

# Yamba Quays



*Sail into a Golden Opportunity*

## Planning Context – Proposed Lots 118-121 in the subdivision of Lot 91 DP1069070, Yamba Quays, Yamba



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28 November 2007



## 1 Introduction

This planning report provides an overview of the primary planning controls affecting Lots 118 – 121 (the site) in the subdivision of Lot 91 DP1069070, Yamba Road, Yamba. Yamba Quays has been assisted in the preparation of this document by S J CONNELLY CPP PTY LTD and Petersen Consulting Group.

## 2 The Site

At the time of writing the site is proposed to be created in accordance with the plan of subdivision included in Appendix A. The property descriptions for the allotments comprising the site and their respective areas are shown in the table below.

Property Description	Area (hectares)
Lot 118	5.033
Lot 119	3.635
Lot 120	3.866
Lot 121	4.372

The site is located along Yamba Road on the western outskirts of the Yamba, adjacent Oyster Channel. It is relatively level and grassed, with much of it having direct water frontage. Figure 1 shows the site in the wider locality.



Figure 1 – The site (Source: Google Earth).



### 3 The Surrounding Area

The area surrounding the site is characterised by low density residential development to the north; public open space to the east; waterway (Oyster Channel) to the west and north-west; and, Yamba Road, native vegetation and cleared land to the south.

Figure 2 below shows the general outline of the site from the south-west.



Figure 2 – Aerial photograph of the site.



## 4 Planning Context

The following information outlines the primary planning controls likely to affect further development of the site; the outline is not intended to be comprehensive.

### 4.1 State Environmental Planning Policies (SEPPs)

There are a number of SEPPs likely to be relevant to any future development of the site. A number of these which may prove relevant are listed below, along with some of their principal controls.

#### 4.1.1 State Environmental Planning Policy No 71—Coastal Protection (SEPP 71)

SEPP 71 applies to the site given its location in the coastal zone (clause 4). It provides a range of coastal matters that must be given consideration when a consent authority determines a development application (clauses 7 and 8).

In addition, SEPP 71 provides that:

- flexible zoning provisions are of no effect within the coastal zone (clause 13);
- that development must not impede or diminish land based access to coastal foreshores (clause 14);
- that a consent authority must not grant consent to a development which disposes of effluent via non-reticulated system, which will have a negative effect on the water quality of coastal waterways (clause 15); and,
- that consent authority must not grant consent to a development which discharges untreated stormwater to coastal waterways (clause 16).

Clause 18 is of particular relevance to the site, and it provides:

*“18 Master plan required before certain consents may be granted*

*(1) A consent authority must not grant consent for:*

*(a) subdivision of land within a residential zone, or a rural residential zone, if part or all of the land is in a sensitive coastal location, or*

*(b) subdivision of land within a residential zone that is not identified as a sensitive coastal location into:*

*(i) more than 25 lots, or*

*(ii) 25 lots or less, if the land proposed to be subdivided and any adjoining or neighbouring land in the same ownership could be subdivided into more than 25 lots, or*

...

*unless:*

*(d) the Minister has adopted a master plan for the land, including any adjoining or neighbouring land in the same ownership, as referred to in paragraph (b) (ii), or*

*(e) the Minister, after consulting the Natural Resources Commission, has, under subclause (2), waived the need for a master plan for the whole or a specified part of the land referred to in paragraph (d).*



(2) *The Minister may waive the need for a master plan to be adopted because of the nature of the development concerned, the adequacy of other planning controls that apply to the proposed development or for other such reasons as the Minister considers sufficient.*

(3) *For the purposes of this clause, areas of land that are adjoining or neighbouring are in the same ownership if:*

(a) *the registered proprietor of all the areas of land is the same person, or*

(b) *the registered proprietor of part of the areas of land is a body corporate and the registered proprietor of the other part is, or the registered proprietors of the other parts are, a director or shareholder of the body corporate, or a related body corporate of the body corporate.”*

Within SEPP 71, a “master plan” is defined as:

*“**master plan** means a document consisting of written information, maps and diagrams that outlines proposals for development of the land to which the master plan applies.”*

