivision of Stage 1.

The community title subdivision, Stage 1 of the project of the concept plan (the later two aspects) are detailed to enable the Minister to, pursuant to **Division 3 Section 75P(1)(c)**,

*...determine that no further environmental assessment is required for the project or any particular stage of the project (in which case the Minister may, under section 75J, approve or disapprove of the carrying out of the project or that stage of the project **without further application, environmental assessment or report under Division 2).***

The proponent requests that the Minister determine that no further application, assessment or report is required for these aforementioned aspects of the concept plan. This will enable these three aspects of the project to proceed directly to either application for registration of subdivision or commencement of construction without further approvals being required under Part 3A, 4 or 5 of the EP&A Act.

To facilitate a determination under **Section 75P(1)(c)**, the proponent is preparing a draft Planning Agreement to accompany any determination of the Minister to approve the community title subdivision, Stage 1 of the project and strata subdivision of Stage 1 of the project (in which case the Minister may, under **Section 75P(1)(c)** and therein **Section 75J**, approve the carrying out of the project without further application, assessment or report under Division 2).

The remainder of the project will require project approval being sought prior to the commencement of construction.

In accordance with **Division 3 Section 75M(2)** of the EP & A Act, this report, assessment and attendant plans:

- outline the scope of the project and any development options;
- set out the proposal for the staged implementation of the project; and
- address all other matters required by the Director-General (as outlined in the environmental assessment requirements for the project).

2.2 The Project Team

Planning Workshop Australia, in preparing this environmental assessment, have relied on relevant information from the respective consultants engaged by the proponent, Blue Dolphin Development Joint Venture, and instructed by the project managers, Jones Lang LaSalle.

Planning Workshop Australia has relied, where relevant, on the information prepared by Sustainable Futures Australia in relation to the previous submission, titled *“Dolphin Blue Residential and Holiday Accommodation Development Application and Environmental Assessment Report”* lodged with the Department of Planning on 2 August 2006. The sections of the documentation relied upon are acknowledged in the Certification and other relevant sections, as well as being included as appendices to this report.

The development of the original submission was based on consultation undertaken by Sustainable Futures Australia. Further post-lodgement consultation with government agencies has been coordinated by Jones Lang LaSalle, as the appointed project managers, with the exception of liaison with the Department of Planning, which has been undertaken by Planning Workshop Australia during the preparation of this amended concept plan application.

Planning Workshop Australia do not, and cannot accept responsibility for any errors or omissions in the material prepared and provided by the consultants.

The consultants and their respective roles are indicated in Table 2.1 following.

Table 2.1 Project Team

Project Team Member	Documentation/ Role
Blue Dolphin Development Joint Venture	Proponent
Jones Lang LaSalle	Project Managers
Planning Workshop Australia	Planning Merit Submission – Overshadowing SEPP No. 65 Residential Flat Code Compliance Clarence Valley Residential DCP Compliance
Sustainable Futures Australia	Planning Original Application Submitted 2 August 2006 Project ESD Framework
Woodhead	Architecture Design Statement Access Report Mosquito Control Report
Scape	Landscape Architecture Landscape Design Statements
Denny Linker	Surveyors Community Title Subdivision Plans Strata Subdivision Plans
Minter Ellison	Draft Statement of Commitments Draft Voluntary Planning Agreement & Legal Advice regarding Concept Plans
ACOR Consulting	Report on Sustainable Water Management Waste Management Plan
Ambrose Ecological Services	Fauna Survey and Assessment
Anne Clements and Associates	Flora Assessment
ARUP	Transport and Traffic Impact Study
BASIX Sustainable Solutions	BASIX Assessment
Coffey Geotechnics	Phase 1 Geotechnical Report Dewatering Management Statement
GHD	Bushfire Hazard Assessment
Gulaptis and Smith P/L	Site Survey
Norman Disney and Young	Infrastructure Provisions Noise Impact Assessment
Ron Heron	Aboriginal Cultural Heritage Site Assessment
Steve Watson and Partners	Building Code of Australia Assessment
Urbis JHD	Economic Benefit Assessment

3 BACKGROUND AND SITE CONTEXT

3.1 Introduction

The redevelopment of the site for predominantly residential and tourist facility uses with some areas of retail, recreational facilities, open space and hotel follows the use of the site as a caravan park.

The Blue Dolphin Holiday resort and caravan park has been owned and managed by the Yamba based Mitchell family for over 15 years.

The proponent, The Blue Dolphin Development Joint Venture comprises Mitchell DB Developments Ltd and Mariner Land Ltd. Mariner Land Ltd, a subsidiary of Mariner Financial Ltd is Sydney based and an Australian owned financial services and investment group which aims to create long-term investment products. The Blue Dolphin Development Joint Venture was formed specifically to undertake this particular development project.

On April 12, 2006 the proponent sought the Minister's authorisation for a 'Concept Plan' to be submitted for a major project at Yamba. Pursuant to **Section 75M** of the Act, this authorisation was issued by the Minister June 6, 2006.

The Director General subsequently issued Environmental Assessment Requirements on 18 July 2006 (see **Appendix 1**). While approval for the submission of the Concept Plan was granted, the same letter noted that environmental constraints and design issues, such as bulk and scale of the proposed built form should be addressed in any concept plan and environmental assessment.

An original application, titled *"Dolphin Blue Residential and Holiday Accommodation Development Application and Environmental Assessment Report"* prepared by Sustainable Futures Australia was lodged with the Department of Planning on 2 August 2006.

The original submission represents a considered alternative development option involving buildings in the range of two to four storeys and is summarised in the Executive Summary of that document reproduced at **Appendix 2** to this report.

This original submission (page III of the Executive Summary) indicated that:

The assessment identifies a range of positive aspects about the proposal that can benefit and potentially enhance the site, the local environment and community. It also identifies a range of key matters, a number of which have been raised by the community, Council and government agencies, that need to be effectively addressed if the proposal is to achieve positive outcomes and not create adverse impacts on the site and its adjoining land, as well as for the wider community. The extensive range of specialist reports provide a review of these aspects and recommend measures to adopt which will avoid this situation.

On the basis of the strong ESD based planning and design approach, and commitment from the proponent to adequately address these matters, the report concludes that with these commitments in place the proposal has merit and should be supported.

Subsequent meetings with the Department in relation to the design of the scheme have resulted in further design development and amendment of the concept plan and inclusion of a community title subdivision and Stage 1 components for detailed consideration (included at **Appendices 3 – 5**).

The scheme has been amended in order to address the Department of Planning's concerns regarding bulk, massing and scale. This included reducing the number of buildings fronting Yamba Road and reducing the height of the majority of these residential buildings from 4 storeys to 3 storeys; relocating the 2 storey residential dwellings located in the centre of the site to the central portion of the Clarence River frontage; increasing the residential building heights in the centre of the site from 4 storeys to 4 and 5 storeys and increasing the tourist accommodation buildings from 2 to 4 storeys to 3 and 4 storeys. In short, this preferred option significantly redistributes bulk and scale from the waterfront reserve to the central portion of the subject site and creates a modulated and reduced scale of buildings along Yamba Road.

Following indication from Planning Workshop Australia that the proponent would be seeking consent for an amended the Concept Plan; including a Community Title Subdivision plan and details in relation to the construction and subdivision of the first residential stage of the concept plan (Stage 1), additional Director General Requirements were issued by the Department on 19 October 2006. The additional requirements were in relation to the Community Title Subdivision and the Stage 1 components of the proposed development.

A draft statement of commitments has been prepared as is included at **Appendix 6** to this report.

In addition, a draft voluntary planning agreement is being prepared by prepared by Minter Ellison Lawyers on behalf of the proponent to provide the opportunity for an agreement to be reached with Council as to additional works and actions to be undertaken by the proponent to provide significant public benefits which would not otherwise be legally required. Legal advice has confirmed that a Planning Agreement can accompany submission of a concept plan.

The notification of this draft voluntary Planning Agreement and accompanying legal advice is provided at **Appendix 7** to this report.

3.2 Site Location and Description

The subject site and surrounding locality was considered in depth by Sustainable Futures Australia in the original submission. Key features are discussed here and Section 1.2: The Site of that document is reproduced in full at **Appendix 2** to this report.

The site is located on the upper mid-north coast of New South Wales in Yamba, a coastal centre within the Clarence Valley Local Government Area. Yamba is situated

between Coffs Harbour and Byron Bay and is approximately 680 kilometres north of Sydney and 310 Kilometres south of Brisbane (see **Figure 1**).

Yamba is the Clarence Valley's major growth area and has a significant influx of tourist and visitors in holiday periods. The centre currently has a population of approximately 6,500 permanent residents, which doubles during the peak holiday periods.

The subject site is located on the northern side of Yamba, approximately two kilometres to the west of Yamba Town Centre (see **Figures 2 to 4**). The Yamba Road is the main access road to Yamba, West Yamba, and the coastal villages of Angourie and Woolweyah.

The site is 5.75 hectares in size and is located on the northern side of Yamba Road. It is legally described as **Lots 1 and 2 DP706628** and has a street address of Blue Dolphin Holiday Resort, Yamba Road (see **Figures 5 and 6**). It has frontages to Yamba Road (approximately 300 metres) and the Clarence River. The topography of the land is generally flat.

The site contains a tourist facility, known as the Blue Dolphin Holiday Resort.

Under the **Maclean Local Environmental Plan 2001**, the site is zoned 2(t) Residential (Tourism), the main objective of which is to facilitate the provision of a range of tourist facilities and higher density residential accommodation (see **Figure 7**).

Council's bushfire prone land map identifies a portion of the site along the western boundary as Bushfire Prone land Vegetation Buffer (see **Figure 8**).

3.3 Existing Uses and Structures

The site is presently in use as a tourist facility and comprises 235 holiday cabins and powered caravan and camping sites (which currently includes 92 manufactured one and two bedroom cabins). The flora report describes the development of the site as including *"numerous occupied holiday units, cabins, tent and caravan sites, swimming pools, children's playgrounds, tennis court, extensive networks of concrete vehicle and pedestrian access ways, mown lawns, landscaped garden beds, and clusters of and individual shade trees"*.

In peak periods the existing facility accommodates 1200 tourists.