A “sensitive coastal location” is defined as:

*“**sensitive coastal location** means any of the following:*

(a) *land within 100m above mean high water mark of the sea, a bay or an estuary,*

(b) *a coastal lake,*

(c) *a declared Ramsar wetland within the meaning of the Environment Protection and Biodiversity Conservation Act 1999 of the Commonwealth,*

(d) *a declared World Heritage property within the meaning of the Environment Protection and Biodiversity Conservation Act 1999 of the Commonwealth,*

(e) *land declared as an aquatic reserve under the Fisheries Management Act 1994,*

(f) *land declared as a marine park under the Marine Parks Act 1997,*

(g) *land within 100m of any of the following:*

(i) *the water’s edge of a coastal lake,*

(ii) *land to which paragraph (c), (d), (e) or (f) applies,*

(iii) *land reserved or dedicated under the National Parks and Wildlife Act 1974,*

(iv) *land to which State Environmental Planning Policy No 14—Coastal Wetlands applies,*

(h) *residential land (within the meaning of State Environmental Planning Policy No 26—Littoral Rainforests) that is within a distance of 100m from the outer edge of the heavy black line on the series of maps held in the Department of Planning and marked “State Environmental Planning Policy No 26—Littoral Rainforests (Amendment No 2)”.*

*the Act means the Environmental Planning and Assessment Act 1979.”*



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

This SEPP has a number of aims the principal of which is to “to identify development to which the development assessment and approval process under Part 3A of the Act applies”.

Clause 6 identifies development to which Part 3A of the Environmental Planning and Assessment Act will apply, and provides:

*“6 Identification of Part 3A projects*

*(1) Development that, in the opinion of the Minister, is development of a kind:*

*(a) that is described in Schedule 1 or 2, or*

*(b) that is described in Schedule 3 as a project to which Part 3A of the Act applies, or*

*(c) to the extent that it is not otherwise described in Schedules 1–3, that is described in Schedule 5,*

*is declared to be a project to which Part 3A of the Act applies.*

*(2) However, any such development does not become a project to which Part 3A of the Act applies by the operation of subclause (1) if:*

*(a) the carrying out of that development has been authorised by a consent that is in force under Part 4 of the Act before development of that kind is declared under subclause (1), or ...”*

Schedule 1 of the SEPP lists a number of classes of development, including the following:

*“13 Residential, commercial or retail projects*

*(1) Development for the purpose of residential, commercial or retail projects with a capital investment value of more than \$50 million that the Minister determines are important in achieving State or regional planning objectives ...*

*14 Marina facilities*

*(1) Development for the purpose of marinas or other related land or water shoreline facilities that moor, berth or store vessels (excluding dinghies and other small craft) at fixed or floating berths, at freestanding moorings, alongside jetties or pontoons, within dry storage stacks or on cradles in hardstand areas and that:*

*(a) moor, berth or store more than 30 vessels in Sydney Harbour, Middle Harbour, North Harbour, Botany Bay, Port Hacking, Broken Bay or associated tidal waters, or*

*(b) moor, berth or store more than 80 vessels in other waters, or*

*(c) are located in environmentally sensitive areas of State significance,*

*but excluding any development that, in the opinion of the Minister, is only of local environmental planning significance.*

*(2) A reference in this clause to the number of vessels moored, berthed or stored includes a reference (in the case of an existing facility) to the additional number of vessels moored, berthed or stored at the facility.”*



Schedule 2 of the SEPP includes the following specified sites:

*"1 Coastal areas*

*(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 or a change of use of a building by which the building becomes a recreational or tourist facility):*

*(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*

*(ii) in the case of facilities wholly or partly in a sensitive coastal location in the metropolitan coastal zone—that provide accommodation (or additional accommodation) for 100 persons or more, or*

*(iii) in the case of facilities outside a sensitive coastal location that are not connected to an approved sewerage treatment work or system—that provide accommodation (or additional accommodation) for 25 persons or more,*