In addition, the resort contains 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. The site is currently actively in use.



Dolphin Blue Redevelopment Concept Plan, Yamba

REGIONAL CONTEXT

prepared by **planning workshop australia**
 2061154\graphics\ds-fig.cdr
 Issued 7 Nov 06

0 25 km



Fig 1



Dolphin Blue Redevelopment Concept Plan, Yamba

LOCATION

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Fig 2



Subject Site

to Yamba Town Centre

Dolphin Blue Redevelopment Concept Plan, Yamba

AERIAL PHOTOGRAPH - 16-7-04

prepared by **planning workshop australia**
 2061154\graphics\ds-fig.cdr
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Fig 3



Subject Site

to Yamba Town Centre

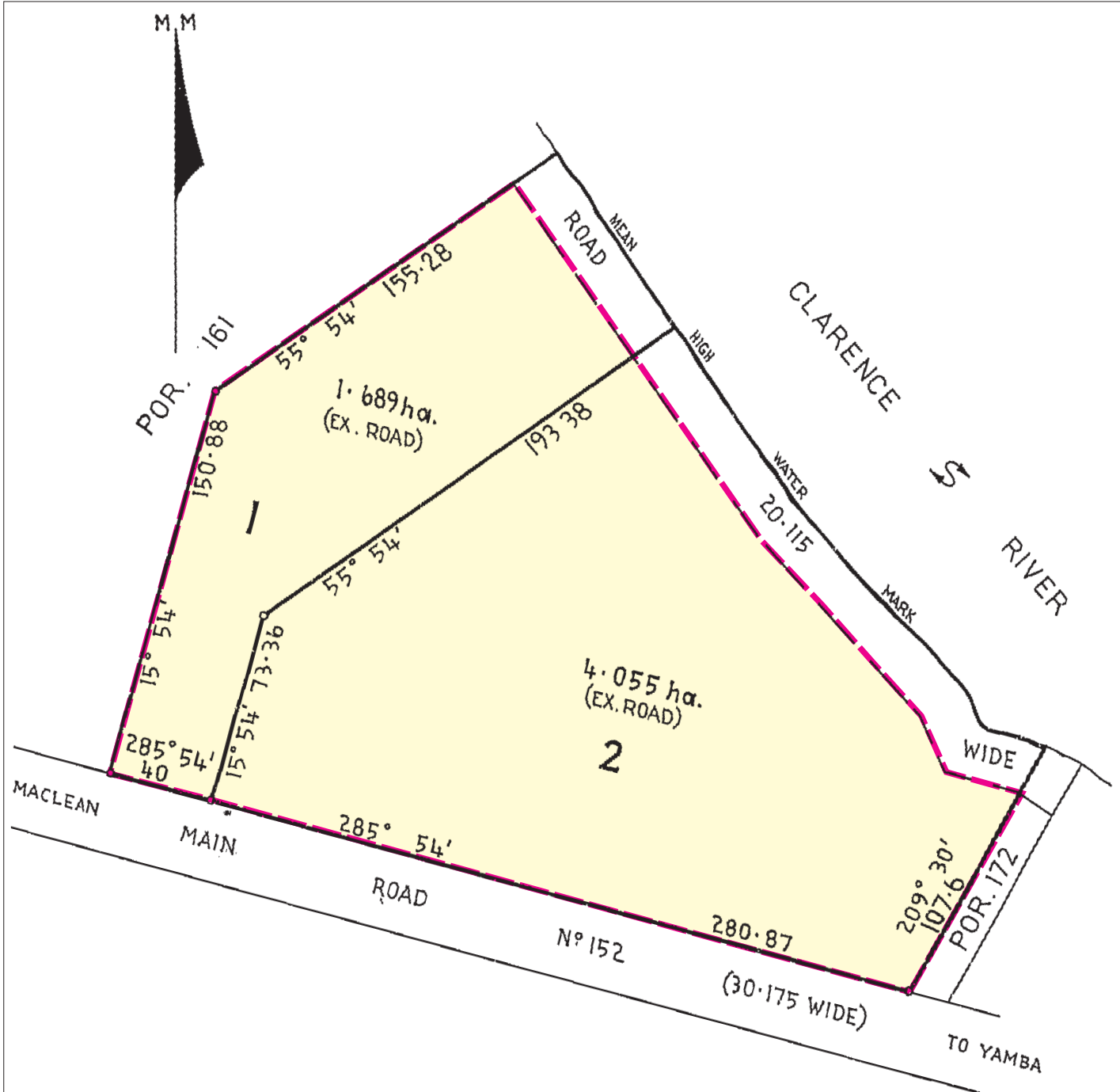
Dolphin Blue Redevelopment Concept Plan, Yamba

AERIAL PHOTOGRAPH - Google

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 2061154\graphics\ds-fig.cdr
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Fig 4



PLAN OF SUBDIVISION OF PORTIONS 159 AND 160.

Mun./Shire : MACLEAN
City :

Parish: Y/ Parish: YAMBA

Reduction f Reduction Ratio 1: 2000

Locality: YAMBA

County: CLARENCE

Lengths are in metres

DP 706628

Registered: 25-9-1984

C.A.: NO 37/1983 OF 16-9-1983

Title System: TORRENS

Purpose: SUBDIVISION

Ref. Map: PARISH #

Last Plan: _____



Dolphin Blue Redevelopment Concept Plan, Yamba

SITE - Lot 1 & 2 DP 706628

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0 50 m



Fig 5

PLAN OF CROWN LAND SHOWING FORMER ARTIFICIAL ID

400/7040//751395/

Shire/City MACLEAN

Town/Locality YAMBA

Parish YAMBA

County CLARENCE

Not to Scale

DP1023318

Registered   7.2.2001

Title System CROWN LAND

Purpose DEPARTMENTAL

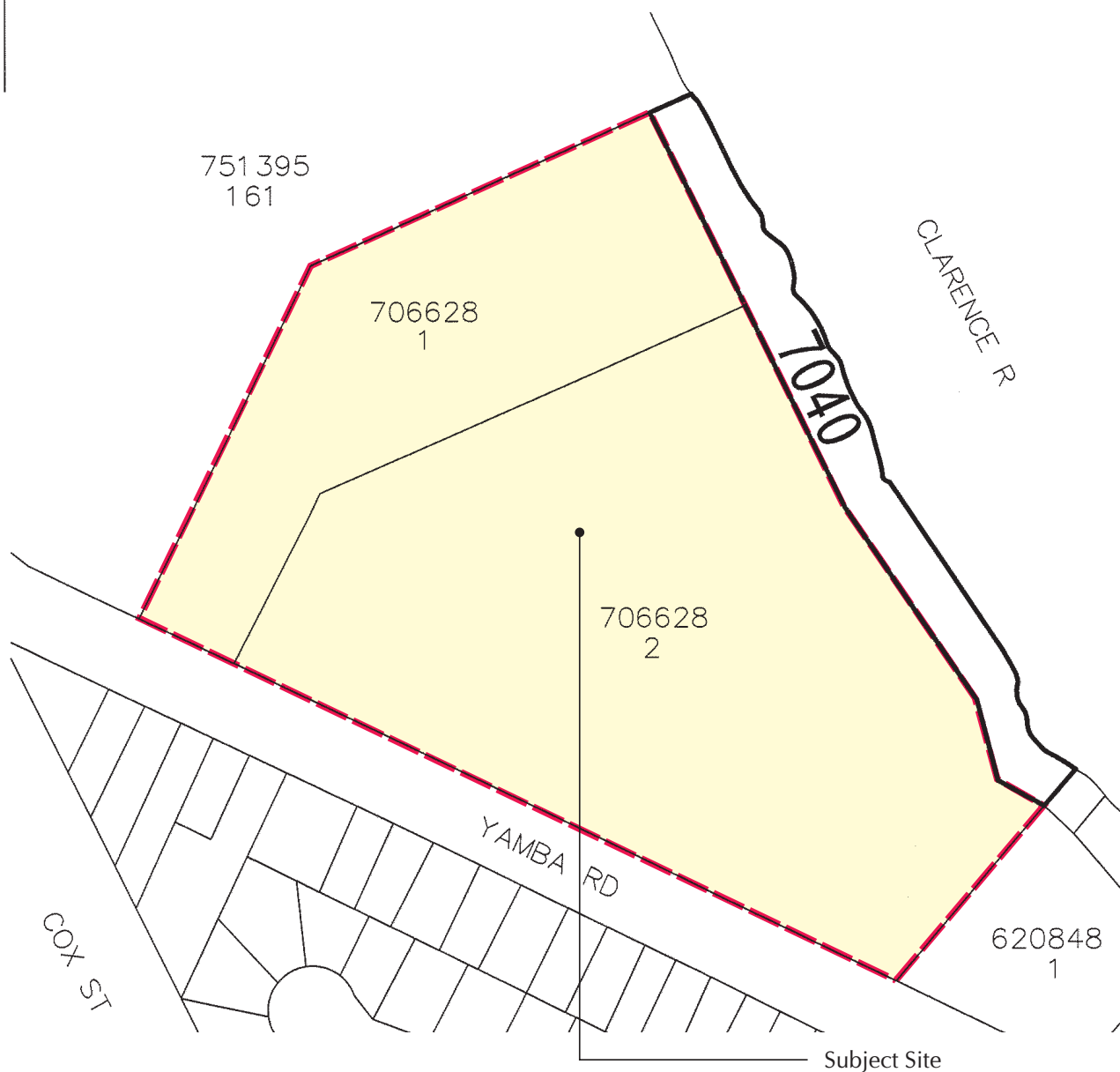
Reference Map Y2740-6

DCDB Partition YAMB25

Last Plan -

DIAGRAM FOR IDENTIFICATION PURPOSES ONLY ... NOT TO BE USED FOR FOLIO CREATION
THIS IS NOT A SUBDIVISION OF THE CROWN ESTATE. STATUS MAY NEED TO BE VERIFIED.
NOT INVESTIGATED IN LAND TITLES OFFICE AS TO LOCATION OF BOUNDARIES