*(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*

*(ii) greater than 13 metres in height, in the case of buildings in other locations outside the metropolitan coastal zone, excluding any building that complies with all development standards relating to the height of such a building set by a local environmental plan that applies to the land on which the building is located,*

*(h) subdivision of land that is wholly or partly in a sensitive coastal location and that will lead to development that is not connected to an approved sewage treatment work or system:*

*(i) into more than 2 lots, or*

*(ii) into 2 lots, if the land to be subdivided and adjoining or neighbouring land in the same ownership as that land could be subdivided into more than 2 lots,*

*(i) subdivision of land that is outside a sensitive coastal location and that will lead to development that is not connected to an approved sewage treatment work or system:*

*(i) into more than 5 lots, or*

*(ii) into 5 or fewer lots, if the land to be subdivided and adjoining or neighbouring land in the same ownership as that land could be subdivided into more than 5 lots,*

*(j) subdivision for residential purposes of land that is not in the metropolitan coastal zone (unless it is wholly or partly in a sensitive coastal location):*

*(i) into more than 25 lots, or*



(ii) into 25 or fewer lots, if the land proposed to be subdivided and adjoining or neighbouring land in the same ownership as that land could be subdivided into more than 25 lots,

...

(1A) Subclause (1) (f)–(k) does not apply to development that the Minister determines is of only local environmental planning significance.

...

(3) For the purposes of this clause, development is not partly in a sensitive coastal location merely because part of the allotment on which it is carried out is in such a location if none of the development is actually carried out in such a location.”

Within the SEPP, a “building” is defined as:

**“building** does not include an aerial, chimney stack, mast, pole, receiving tower, silo, transmission tower, utility installation or ventilator.”

“Height” is defined as:

**“height** of a building or structure means the greatest height measured from any point on the building or structure to the natural ground level (being the ground level of the site as if the land comprising the site were undeveloped) immediately below that point.”

“Recreational or tourist facilities” are defined as:

**“recreational or tourist facilities** means facilities that provide accommodation, including hotels, motels, backpackers’ accommodation, hostels, tourist resorts, holiday cabins, holiday units, serviced apartments, eco-tourism resorts, caravan parks, camping grounds, health farms, religious retreat houses, rest homes or youth camps, but does not include bed and breakfast establishments or farm stays.”

A “sensitive coastal location” is defined as:

**“sensitive coastal location** means any of the following which occur within the coastal zone:

- (a) land within 100m above mean high water mark of the sea, a bay or an estuary,
- (b) a coastal lake,
- (c) a declared Ramsar wetland within the meaning of the Environment Protection and Biodiversity Conservation Act 1999 of the Commonwealth,
- (d) a declared World Heritage property within the meaning of the Environment Protection and Biodiversity Conservation Act 1999 of the Commonwealth,
- (e) land declared as an aquatic reserve under the Fisheries Management Act 1994,
- (f) land declared as a marine park under the Marine Parks Act 1997,
- (g) land within 100m of any of the following:
  - (i) the water’s edge of a coastal lake,
  - (ii) land to which paragraph (c), (d), (e) or (f) applies,



- (iii) land reserved under the National Parks and Wildlife Act 1974,
- (iv) land to which State Environmental Planning Policy No 14—Coastal Wetlands applies,
- (h) residential land (within the meaning of State Environmental Planning Policy No 26—Littoral Rainforests) that is within a distance of 100m from the outer edge of the heavy black line on the series of maps held in the Department and marked “State Environmental Planning Policy No 26—Littoral Rainforests (Amendment No 2)”.

“Subdivision” is defined as:

*“**subdivision** of land does not include a boundary adjustment, or a strata subdivision, or a community title subdivision associated with an approved development.”*

## 4.2 North Coast Regional Environmental Plan (REP)

The REP provides planning direction and control from a regional perspective, and includes amongst its aims:

*“(a) to develop regional policies that protect the natural environment, encourage an efficient and attractive built environment and guide development into a productive yet environmentally sound future,*

...