GN



Dolphin Blue Redevelopment Concept Plan, Yamba

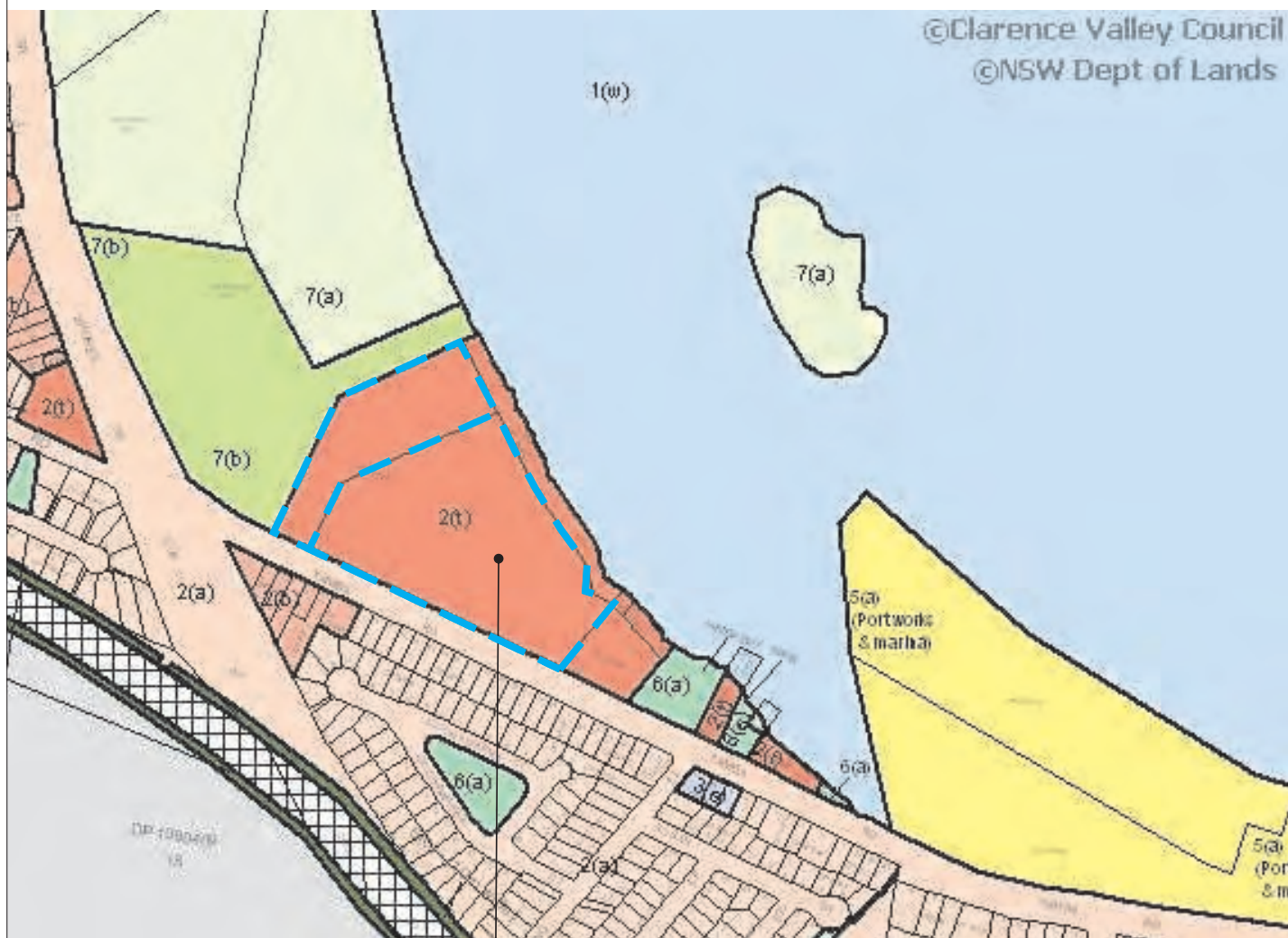
PLAN OF CROWN LAND - Lot 7040 DP 1023318

prepared by **planning workshop australia**
2061154\graphics\ds-fig.cdr
Issued 7 Nov 06

0 100 m



Fig 6



©Clarence Valley Council
©NSW Dept of Lands

ZONING KEY

- 1 (f) Rural (Forests)
- 1 (i) Rural (Investigation)
- 1 (r) Rural (Residential)
- 1 (s) Rural (Small Holdings)
- 1 (t) Rural (Tourist)
- 1 (w) Rural (Waterway)
- 2 (a) Residential (Low Density)
- 2 (b) Residential (Medium Density)
- 2 (t) Residential (Tourism)
- 3 (a) Business
- 4 (a) Industrial
- 5 (a) Special Uses
- 6 (a) Open Space
- 6 (b) Proposed Open Space
- 6 (c) Open Space Buffer
- 7 (a) Environmental Protection (Ecological Significance)
- 7 (b) Environmental Protection (Conservation/Habitat)
- 7 (c) Environmental Protection (Coastal Foreshore)
- 7 (e) Environmental Protection (Escarpment/Scenic)
- 8 (a) National Parks
- 8 (b) Proposed National Parks

Subject Site

Dolphin Blue Redevelopment Concept Plan, Yamba

ZONING - Maclean LEP 2001

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0 250 m



Fig 7



Subject Site

Bushfire Prone Land

- BFPL Vegetation Category 1
- BFPL Vegetation Category 2
- BFPL Vegetation Buffer

Dolphin Blue Redevelopment Concept Plan, Yamba

BUSHFIRE PRONE LAND



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Fig 8

3.4 Surrounding Land Uses

The site is bound to the north and north east by a 20 metre wide reserve which separates the site from the Clarence River, detached dwellings on the opposite side of Yamba Road (to the south), the Moby Dick Hotel to the south east and the Clarence Estuary Nature Reserve to the west.

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 golf 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.

4 DESCRIPTION OF PROPOSAL

4.1 Concept Plan

The Concept Plan is described in:

- architectural drawings (prepared by Woodhead and reproduced at **Appendix 3**);
- landscape architectural drawings (prepared by Scape and reproduced at **Appendix 3**); and
- the community title subdivision plan (**Appendix 4**) and the strata subdivision plans (**Appendix 5**).

A draft statement of commitments has also been prepared to compile the key recommendations of the project team assessment reports and documentation (**Appendix 6**).

Concept Plan approval for the distribution of uses and development envelopes (including GFA, height, building footprints), road layout, basement car parking, landscaping and indicative services and infrastructure is sought for the proposed development of residential flat buildings, residential dwellings, tourist facilities including accommodation, shops, refreshment rooms and a hotel (licensed premises).

The proponent, Blue Dolphin Development Joint Venture, requests that in granting approval for the Concept Plan for the project, the Minister determines that no further application, assessment or report is required, pursuant to **Part 3A Division 3 Section 75P(1)(c)** of the EP&A Act, for the following stages of the project:

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

Sufficient detail is provided to enable the Minister to determine that no further assessment is required and for these aspects of the project to proceed directly to application for registration of subdivision or construction certificate application (as required).

The proponent seeks approval for staged construction to allow occupation of Stage 1 prior to any further applications, assessments and/or being granted in relation to the remainder of concept plan (except for the community title subdivision).

The relevant components of these detailed aspects of the concept plan are described in **Section 4.1.2 – Section 4.1.4** of this report. The remainder of the concept plan will require project approval to be sought.

4.1.1 Distribution of Uses, Development Envelopes, Road Layout, Landscaping and Ancillary Infrastructure and Services

The proposal seeks Concept Approval for the distribution of uses and indicative development envelopes, indicative road layout, indicative services layout and landscaping illustrated in architectural plans **CP 004** to **CP007** and landscape plans **LSK001**, **LSK003** and **LSK004** (Appendix 3).

Table 4.1 Proposed Aspects of the Concept Plan and Level of Detail Provided

Aspect of Concept Plan/Use	Part of Community Subdivision Plan	GFA	Indicative no. of units	Level of detail
Community title subdivision	NA	NA	NA	Progression straight to application for registration of subdivision
Residential flat buildings (Stage 1 - Buildings 1 and 2)	Community Development Lot 2	8920	55	Progression straight to Construction Certificate application
Strata subdivision of residential flat buildings (Stage 1 - Buildings 1 and 2)	Community Development Lot 2	NA	NA	Progression straight to application for registration of subdivision
Internal road serving Stage 1	Part Community Property Lot 1	NA	NA	Progression straight to Construction Certificate application
Infrastructure and services ancillary to Stage 1	Community Development Lot 2 & part Community Property Lot 1	NA	NA	Progression straight to Construction Certificate application
Tourist facility buildings 9 and 11-15, including tourist accommodation, serviced apartments, hotel (pub), shop, recreation facilities, commercial premises (spa) and refreshment room uses	Community Development Lot 3	25014	117	Requires further project approval
Residential flat buildings (Building nos. 3 to 8 and 10)	Community Development Lot 4	25264	157	Requires further project approval
Dwellings (residential 'villas')	Community Development Lot 4	2640	12	Requires further project approval
Indicative basement areas, roads, landscaping and infrastructure and services ancillary to remainder of the concept plan	(includes remainder of Community Property Lot 1)	NA	NA	Requires further project approval

Distribution of Uses and Building Envelopes

The proposal involves a range of uses distributed over three stages of development. As described in **Table 4.1** above, this includes the residential uses in Stage 1, the tourist facility and other uses in Stage 2 and the remainder of the residential uses in Stage 3.

As identified within **Table 4.1** above, each of these stages relates to a proposed 'Community Development Lot' and include the relevant portion of the 'Community Property Lot 1' proposed within the Community Subdivision Plan (**Sheets 01 and 02**), prepared by Denny Linker & Co. and included at **Appendix 4**.

Throughout the site, the buildings vary in height in order to reduce the perception of mass around the perimeter of the site, and have been orientated to maximize solar exposure and the views created and minimise the impact on the surrounding area.

The gross floor area (GFA) included in Stages 2 and 3 (corresponding to Community Development Lots 3 and 4 respectively) will be capped at 52, 918 m² and will be contained within the outer envelope and height limits as shown on the Concept Plan **CP004 (Figure 9)**. The total GFA (including Development Lots 2, 3 and 4) proposed is 61, 838 m². The GFA in the table above has been measured by Woodhead architects in accordance with the definition within the Standard Instrument (Local Environmental Plans) Order 2006.

Stage 2 development on the proposed Community Development Lot 3 is for tourist facilities including, but not limited to, tourist accommodation whether as hotels or 'serviced apartments'. In the case of serviced apartments, such units could be the equivalent form to unit typologies in Stage 1 where these are proposed to be occupied by permanent residents as residential flat buildings. The community title and management statement will ensure that specific nominated facilities and services could be available to both the residential flat developments and serviced apartments/ hotel accommodation.

Staging

Details of the staging are provided in the discussion of the Community Subdivision Plan (**Sheets 01 and 02**), prepared by Denny Linker & Co. below.

Importantly, the stages identified in the concept plan do not connote the order of staging, except for Stage 1 (Community Development Lot 2). In other words, Stage 3 could precede Stage 2 or the reverse. Stage 2 (Community Development Lot 3) and Stage 3 (Community Development Lot 4) are designed to ensure appropriate infrastructure required to serve development within each development lot is provided prior to occupation. This is would also be incorporated within the community title management statement.

Road Layout, Vehicular Access, Parking, Landscape Concept and Ancillary Infrastructure

The concept plan also includes the following aspects:

- Two access points to Yamba Road;
- Internal circulation/road network, including two access routes to the Clarence River foreshore for which rights for public access (vehicular and pedestrian) will be granted via an easement on the community title subdivision. While granted on registration these would not become operational until construction of that part of the road network);
- At grade parking provided for visitors and the public for which rights for public access (vehicular and pedestrian) will be granted via an easement on the community title subdivision.
- Indicative layout of basements for car parking and ancillary infrastructure (these indicative layouts provide the opportunity for 212 spaces within Stage 2 and 277 spaces within Stage 3 and 99 spaces will be provided for Stage 1);
- In principle connection to ancillary services and infrastructure; and
- Landscape concept plans and indicative planting schedule, including concept design of external spaces around the building including both public and private areas. The landscape concept and landscape principles for the concept plan are described in the Landscape Statement and Landscape concept drawings prepared by Scape landscape architects at **Appendix 3**.

4.1.2 Community Title Subdivision

The concept plan also seeks subdivision of the development under the provisions of the **Community Land Development Act 1989** to create a Community Scheme.

The Conceptual Draft Community Subdivision Plan (**Sheets 01 and 02**), prepared by Denny Linker & Co. and included at **Appendix 4**, define the lots which will be comprised within the Community Scheme.

As indicated previously, the stages identified in the concept plan do not connote the order of staging, except for Stage 1 (Community Development Lot 2). In other words, Stage 3 could precede Stage 2 or the reverse.

Denny Linker & Co. have provided the following description of the scheme:

Proposed Lots

The draft community plan creates 4 lots.

Lot 1 - Community Property Lot 1

The Community Property Lot will comprise those parts of the development which contain shared/community facilities. These facilities include:

- The main entry road into the resort component.*
- The residential ring road into the residential component.*
- Car parking/visitor parking bays adjacent to the ring road.*
- Common footpaths and walkways.*
- Common facilities including substation, gas storage facilities and switch rooms.*
- Common services.*

Lot 2 - Community Development Lot 2 - being Stage 1 of the development and comprising residential buildings 1 and 2. Development Lot 2 will be subject to a strata subdivision.

Lot 3 - Community Development Lot 3 - being Stage 2 of the development and comprising the resort buildings 9 and 11 to 15. Development Lot 3 may be subject to further community and strata subdivision during the course of the project.

Lot 4 - Community Development Lot 4 - being Stage 3 of the development and comprising residential buildings 3 to 8, 10 and the villas. Development Lot 4 may be subject to further community and strata subdivision during the course of the project.

Proposed Easements

Public Access Easements

An easement for public access is to be created over parts of Community Property Lot 1 and Community Development Lot 4. The public access easement will provide for public access to the Clarence River.

The easement will permit both pedestrian and vehicular access. However, the easement terms will prohibit vehicular access to vehicles towing trailers of any kind. Further, the terms will also prohibit access to the public until after the construction and certification of roads and paths within the easement site.

Easement for Recreational Access

An easement for recreational access will permit the residents of the strata schemes within Stage 1 and Stage 3 respectively to access each others pathways and walkways for recreational purposes.

Easement for Services

Community Property Lot 1 will be burdened by an Easement for Services in favour of the adjoining development lots 2,3 & 4.

Additional Easements

It is envisaged that the need for additional access and service easements will become apparent as the project develops.

Community Management Statement

A Community Management Statement (CMS) will be required to facilitate the ultimate registration of the Community Subdivision. The CMS will deal with the management of all Community Property, together with additional items which allow for the effective development, staging and management of the community scheme.

The CMS will also include the necessary documentation for the creation of Open Access ways and Statutory Service Easements, together with Concept Plans identifying community facilities and Restricted Community Property. We note that Sheet 2 of the Draft Subdivision Plan identifies Restricted Community Property Area 1. The community property within Area 1 will be the subject of a restricted property by-law in favour of the developer to assist with the staging and construction of the project.

Construction Staging

The Dolphin Blue Development is intended to be constructed in 3 stages.

Stage 1 - *Will comprise Development Lot 2, being residential buildings 1 & 2, together with part of Community Property Lot 1 containing that part of the residential loop road which provides access to the basement car park and to the Stage 1 visitor parking bays. Full plans and specifications regarding the road works will be documented as part of the Construction Certificate process for Stage 1.*

It is proposed that the Community Plan be completed and registered as part of the Stage 1 works. The early registration of the Community Plan will significantly assist in the orderly and timely registration of the Stage 1 Strata Plan.

Stage 2 – *Will comprise Development Lot 3, being the resort buildings 9 and 11-15, together with part of Community Property Lot 1 containing the main resort entry road.*

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.*

Existing Caravan Park Operations

It is intended that the existing caravan park will continue to operate on Development Lots 3 and 4 during Stage 1 works, and subsequently reduce in size to operate on Development Lot 4 only during Stage 2 works. The developer's rights to maintain the caravan park within the development lots and on parts of the community property will be embedded within the terms and by-laws of the CMS. In particular the by-law associated with Restricted Area 1 will ensure the developers rights to operate and maintain the caravan park until such time that Stages 3 and 4 progress respectively to construction stage.

The proposed Community Subdivision will assist in the orderly and effective development of the Dolphin Blue development. The Community Scheme will provide for the long term maintenance of all community facilities. It will establish a Community Management Statement which will address the management of community items including access ways, services, landscaping and building standards. The Community Subdivision will provide for the creation of necessary easements for access and public access, and it will allow for the effective staging and development of the project.

4.1.3 Stage 1

Stage 1 of the concept plan includes:

- site preparation (including bulk earthworks subject to sediment and erosion controls);
- construction of two residential flat buildings (consisting of four storeys and 55 residential units) with basement car parking;
- landscape works and swimming pool;
- internal access road;
- Construction of a detention basin and other such ancillary services and infrastructure; and
- Strata subdivision of Stage 1

The Stage 1 development area is limited to Development Lot 2 and part Community Property Lot 1 (being the part of the internal access network which provides access to Stage 1 and the foreshore from Yamba Road).

The proposed Stage 1 development is illustrated in Architectural Drawings **CP102** to **CP108** (inclusive) and Landscape Plan **LDA001** (see **Appendix 3**).

The proposed plans of strata subdivision of the Stage 1 development (**Sheets 1-12**) have been prepared by Denny Linker & Co. (see **Appendix 5**).

Construction staging including the provision of the right for the existing caravan park to operate during construction and operation of Stage 1 is addressed above.

4.2 Need for the Proposal

Yamba has a current population of approximately 6,500 people, which doubles in the peak summer months. Yamba is a major growth area within Clarence Valley Local Government Area. The population for Clarence Valley (Macleans Statistical Local Area) is expected to increase to approximately 20,000 by 2011 and as such sufficient accommodation, both residential and tourist is required.

The town at present has a moderate provision of resort and motel accommodation and residential apartments, with many built 30 - 40 years ago. At present, the tourist and visitor accommodation market in Yamba is dominated by budget and low key accommodation options such as caravan parks, accounting for 70.1% of supply.

The subject site has been identified in the **Macleans Local Environmental Plan**, through the zoning provisions for the Residential Tourist zone as a location appropriate for the development of *“tourist facilities, recreation facilities and high density residential development and associated uses”*.

The proposed introduction of permanent residential accommodation on to the site is likely to result in greater numbers of residents on the site. However due to the reduction in the capacity of holiday accommodation on site, the capacity of the site during peak holiday periods will be reduced.

The concept plan will provide new stock of tourist accommodation and assist to accommodate the increase in demand for high quality residential housing, presently not available in the Lower Clarence Area. The proposed provision of a mix of residential units will cater for different household requirements now and in the future. The development will increase housing choice within Yamba.

The Concept Plan incorporates *“higher density residential development”* which has the potential to achieve more efficient use of land. In accommodating greater amounts of residential growth in comparison to lower density development options, the proposal minimises the take up of land elsewhere in Yamba, where environmental opportunities such as the retention of threatened species exist. This has the potential to reduce the ecological footprint of development in the locality.

In addition, the use of height to accommodate the density of the site reduces the overall site coverage of the proposal, providing greater opportunities for increased planting of native species on the site and the accommodation of overland flow paths to provide drainage management.

The economies of scale achieved with the development also allow a strong commitment to incorporation of the principles of ecologically sustainable development.

The potential environmental impacts identified at **Sections 7, 8 and 9** of this report, are able to be effectively ameliorated by the mitigation measures recommended within the various consultant reports that have informed this report and are incorporated into the statement of commitments. This report concludes that the proposed concept plan is not likely to result in any significant adverse impacts.

The **North Coast Regional Environmental Plan** provides that, pursuant to **Clause 43(1)(a)**, the council shall not grant consent to development for residential purposes unless *“it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land.”* It is considered that the Minister can be reasonably satisfied that the proposed development achieves this objective.

It is considered that the concept plan contemplates a form of development that will achieve the objects of the EP&A Act. In particular the proposal represents *“orderly and economic use and development of land”* and provides the opportunity for *“the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and ... ecologically sustainable development...”*.