*(c) specifying regional policies for the control of development in the region.”*

Notable provisions of the plan include:

*“15 Development control—wetlands or fishery habitats*

*The council shall not consent to an application to carry out development for any purpose within, adjoining or upstream of a river or stream, coastal or inland wetland or fishery habitat area or within the drainage catchment of a river or stream, coastal or inland wetland or fishery habitat area unless it has considered the following matters:*

- (a) the need to maintain or improve the quality or quantity of flows of water to the wetland or habitat,*
- (b) the need to conserve the existing amateur and commercial fisheries,*
- (c) any loss of habitat which will or is likely to be caused by the carrying out of the development,*
- (d) whether an adequate public foreshore reserve is available and whether there is adequate public access to that reserve,*
- (e) whether the development would result in pollution of the wetland or estuary and any measures to eliminate pollution,*
- (f) the proximity of aquatic reserves dedicated under the Fisheries Management Act 1994 and the effect the development will have on these reserves,*
- (g) whether the watercourse is an area of protected land as defined in section 21AB of the Soil Conservation Act 1938 and any measures to prevent soil erosion, and*



(h) the need to ensure that native vegetation surrounding the wetland or fishery habitat area is conserved, and

(i) the recommendations of any environmental audit or water quality study prepared by the Department of Water Resources or the Environment Protection Authority and relating to the river, stream, wetland, area or catchment.

...

### 32B Development control—coastal lands

(1) This clause applies to land within the region to which the NSW Coastal Policy 1997 applies.

(2) In determining an application for consent to carry out development on such land, the council must take into account:

(a) the NSW Coastal Policy 1997,

(b) the Coastline Management Manual, and

(c) the North Coast: Design Guidelines.

(3) The council must not consent to the carrying out of development which would impede public access to the foreshore.

(4) The council must not consent to the carrying out of development:

(a) on urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out the development would result in beaches or adjacent open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time), or

(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).

...

### 33 Development control—coastal hazard areas

Before granting consent to development on land affected or likely to be affected by coastal processes, the council shall:

(a) take into account the Coastline Management Manual,

(b) require as a condition of development consent that disturbed foreshore areas be rehabilitated, and

(c) require as a condition of development consent that access across foredune areas be confined to specified points.

...

### 43 Development control—residential development

(1) The council shall not grant consent to development for residential purposes unless:



(a) it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land,

(b) it is satisfied that the proposed road widths are not excessive for the function of the road,

(c) it is satisfied that, where development involves the long term residential use of caravan parks, the normal criteria for the location of dwellings such as access to services and physical suitability of land have been met,

(d) it is satisfied that the road network has been designed so as to encourage the use of public transport and minimise the use of private motor vehicles, and

(e) it is satisfied that site erosion will be minimised in accordance with sedimentation and erosion management plans.

...

51 Development control—Director's concurrence for tall buildings

(1) In this clause, a reference to a building does not include an aerial, chimney stack, mast, pole, receiving tower, silo, transmission tower, utility installation or ventilator or any other building, or a building of a class or description of buildings, exempted by the Minister from the provisions of this plan by notice published in the Gazette.

(2) The council shall not, without the concurrence of the Director, grant consent to a development application for the erection of a building over 14 metres in height.

(3) In deciding whether to grant concurrence to a development application in respect of development referred to in subclause (2), the Director shall take into consideration the likely regional implications of the development as regards its social, economic and visual effect and the effect which it will or is likely to have on the amenity of the area.

(4) The provisions of sections 84, 85, 86, 87 (1) and 90 of the Act apply to and in respect of development for the purpose of a building over 14 metres in height in the same way as those provisions apply to and in respect of designated development.

...

75 Development control—tourism development

(1) The council must not grant consent to tourism development unless it is satisfied that:

(a) adequate access by road, railway or water transport (or any combination of them) exists or will be provided to service the development, taking into account the scale of the development proposed, and

(b) if the proposal involves permanent residential accommodation, all social and community services reasonably required by those residents exist in close proximity to the development, and

(c) the development will not be detrimental to the scenery or other significant features of the natural environment, and

(d) reticulated water and sewerage are available, or arrangements satisfactory to the council have been made for the provision of those facilities.



(2) *In considering an application for consent to tourism development, the council must have regard to principles contained in the Tourism Development Along the New South Wales Coast: Guidelines.*

(3) *The council must not approve an application for large scale resort development unless it is within or adjacent to a prime tourism development area or adequate urban services are available.*

...

81 *Development control—development adjacent to the ocean or a waterway*

(1) *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.*

(2) *Nothing in subclause (1) affects privately owned rural land where the development is for the purpose of agriculture.”*

Within the REP, “height” and “natural ground level” are respectively defined as:

**“height**, *in relation to a building, means the greatest distance measured vertically from any point on the building to the natural ground level immediately below that point.*

**natural ground level** *means the level of site as if the land comprising the site were undeveloped.”*

### 4.3 Maclean Local Environmental Plan 2001 (LEP 2001)

LEP 2001 adopts the Environmental Planning and Assessment Model Provisions 1980, except for clauses 4 (1), 15, 31 and 33. LEP 2001 also includes a list of its own definitions (clause 7).

Under LEP 2001 the site is zoned a combination of 2 (a) Residential (Low Density) and 6 (c) Open Space Buffer.

Figure 3 elow shows the zoning across the site.

#### 4.3.1 2 (a) Residential (Low Density) zone

Clause 46(5) of LEP 2001 applies to the 2 (a) Residential (Low Density) zone and provides that:

*“Except as otherwise provided by this plan, consent must not be granted to the carrying out of development on land to which this plan applies unless the consent authority is satisfied that the development is consistent with the objectives of the zone within which the development is proposed to be carried out.”*

The aim of the 2 (a) Residential (Low Density) zone is to “... enable the provision of housing, characterised by low density residential development.”



The particular objectives of the 2 (a) Residential (Low Density) zone are to enable:

- the provision of low density housing, and
- a residential environment free from any adverse impact from commercial and industrial uses, and
- the provision of community uses, such as child care centres, of a compatible scale, bulk, height and design, which do not detract from the amenity and character of the residential area, and
- adequate provision for water and effluent disposal.

Within the 2 (a) Residential (Low Density), the following development does not require development consent:

- ancillary removal of native vegetation;
- bushfire control;
- flood mitigation works;
- jetties with a maximum of 2 vessels used for private use;
- maintenance dredging;
- public utility undertakings; and
- exempt development.

Within the 2 (a) Residential (Low Density) zone, the following development requires development consent:

- child care centres;
- clearing;
- cluster housing;
- dual occupancies;
- dwelling houses;
- home industries;
- places of public worship;
- professional consulting rooms; and
- utility installations (other than gas holders or generating works).

Within the 2 (a) Residential (Low Density) zone, the following development is listed as prohibited:

- advertisements excluding business identification signs;
- advertising structures, excluding those displaying business identification signs; and
- any other development not included in the above without and with consent categories of the zone.

LEP 2001 provides the following definitions mentioned above:

***“cluster housing*** means 3 or more dwellings grouped on a site to take advantage of good building areas or views and to conserve large areas of open space. The number of dwellings on a site area should be no greater than would be allowed if each dwelling was on a separate allotment that could be created in the same zone.

***dual occupancy*** means two dwellings on one allotment of land, irrespective of whether the dwellings are attached or detached.

***dwelling house*** means a building containing one, but not more than one, dwelling.

***professional consulting rooms*** means a room or a number of rooms forming either the whole or part of, attached to or within the curtilage of, a dwelling house and used by not more than three legally qualified medical practitioners or by not more than three dentists within the meaning of the Dentists Act 1989, or by not more than three health care professionals, who practise there



*the profession of medicine, dentistry or health care respectively and, if more than one, practise in partnership, and who employ not more than three employees in connection with that practice.”*

#### 4.3.2 6 (c) Open Space Buffer zone

Clause 53(5) of LEP 2001 applies to the site and provides that:

*“Except as otherwise provided by this plan, consent must not be granted to the carrying out of development on land to which this plan applies unless the consent authority is satisfied that the development is consistent with the objectives of the zone within which the development is proposed to be carried out.”*

The primary aim of the 6 (c) Open Space Buffer zone is to set aside land, whether in public or private ownership, which will act as a buffer between main or arterial roads and development associated with town or village areas.