The inclusion of other uses on the site including hotel (pub), shop, recreation facilities, commercial premises (beautician or the like) and refreshment room (café, restaurant or the like) in the buildings adjoining the publicly accessible western road to the foreshore will provide opportunities for interaction of the new residents and the surrounding community in the foreshore location.

The Concept Plan process has been adopted to allow the staging of certain components in response to cycles in market demand and reduce any construction activity related impacts on the local community. Staging is also required to minimise any interruption during the construction and occupation of period of Stage 1 and subsequent stages to any ongoing operations of the caravan park on the remainder of the site.

5 STATUTORY FRAMEWORK

5.1 Application of Part 3A of the Environmental Planning and Assessment Act 1979

Part 3A (Major infrastructure and other projects) of the EP&A Act commenced on 1 August 2005. Part 3A establishes the assessment and approval regime for all Major Projects previously considered under **Part 4** (Development Assessment) or **Part 5** (Environmental Assessment) of the EP&A Act and that are considered to be of State or regional planning significance by the Minister for Planning. The Minister is the consent authority for the determination of Major Projects.

Under the provisions of **Division 1 Section 75B** of the EP&A Act, development may be declared to be a Major Project by virtue of a State Environmental Planning Policy or by order of the Minister and published in the Government Gazette.

Section 75B defines ‘projects’ to which this part of the EP&A Act applies. **Clause 6 of State Environmental Planning Policy (Major Projects) 2005** (SEPP 2005) defines ‘Major Projects’, with the proposal falling within **Paragraph 1 Coastal Areas** within **Schedule 2 Part 3A projects – specified sites** of the SEPP:

(1) Development within the coastal zone for any of the following purposes: ...

(f) recreational or tourist facilities (other than internal refits of, or minor alterations or minor additions to, existing facilities):

(i) in the case of facilities wholly or partly in a sensitive coastal location outside the metropolitan coastal zone—that provide accommodation (or additional accommodation) for any number of persons, or...

(g) buildings or structures (other than minor alterations or minor additions to existing buildings or structures) that are:

(i) greater than 13 metres in height, in the case of buildings or structures wholly or partly within a sensitive coastal location, or...

(i) subdivision of land in a residential zone into more than 25 lots ...

The proposed development comprises tourist facilities, buildings greater than 13 metres in height and strata subdivision into more than 25 lots on a site that is within a ‘sensitive coastal location’ within the ‘coastal zone’ and outside of the ‘metropolitan coastal zone’, as defined in the **Coastal Protection Act**. As such, it is considered to be a Major Project and therefore subject to Part 3A of the EP & A Act.

As previously outlined, the proponent, Blue Dolphin Development Joint Venture, seeks the Minister’s approval pursuant to **Part 3A Division 3 Section 75P** of the Act, for the

concept plan and requests that the Minister, pursuant to **Division 3 Section 75P(1)(c)**, determines that no further application, assessment, reports or approvals under Part 3A or other parts of the EP&A Act are required for the community title subdivision, Stage 1 of the concept plan and strata subdivision of Stage 1 of the concept plan.

5.2 Zone Objectives and Permissibility

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

The proposed concept plan contemplates the following uses on the site, as defined by the LEP and included in **Table 5.1a** and **Table 5.1b** below.

All of these uses are identified within **Clause 48** of the LEP as being uses which may be carried out “*only with development consent*”.

Table 5.1a – Proposed primary uses as defined within the Maclean LEP 2001

Use	Definition in LEP	Typical example
Residential flat building	residential flat building means a building containing 3 or more dwellings on one allotment of land.	Serviced apartments, permanent residential
Dwelling	dwelling means a room or suite of rooms occupied or used, or so constructed or adapted as to be capable of being occupied or used, as a separate domicile.	Individual ‘Villas’
Tourist facility	tourist facility means an establishment providing for holiday accommodation or recreation and may include backpackers’ accommodation, bed and breakfast accommodation, boat landing facilities, boat sheds, camping grounds, caravan parks, guest houses, holiday cabins, hotels, houseboats, marinas, motels, playgrounds, recreation facilities, refreshment rooms, serviced apartments, kiosks, water sport facilities or clubs used in conjunction with holiday accommodation or recreation, but does not include a total destination resort.	Serviced apartments, hotel accommodation, hotels, motels, bar or pub including a place of public entertainment, Café, restaurant, playgrounds, recreation facilities

Stage 2 development on the proposed Community Development Lot 3 is for tourist facilities including, but not limited to, tourist accommodation whether as hotel accommodation or serviced apartments. In the case of serviced apartments, such units could be the equivalent form to unit typologies in Stage 1 where these are proposed to be occupied by permanent residents as residential flat buildings. The community title and management statement provide the opportunity to indicate any specific nominated facilities and services which could be available to the residential flat developments and serviced apartments/ hotel accommodation.

The Stage 2 development containing tourist facilities may include tourist accommodation, hotel (pub), refreshment rooms (such as a cafe) and business premises (such as a spa or beautician).

Table 5.1b – Proposed uses as defined within the Maclean LEP 2001

Use	Definition in LEP	Typical example
Hotel	hotel means the premises to which a hotelier's licence granted under the Liquor Act 1982 relates.	Bar or pub including a place of public entertainment
Refreshment room	refreshment room means a restaurant, café, tea room, eating house or the like.	Café, restaurant
Shop	shop means a building or place used for the purpose of selling, exposing or offering for sale by retail, goods, merchandise or materials, but does not include a building or place elsewhere specifically defined in this clause.	Convenience store, boutique retail
Commercial premises	commercial premises means a building or place used as an office or for other business or commercial purposes, but does not include a building or place elsewhere specifically defined in this clause or a building or place used for a purpose elsewhere specifically defined in this clause.	Beauty spa
Recreational facility	recreation facility means a building or place used for indoor recreation, a billiard saloon, table tennis centre, squash court, swimming pool, gymnasium, health studio, bowling alley, fun parlour or any other building of a like character used for recreation, and whether used for the purpose of gain or not, but does not include a place of assembly.	Tennis court
Place of assembly	place of assembly means a public hall, theatre, cinema, music hall, concert hall, dance hall, open-air theatre, drive-in theatre, music bowl or any other building of a like character used as such and whether used for the purpose of gain or not, but does not include a place of public worship, an institution or an educational establishment.	Conference facilities

It is noted that tourist accommodation, hotel and refreshment room are uses which are contemplated within the LEP definition of tourist facility as well as being separately defined in the LEP. While these uses are included within the Stage 2 tourist facility building envelope this is not intended to preclude management by parties separate to the management of the tourist accommodation.

It is envisaged that these will be active uses open to members of the public including permanent residents, visitors, and the wider community.

Clause 48 of the LEP provides that development within the zone should satisfy the following objectives of the zone:

- (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, and*
- (c) provision of employment opportunities and economic benefits, and*
- (d) adequate provision for water and effluent disposal.*

The subject project responds to a market demand for quality tourist and residential accommodation. It integrates these uses and satisfies the specific zone objectives.

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, as detailed in the Economic Assessment (**Appendix 8**). 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 which has an unemployment rate 4.9% higher than the NSW non-metropolitan area.

The residential and tourist accommodation has been designed to ensure that it does not detract from the natural, social and built environment through careful siting of the units, through the use of materials which will be 'reflective-of-place' which consider the site's context in terms of appearance and proximity to the surrounding environments and through careful landscaping. A mix of accommodation types will be provided to ensure a choice of accommodation. Adequate water and effluent disposal have been incorporated into the design with the inclusion of a sustainable water management system and waste management plan.

5.3 Part 3A Assessment Requirements

Section 75F requires consideration of any published guidelines in the Gazette and Director General requirements.

The Director-General issued environmental assessment requirements pursuant to **Division 3 Section 75N** and referring to **Section 75F** of the EP & A Act. The key issues raised in the Director-General requirements form the framework for assessment presented in **Section 7, 8 and 9** of this report.

Table 5.2 - Key Issues of Director General Environmental Assessment Requirements

Aspect of the concept plan	Assessment section of this report
Concept plan – distribution of uses	Section 7
Community title subdivision	Section 8
Stage 1	Section 9

5.4 Application of the Provisions of other Legislation

5.4.1 Approvals and legislation that does not apply

Part 3A Division 4 Section 75U of the EP&A Act provides that the following authorisations are not required for an approved project:

- “ (1) The following authorisations are not required for an approved project (and accordingly the provisions of any Act that prohibit an activity without such an authority do not apply):*
- (a) the concurrence under Part 3 of the Coastal Protection Act 1979 of the Minister administering that Part of the Act,*
 - (b) a permit under section 201, 205 or 219 of the Fisheries Management Act 1994,*
 - (c) an approval under Part 4, or an excavation permit under section 139, of the Heritage Act 1977,*
 - (d) a permit under section 87 or a consent under section 90 of the National Parks and Wildlife Act 1974,*
 - (e) an authorisation referred to in section 12 of the Native Vegetation Act 2003 (or under any Act to be repealed by that Act) to clear native vegetation,*
 - (f) a permit under Part 3A of the Rivers and Foreshores Improvement Act 1948,*
 - (g) a bush fire safety authority under section 100B of the Rural Fires Act 1997,*
 - (h) a water use approval under section 89, a water management work approval under section 90 or an activity approval under section 91 of the Water Management Act 2000.”*

Notwithstanding the fact that referral to, and approval from, the Rural Fire Service is not required, bushfire issues have been addressed by GHD, as outlined in their report reproduced at **Appendix 9**, and summarised in **Section 7.7**, of this report,

5.4.2 Roads Act 1993

The **Roads Act 1993**, in **Section 138**, requires the proponent to seek the consent of Clarence Valley Council (as the appropriate Roads Authority for Yamba Road) to:

- “(a) erect a structure or carry out a work in, on or over a public road, or*
- (b) dig up or disturb the surface of a public road, or*
- (c) remove or interfere with a structure, work or tree on a public road, or*
- (d) pump water into a public road from any land adjoining the road, or*
- (e) connect a road (whether public or private) to a classified road”*

The concept plan includes a private road system which is proposed to connect with Yamba Road. In circumstances such as this proposal, where consent is required in respect of a classified road, the concurrence of the Roads and Traffic Authority is required prior to the granting of consent.

Section 75V Part 3A of the EP&A Act provides that a consent under **Section 138** of the **Roads Act 1993** *“cannot be refused if it is necessary for carrying out an approved project and is to be substantially consistent with the approval under this Part”*.

5.4.3 Threatened Species Conservation (TSC) Act, 1995

The functions of the TSC Act are to identify and list threatened species populations and ecological communities, vulnerable species and ecological communities and key threatening processes. The Act contains provisions for the identification and declaration of critical habitat and other protective measures.

The **Flora Assessment** prepared by **Anne Clements and Associates (Appendix 10)**, indicates that two endangered ecological communities (namely Littoral Rainforest in the NSW North Coast, Sydney Basin and South East Corner bioregions and Swamp sclerophyll forest on coastal floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions) and four threatened plant species (*Acronychia littoralis*, *Phaius australis*, *Phaius tankervilleae* and *Sophorea tomentosa*) may possibly occur in the Clarence Estuary Nature Reserve.

The report concludes that given historical clearing and current land use as the Blue Dolphin Holiday Resort, no endangered ecological communities and none of the listed threatened species are likely to occur on the Site and *“none of these species were recorded nor expected to occur on the Site”*.

The **Fauna Assessment** prepared by **Ambecol Ecological Services (Appendix 11)** indicates that three threatened bat species, the Grey-headed Flying-fox (*Pteropus poliocephalus*), East Coast Freetail-bat (*Mormopterus norfolkensis*) and Eastern Bentwing-bat (*Miniopterus schreibersii*) have been recorded on the subject site. The **Fauna Assessment** provides 7 part tests of significance for these species and concludes that there are unlikely to be any significant impacts on any flora ecology listed under the TSC Act, subject to the recommendations within the report.

5.4.4 Commonwealth Environment Protection and Biodiversity Conservation (EPBC) Act, 1999

The EPBC Act is administered by the Federal Department of Environment and Heritage and aims to protect the environment, with respect to matters of National Environmental Significance.

Under the EPBC Act approval is required for activities that are likely to have a significant impact on a matter of national environmental significance relevantly including listed threatened species and communities and listed migratory species.

The **Flora Assessment (Anne Clements and Associates)** included as **Appendix 10** indicates that a search of the Environment Protection and Biodiversity Conservation Act 1999 (EP&BC Act) online database (www.deh.gov.au/epbc, accessed on 29 October 2006) revealed that there are no endangered ecological communities listed in the EP&BC Act within 10 km radius from the site.

The **Fauna Assessment** prepared by **Ambecol Ecological Services (Appendix 11)** indicates that records of threatened fauna species, listed under the schedules of the EPBC Acts were obtained from the EPBC database for the Maclean LGA.

One nationally vulnerable fauna species (the Grey-headed Flying-fox) has been recorded on the subject site. Two nationally endangered fauna species (Swift Parrot, Regent Honeyeater) may very occasionally occur on the subject site as vagrants. However assessment against the criteria provided in the EPBC Act revealed that

“The Grey-headed Flying-fox is a highly mobile species and the proposed development of the subject site would not hinder the movement of this species to the extent that a population would be fragmented. In the Northern Rivers region, this species congregates in areas where there is prolific flowering of Swamp Mahogany and/or Coast Banksia (Banksia integrifolia). Neither of these species occurs within the subject site. ...

The Swift Parrot and Regent Honeyeater may occasionally feed on the nectar of eucalypts and other trees when these trees are flowering within the subject site. However, there are no limiting resources for these two species on the subject site.”

In addition, the Fauna report considers impact on migratory species listed in the report and concludes:

“The area of habitat that would be cleared from the subject site is a negligible amount of area available to these species. Therefore, the proposed development is unlikely to have a significant impact on the status of migratory species that use or potentially use the subject site.

The existing 20-m wide foreshore reserve between the river and the subject site will be retained and there is unlikely to be any direct impact by the proposed development on the foraging areas of shorebirds that are listed under the EPBC provided that adequate sediment, pollution and erosion controls are in place during the construction period.

There is potential for people using the existing beachfront near the subject site to disturb foraging shorebirds. However, this level and type of disturbance already exists through the current use of the Blue Dolphin Holiday Resort by people. The extent of human disturbance is not likely to increase significantly as a result of the proposed development provided the recommendations listed in Sections 4.3.1 and 4.3.2 are implemented."

In the context of the EPBC Act, the proposed development will not have a significant impact on matters of national environmental significance, thus a Commonwealth referral and approval is not required.

5.5 Relevant Environmental Planning Instruments

While the following environmental planning instruments do not expressly provide that they apply to and in respect of the subject project, they are referred to in the Director-General Requirements as matters to consider in merit assessment of the project.

5.5.1 Maclean Local Environmental Plan 2001

The **Maclean LEP 2001** is the principal environmental planning instrument applying to the site. As addressed above, the proposed uses contemplated by the concept plan are permissible under this instrument.

Information to address the key provisions of the Maclean LEP is detailed in the assessment sections of this report as outlined below:

Clause 10 Bushfire Hazard

Under **Clause 10** consent must not be granted to the carrying out of development on land in respect of which a bushfire hazard has been identified in the *Maclean Shire Local Environmental Study 1989*, unless the Council is satisfied that adequate provision has been or will be made for the reduction of bushfire hazard on the land (see **Figure 8**).

A Bushfire Assessment (**Appendix 9**) has been carried out by GHD and concludes:

"considering factors and circumstances identified in discussions with the NSW Rural Fire Service, this development is not at significant risk of bushfire. Characteristics of the site, the development and the proposed additional measures provide a merit based argument to support the thirty metre APZ proposed in the concept."

This is further discussed in **Section 7.7** of this report.

Clause 11 (2) Flood Liable Land

Consent must not be granted to the erection of a dwelling on flood liable land unless the floor level of the living accommodation of the dwelling is located:

- (a) *in the case of land within Zone No 2 (a), 2 (b), 2 (t), 3 (a) or 4 (a) that is within the town of Iluka or Yamba, at least 0.3 metre above the 1 in 100 year flood level adopted by the Council.*

The proposal has been designed to set all floor levels at or above the flood planning level provided by Council, i.e. 2.7m AHD. This is further detailed in **Section 7.3** of this report.

Clause 12 Development in the vicinity of waterways

The proposal complies with foreshore building lines created in accordance with this Clause.

Clause 13 Development within the coastal zone

Before granting consent for any development in the coastal zone as defined in the NSW Coastal Policy 1997, the consent authority must take into consideration the design and location principles as set out in the NSW Coastal Policy 1997.

These principles have been taken into account and with compliance addressed in **Section 8.1.6** of this report.

Clause 14 Foreshore Building Lines

No foreshore building applies to the subject site.

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

The site is identified as being subject to Acid Sulphate Soils and as such a preliminary acid sulfate soil management plan for any works below the surface has been prepared and forms part of the Phase 1 Geotechnical Assessment (**Appendix 12**) prepared by Coffey Geotechnics. This matter is further discussed in **Section 7.4.2** of this report.

Clause 19 Development along main or arterial roads

This clause does not apply to the subject site as Yamba Road is not identified as a main or arterial road on the map named "Maclean Local Environmental Plan 1992" as amended (see **Figure 7**).

Clause 26 Development control of heritage items and Clause 27 Development in the vicinity of heritage items

These provisions do not apply to the proposed concept plan as a review of heritage listings within the LEP did not identify any buildings structures or other relics of European settlement on, or within the vicinity of, the subject site.

5.5.2 North Coast Regional Environmental Plan (North Coast REP)

The relevant regional policy applying to the Yamba area is the **North Coast Region Environmental Plan** (formerly North Coast Regional Environmental Plan 1988) (North Coast REP).

Pursuant to the draft Guidelines for the Concept Plan Application process, distributed by the Department of Planning, the heads of consideration identified in the North

Coast REP may be taken into account by the Minister, until such time as it is repealed in whole or part.

Clause 2B(2) specifies that *“the consent authority, Minister or public authority must take into consideration such of the aims and objectives of this plan as are relevant to the making of its determination.”*

Division 2 deals with **Coastal Development**. The **Objectives** of relevance in the plan in relation to **Coastal Planning** are:

- (a) *to enhance the visual quality of the coastal environment;*
- (b) *to provide for the appropriate recreational use of beaches;*
- (c) *to protect the water quality of the coastal environment;*
- (d) *to minimise risks to people and property resulting from coastal processes;*
- (e) *to minimise changes to coastal processes resulting from development; and*
- (f) *to encourage retention of natural areas and regeneration of those natural areas which are already degraded.*

These matters are addressed in detail in the Environmental Assessment Issues at **Sections 7, 8 & 9** of this report.

Clause 32B deals with **Development Control – Coastal Lands**. In determining an application for consent to carry out development on such land, a council must take into account the NSW Coastal Policy 1997; the Coastline Management Manual; and the North Coast: Design Guidelines (**Clause 31(2)**). In this case, the Minister is the consent authority and may take into account the provisions of these plans. The provisions of these plans are addressed at **Section 8.1** below. Pursuant to the requirements of **Clause 31(3)**, the proposed development will not impede public access to the foreshore but will in fact improve access to the foreshore.

Pursuant to **Clause 32B(4b)**, the consent authority *‘must not consent to the carrying out of development:*

...

(b) elsewhere in the region, if carrying out the development would result in beaches or waterfront open space being overshadowed before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time).’

A variation to the numerical standard contained in **Clause 324B**, with the marginal overshadowing of the adjoining beach reserve in **Clause 324B** is supported by a Merit Submission at **Appendix 13**.

Part 4 Division 2 addresses **Urban Housing**. The **Objectives** of the Plan in relation to **Urban Development** are to *“promote the provision of a range of adequate, affordable and suitable housing to meet the needs of the region’s population”* (**Clause 41**).

Clause 43(1)(a) provides that the council shall not grant consent to development for residential purposes unless *“it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land”*.

Pursuant to this Clause, the consent authority must seek to maximise the number of dwellings within residential developments, subject to the development not adversely affecting the environmental features of the land. The proposal does this and through careful design minimises the impact on the surrounding area.