The particular objectives of the 6 (c) Open Space Buffer zone are:

- to prohibit access from main or arterial roads to adjoining land, and
- to prevent the development of land within this zone for purposes that may jeopardise the movement of traffic safely along the adjoining main or arterial road, and
- to enable the development of land within this zone for the purpose of public utility undertakings or utility installations.

Within the 6 (c) Open Space Buffer zone the following development does not require development consent:

- ancillary removal of native vegetation;
- bushfire control;
- clearing not included in the with consent category;
- flood mitigation works;
- jetties with a maximum of 2 vessels used for private use;
- public utility undertakings;
- utility installations (other than gas holders or generating works);
- works involved in gardening or landscaping; and
- exempt development.

Within the 6 (c) Open Space Buffer zone the following development requires development consent:

- clearing allowed only with consent by a tree preservation order.

Within the 6 (c) Open Space Buffer zone the following development is listed as prohibited:

- Any development not included in the without or with consent categories of the zone.

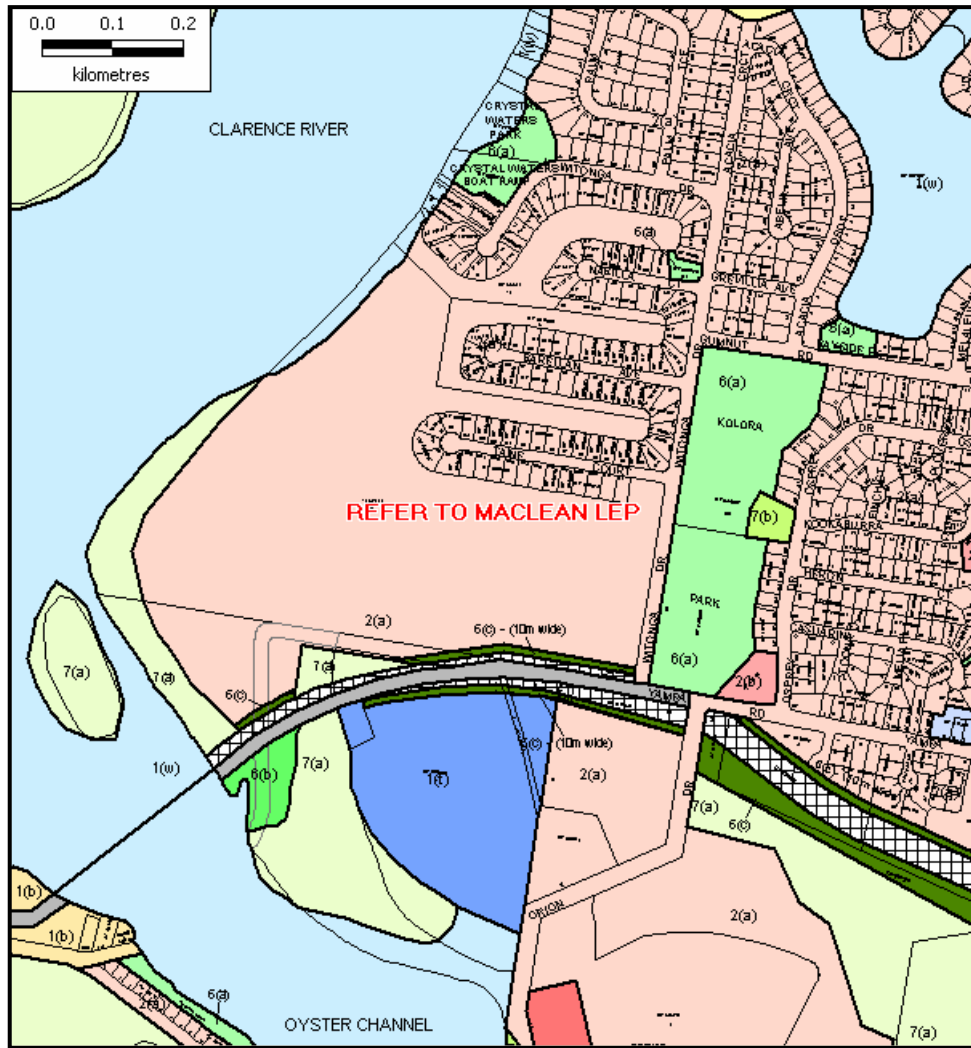


Figure 3 – Zoning of the site (Source: Clarence Valley Council website).