In accordance with **Clause 41** and **Clause 43**, the proposal seeks to provide an appropriate mix and density of dwellings on the site with access to facilities and services, without adversely effecting environmental features of the land.

Clause 44 seeks to locate urban and tourism development on land that is free from environmental hazards such as flooding and bush fire risks. In respect of risks from flooding, while the site is flood affected it is noted that this is the case with much of the land in Yamba. The proposal adopts the flood management requirements of Council to ameliorate the risks associated with flooding. The Bushfire Assessment prepared by GHD has concluded that *"considering factors and circumstances identified in discussions with the NSW Rural Fire Service, this development is not at significant risk of bushfire."* In any case, the land is clearly identified for the proposed use in the Maclean LEP.

Part 4 Division 5 deals with **Tall Buildings**. The Objectives of the Plan in relation to tall buildings are to ensure that proposals for buildings over 14 metres are:

(a) *subject to the opportunity for public comment, and*

The Project Application will be publicly exhibited.

(b) *assessed for their local impact and regional significance.*

The proposal represents a preferred development option for the site, providing additional housing opportunities within the area, in terms of local impact and regional significance.

The Concept Plan incorporates *"higher density residential development"*, as contemplated by the Maclean LEP, to achieve more efficient use of land. In accommodating greater amounts of residential growth in comparison to lower density development options, the proposal minimises the take up of land elsewhere in Yamba, where environmental opportunities such as the retention of threatened species exist.

The proposed form of development will accommodate a mix of residential and tourist accommodation of varying unit types and sizes, increasing local housing and holiday accommodation choice while potentially reducing the ecological footprint of future development in the locality.

In addition, the use of height to accommodate the density of the site reduces the overall site coverage of the proposal, providing greater opportunities for increased planting of native species on the site and the accommodation of overland flow paths to provide drainage management.

The buildings around the perimeter of the site boundary units have generous variable set backs to reduce the impact on the surrounding areas and also to create view corridors through the site to the riverfront and areas of dense planting. The variable setback approach adopted in the amended concept plan, avoids the creation of a 'wall of buildings effect'. In addition, the building facades will be designed to respond primarily to internal/external functions (connection with landscape, lifestyle spaces, indoor/outdoor connectivity) and also to integrate the building into its local context.

Materials will be 'reflective-of-place' and have been selected to consider the site's context in terms of appearance and proximity to the surrounding environments.

As such, the proposal has the potential to achieve improved environmental outcomes both regionally and locally.

Pursuant to **Clause 66 – Development control, adequacy of community and welfare services**, before granting consent to a development application for the subdivision of land intended for residential or rural residential purposes, the council shall consider the adequacy of community and welfare services available to the land and take into account the results of that consideration. It is noted that the site is located in the Yamba urban area in close proximity to the wide range of community and welfare services in the city.

The objectives of **Clause 67** in relation to tourism are as follows:

- (a) to encourage tourism activity that will complement the existing natural and man-made features of the region and be of positive benefit to the region's economy, and
- (b) to encourage a range of tourism facilities in the region without degrading important environmental or agricultural features of the region, and
- (c) to encourage the location of tourism facilities so that they may benefit from existing air, road and rail services, physical service infrastructure, other tourist attractions, natural features and urban facilities, and
- (d) to encourage large scale resort development in places that are easily accessible to tourists by roads, railways or water transport (or any combination of them) of a high standard and that are in proximity to urban services.

Pursuant to this, the proposal incorporates both residential and tourist accommodation, upgrading the existing tourist accommodation provided on the site. The development will increase and improve the tourist facilities provided in the Yamba area. Given the location of the site, it will benefit from existing road, air services and urban services. The Pacific Highway is a major regional transport corridor and is located approximately 15 kilometers to the west of the site via Yamba Road. Commercial air services are available at Grafton, Ballina and Lismore.

Clause 81 (1) states that the council shall not consent to a development application for development on land within 100 metres of the ocean or any substantial waterway unless it is satisfied that:

- (a) there is a sufficient foreshore open space which is accessible and open to the public within the vicinity of the proposed development;
- (b) buildings to be erected as part of the development will not detract from the amenity of the waterway; and
- (c) the development is consistent with the principles of any foreshore management plan applying to the area.

Part (a) and (b) have been addressed in **Section 7.1** and **Section 9.1** of this report in the assessment of the proposal against SEPP 71.

In terms of part (c), while the subject site does not include the foreshore reserve which separates the subject site from the Clarence River, the proposed development is consistent with the Yamba Bay Foreshore Reserve Plan of Management.

5.5.3 State Environmental Planning Policy (Major Projects) 2005

State Environmental Planning Policy (Major Projects) 2005 outlines the types of development declared to be a Major Project for the purposes of Part 3A of the Act. **Clause 6** of SEPP 2005 defines 'Major Projects' and as previously described the proposal falls within the SEPP and is therefore subject to Part 3A of the EP & A Act.

5.5.4 State Environmental Planning Policy No. 1- Development Standards

State Environmental Planning Policy No. 1 (SEPP 1) aims to provide *"flexibility in the application of planning controls"* (**Clause 3**).

Clause 6 requires that a development application which seeks to vary a development standard be supported by a written objection outlining how compliance with that development standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds for objection.

It is noted that Stage 1 of the concept plan causes overshadowing on a small part of the river beach reserve as a result of mid to late afternoon shadows in mid-winter and mid-summer during the times nominated in **Clause 32B (4)(b)** of the **North Coast Regional Environmental Plan**. However, overshadowing already occurs throughout the year on the river beach and waterfront as a result of existing mature evergreen trees. Any additional overshadowing caused by the proposal will be marginal and will be compensated by the provision of additional open space on the site and indeed the provision of access to the waterfront open space. Given the preceding it is considered that a variation to the numerical standard is justified and is supported by a SEPP No. 1 Merit Submission.

The **SEPP No. 1** Merit Submission is provided at **Appendix 13** of this Environmental Assessment.

5.5.5 State Environmental Planning Policy No. 11 – Traffic Generating Developments

State Environmental Planning Policy No. 11 (SEPP 11) aims at ensuring that the Roads and Traffic Authority is aware of major traffic generating developments.

Developments of the types listed in **Schedule 1** and **2** of the SEPP require referral to the Roads and Traffic Authority. The proposed concept plan would be referred to the Roads and Traffic Authority on the basis that the proposal includes development having ancillary accommodation for 200 or more motor vehicles.

In brief, as outlined in the Traffic Report prepared by ARUP and included as **Appendix 14** to this report, the proposed redevelopment of the site is anticipated to generate less

traffic movements than the existing caravan park and service station during peak periods. The road system servicing the site is therefore considered to be adequate.

Notwithstanding the adequacy of the current road network, the proponent separately proposes improvements to the site's access to Yamba Road and additional road works as part of the voluntary Planning Agreement.

5.5.6 State Environmental Planning Policy No. 14 (Coastal Wetlands)

The aim of this policy is *"to ensure that the coastal wetlands are preserved and protected in the environmental and economic interests of the State."*

The site does not contain any coastal wetlands, however land subject to the policy is located to the northwest of the site (as illustrated in **Figure 10**).

5.5.7 State Environmental Planning Policy No. 26 (Littoral Rainforests)

The aim of this Policy is to provide a mechanism for the consideration of applications for development that is likely to damage or destroy littoral rainforest areas with a view to the preservation of those areas in their natural state. The site does not contain any littoral rainforest, however land subject to the policy is located to the northwest of the site (as illustrated in **Figure 11**).

5.5.8 State Environmental Planning Policy No. 44 (Koala Habitat)

The Fauna Assessment undertaken by Ambecol Ecological Services (see **Appendix 11**) includes an assessment of koala habitat on the site, according to the SEPP 44, was completed on 26-27 October 2006.

Potential koala habitat is defined in the SEPP as *areas of native vegetation where trees of the types listed in Schedule 2 constitute at least 15% of the total number of trees in the upper or lower strata of the tree component.*

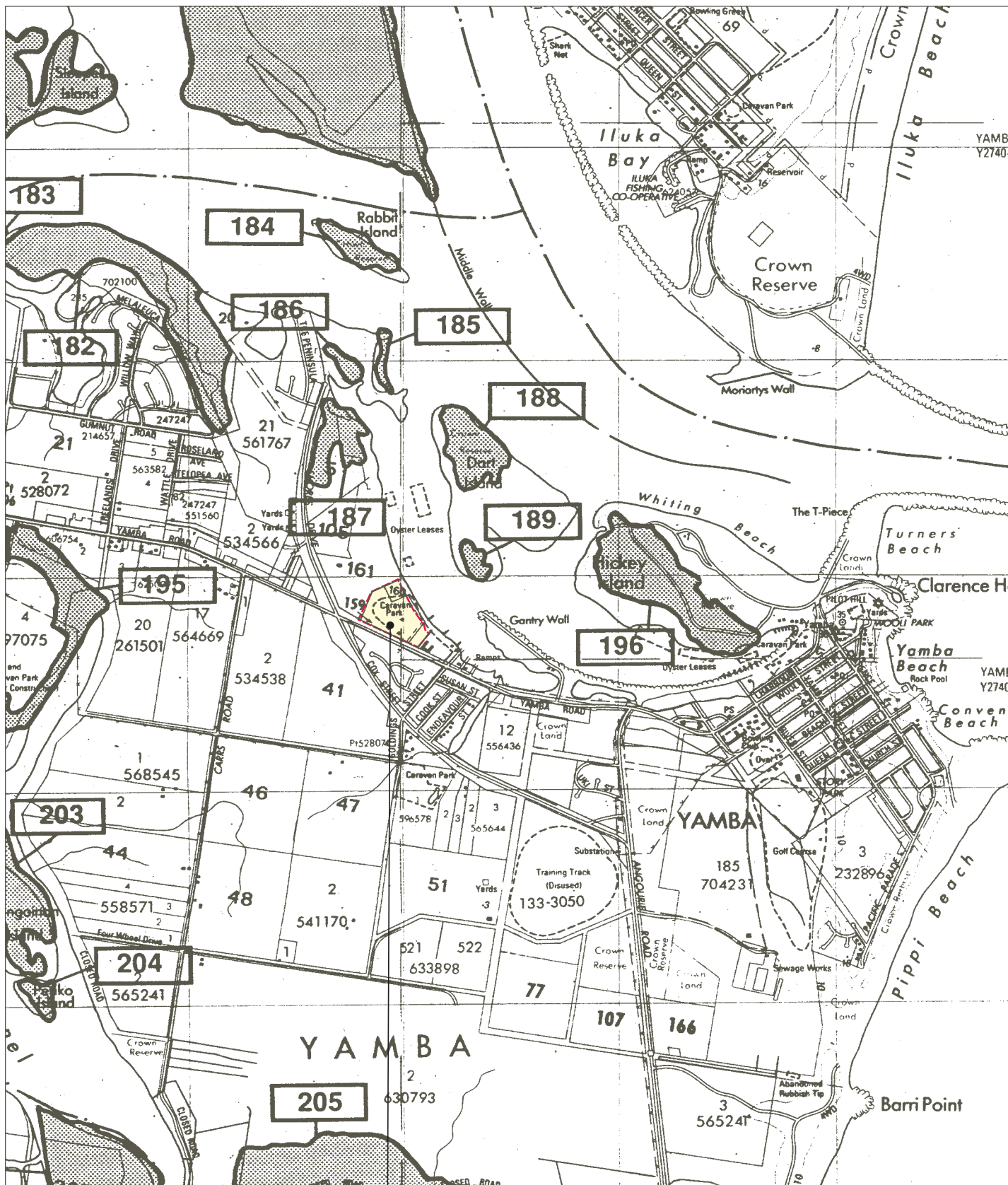
Core koala habitat is defined in the SEPP as *an area of land with a resident population of koalas, evidenced by attributes such as breeding females and recent sightings and historical records of koala population.*