There are a number of clauses within LEP 2001 which would apply to development proposed for the site. The applicability of some of these clauses depends on the nature of the proposed development and its location. These clauses are described in Table 1 below, and for brevity, certain sections have been paraphrased, while others are only set out in part.



Table 1 – Provisions of LEP 2001.

LEP Provision
<p><b>10 Bushfire hazard</b></p> <p>Consent must not be granted to development in respect of which a bushfire hazard has been identified in the Maclean Shire Local Environmental Study 1989, deposited in the office of the Council, unless the Council is satisfied that adequate provision has been or will be made for the reduction of bushfire hazard on the land.</p>
<p><b>11 Flood liable land</b></p> <p>(1) Consent must not be granted to the erection of a building or the carrying out of a work if, in the opinion of the consent authority:</p> <p>(a) the land is within a floodway, and</p> <p>(b) the carrying out of the development is likely:</p> <p style="padding-left: 40px;">(i) to adversely impede the flow of floodwaters on that land or land in its immediate vicinity, or</p> <p style="padding-left: 40px;">(ii) to imperil the safety of persons on that land or land in its immediate vicinity in the event of those lands being inundated with floodwaters, or</p> <p style="padding-left: 40px;">(iii) to aggravate the consequence of floodwaters lying on that land or land in its immediate vicinity with regard to erosion, siltation or the destruction of vegetation, or</p> <p style="padding-left: 40px;">(iv) to have an adverse effect on the water table of that land or of land in its immediate vicinity.</p> <p>(2) 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:</p> <p>(a) in the case of land within Zone No 2 (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, and</p> <p>(b) in the case of all other land, at least 0.5 metre above the 1 in 100 year flood level adopted by the Council.</p> <p>(3) Where an application is received by the consent authority for consent to carry out development which affects flood mitigation works carried out by the Clarence River County Council, the consent authority shall, before determining the application:</p> <p>(a) forward particulars of the application to the Clarence River County Council, and</p> <p>(b) take into consideration any representations received from the Clarence River County Council in respect of the application within 21 days after the forwarding of those particulars to that County Council.</p>
<p><b>12 Development in the vicinity of waterways</b></p> <p>(1) Consent must not be granted to the carrying out of development for any purpose on land identified by the Council on a map kept by the Council for the purposes of this clause and within such distance as may be determined by the Council of the mean high water mark (or, where there is no mean high water mark, of the bank) of any tidal or non-tidal waterway within the local government area of Maclean.</p>