The Assessment concludes:

The subject site in the present study is not Potential or Core koala habitat.

5.5.9 State Environmental Planning Policy No. 55 (Contaminated Land)

The relevant planning instrument for consideration with respect to contamination is **State Environmental Planning Policy No. 55 – Remediation of Land, (SEPP 55)**, which deals primarily with contaminated land and its remediation. In accordance with this policy, no consent authority may grant consent to the carrying out of any development, unless it has considered the possibility of the land being contaminated and in the case



Subject Site

REFERENCE

LAND SUBJECT OF THE POLICY SHOWN THUS

LIMIT OF NSW COASTAL WETLANDS AERIAL
PHOTOGRAPHY (1986) SHOWN THUS



Compiled by the Cartographic Branch,
Department of Urban Affairs and Planning

Dolphin Blue Redevelopment Concept Plan, Yamba

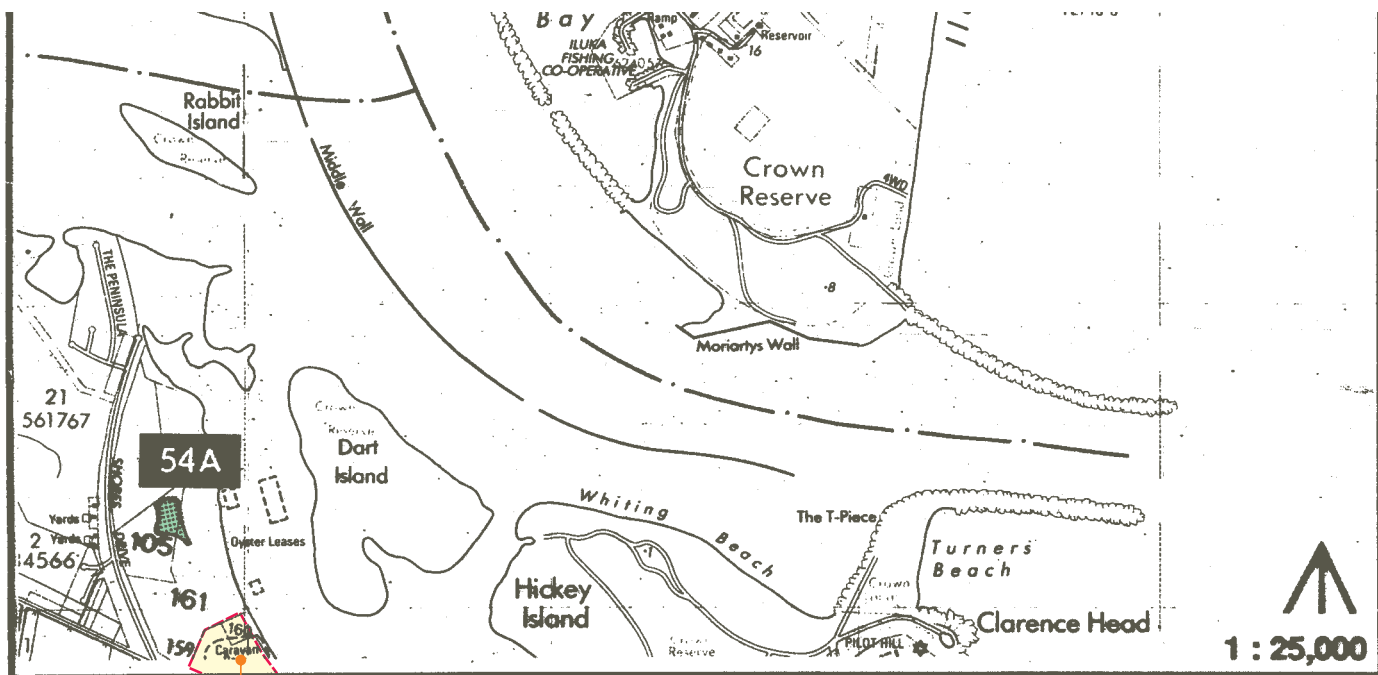
SEPP No. 14 Coastal Wetlands

prepared by **planning workshop australia**
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Fig 10



Subject Site

1  SUBJECT AREAS (with index number)

DEPARTMENT OF URBAN AFFAIRS AND PLANNING
 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979
STATE ENVIRONMENTAL PLANNING POLICY No. 26
LITTORAL RAINFORESTS
AMENDMENT No. 1

Dolphin Blue Redevelopment Concept Plan, Yamba

SEPP No. 26 - Littoral Rainforest, Amendment No. 1

prepared by **planning workshop australia**
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Fig 11

of contamination, its suitability (after remediation) for the purpose proposed in the development application. The policy applies to the whole of the State.

Clause 7 (2) of the Policy states that before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the applicant must provide a report in accordance with the contaminated land planning guidelines for the consideration of the consent authority.

At present, the site contains a service station and as a result, a Contamination Report was prepared by **Coffey Geosciences Pty Ltd** (see **Appendix 12**) to assess the site for the presence and extent of potential petroleum hydrocarbon contamination.

Information on the site's history was obtained from:

- *A site walkover;*
- *Historical land titles search;*
- *Review of Council records;*
- *Review of aerial photographs;*
- *A search of NSW EPA records; and*
- *A search of dangerous goods licenses held by WorkCover NSW.*

The operation and use of the site has included:

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

The objective of the investigation was to assess the site for the presence and extent of potential petroleum hydrocarbon contamination arising from the existing service station.

A Site Contamination Assessment of the service station portion of the site (approximately 1,700m² located near the eastern end of the Yamba Road site boundary) was carried out in accordance with the relevant sections of the NSW EPA (1997) Guidelines for Consultants Reporting on Contaminated Sites and the NSW EPA (1995) Sampling Design Guidelines.

The Phase 1 Geotech report provides:

This contamination assessment, for the service station portion, would be 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):

- *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 bowzers and existing pipelines in approximately the centre of the site.*
- *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 Assessment identifies that the likely chemicals of concern are:

- *TPH – Total Petroleum Hydrocarbons;*
- *BTEX – Benzene, Toluene, Ethylbenzene and Xylene;*
- *PAH – Polycyclic Aromatic Hydrocarbons, and*
- *Lead.*

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 bowzers.

The report concluded that the site can be made suitable for the proposed development. This issue is further addressed in the order of the Director-General Requirements at **Section 7.4** of this report.

5.5.10 State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Buildings

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Buildings, aims to improve the design quality of residential flat buildings across NSW by providing a consistent policy mechanism directing developments across the state (**Clause 2**).

The Policy sets out 10 design quality principles. An assessment of the proposal against these design principles is contained in the SEPP 65 Design Statement prepared by Woodhead architects at **Appendix 15**.

An assessment of the proposal against the accompanying Residential Flat Design Code is contained in the SEPP 65 Compliance Table prepared by Planning Workshop Australia at **Appendix 16**. Overall, 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.

5.5.11 State Environmental Planning Policy No. 71 - Coastal Protection (SEPP 71)

State Environmental Planning Policy No. 71 - Coastal Protection (SEPP 71) aims to protect and enhance the important coastal environment from inappropriate development (see **Figure 12**). A consideration of the proposal's consistency with the strategic outcomes of the policy with respect to the protection of the sensitive coastal environment may be addressed through a consideration of the **Aims** of the Policy (**Clause 2**) and the **Heads of Consideration** at **Clause 8**.

The proposal's compliance with relevant **Aims** of SEPP 71 outlined in **Clause 2(1)** is included in **Section 5.5.2** of this report, in the order the issue was raised in the Director-General Requirements.

5.5.12 State Environmental Planning Policy (Building Sustainability Index) 2004 (SEPP BASIX)

The provisions of **State Environmental Planning Policy (Building Sustainability Index) 2004**, commenced on the 1 July 2004, for multi-unit housing. This SEPP operates in conjunction with Environmental Planning and Assessment Amendment (Building Sustainability Index: BASIX) Regulation 2004, ensuring consistency in the implementation of BASIX throughout the State by overriding competing provisions in other environmental planning instruments and development control plans. SEPP BASIX requires the submission of a BASIX certificate to accompany an application for development consent for any "BASIX affected building". As previously stated, multi-unit housing and residential flat buildings are listed as BASIX affected buildings. A BASIX Certificate is submitted with this Project Application and accompanies the architectural drawings.

5.6 Other Relevant Plans and Policies

Other relevant plans and policies are addressed in the order that they are raised by the assessment against the Director-General Requirements in Section 7, 8 and 9 of this report.