<b>LEP Provision</b>
<p>(2) In determining a distance for the purposes of this clause, the Council shall have regard to:</p> <p>(a) the preservation of the scenic quality of foreshores, and</p> <p>(b) minimising the risk of pollution of waterways, and</p> <p>(c) the protection of foreshore ecosystems.</p> <p>(3) Nothing in subclause (1) prevents consent from being granted to the development of land referred to in subclause (1) for the purpose of a jetty, pier or similar structure capable of providing a mooring for one commercial or recreational fishing boat, agriculture (other than animal boarding, breeding or training establishments, intensive animal husbandry or poultry farming establishments), boat launching ramps, commercial fishing, drainage, picnic grounds, recreational fishing or roads. Aboriginal conservation areas and relics</p>
<p><b>13 Development within the coastal zone</b></p> <p>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 Table 3 entitled "Design and Location Principles for Consideration in LEPs, DCPs and Development Control" in the NSW Coastal Policy 1997.</p>
<p><b>14 Foreshore building line</b></p> <p>(1) The Council may, by resolution, fix a line (in this clause called a foreshore building line) in respect of any land fronting any bay, river, creek, lake, lagoon, harbour or ocean.</p> <p>(2) A foreshore building line shall, when fixed in accordance with subclause (1), be marked on a plan or clearly described in the resolution and the plan or resolution shall be available for inspection by the public during office hours at the office of the Council.</p> <p>(3) The Council may by resolution alter or abolish any foreshore building line.</p> <p>(4) A building shall not be erected between a foreshore building line and a bay, river, creek, lake, lagoon, harbour or ocean in respect of which the line is fixed.</p>
<p><b>18 Development on land identified on Acid Sulfate Soils Planning Maps</b></p> <p>This clause provides that consent is required for certain works depending on the class of land shown on Acid Sulfate Soils Planning Maps held by the Council.</p> <p>Sub-clause (3) provides an exception to the need for consent, where a preliminary assessment has been carried out in accordance with the Acid Sulfate Soils Assessment Guidelines and been given to the Council; and, the Council has provided written advice to the person proposing to carry out the works confirming that the results of the preliminary assessment indicate the proposed works do not require the preparation of a management plan prepared in accordance with the Acid Sulfate Soils Assessment Guidelines.</p> <p>Sub-clause (4) provides a further exception for cane land, and sub-clause (5) deals with drainage management plans to which sub-clause (4) relates.</p> <p>Sub-clause (6) provides considerations for the consent authority which include:</p> <p>(a) the adequacy of an acid sulfate soils management plan prepared for the proposed development in</p>



<b>LEP Provision</b>
<p>accordance with the Acid Sulfate Soils Assessment Guidelines, and</p> <p>(b) the likelihood of the proposed development resulting in the discharge of acid water, and</p> <p>(c) any comments received from the Department of Land and Water Conservation within 21 days of the consent authority having sent that Department a copy of the development application and the related acid sulfate soils management plan.</p> <p>Sub-clause (7) deals with public authorities, while sub-clauses (8) and (9) provide special provisions for Council and county councils.</p>
<p><b>19 Development along main or arterial roads</b></p> <p>(1) Where land has a frontage to a main or arterial road indicated on the map, consent must not be granted to the carrying out of the following development on the land:</p> <p>(a) development for the purpose of:</p> <p>boarding-houses, bulk stores, car repair stations, caravan parks, commercial premises, educational establishments, hospitals, hotels, industries (other than home or rural industries), institutions, junk yards, liquid fuel depots, mines, motels, motor showrooms, offensive or hazardous industries, places of assembly, places of public worship, recreation establishments, recreation facilities, refreshment rooms, residential flat buildings, retail plant nurseries, roadside stalls (except for a roadside stall fronting a main or arterial road which is not a State highway or within 200 metres of a State highway), sawmills, service stations, shops, stock and sales yards, taverns, timber yards, transport terminals, warehouses—unless the only access to the land is to be provided to a road other than the main or arterial road and the access to that road is located in excess of 90 metres (measured along the road alignment of the connecting road) from the alignment of the arterial road,</p> <p>(b) a subdivision, where access is intended onto the main or arterial road, except that (subject to subclause (3)) consent may be granted where no other alternative access is available and, if the main or arterial road is controlled by the RTA, the consent authority has received the concurrence of the Chief Executive of the RTA and taken into consideration the Chief Executive's comments,</p> <p>(c) development for the purpose of advertisements and advertising structures, except that consent may be granted to:</p> <p>(i) the erection on land of an advertising structure displaying notices relating only to the purpose for which the land is used, or</p> <p>(ii) the display of advertisements and the erection of advertising structures on land identified by the Council as suitable. Such advertising may only relate to the purpose of directing the travelling public to tourist areas or tourist facilities, and may include the advertisement of community services and community facilities relevant to the tourist.</p> <p>Sub-clause (2) deals with the decision to grant concurrence under subclause (1)(b), while sub-clause (3) provides further considerations for the consent authority in determining any application for consent to carry out development on land which has a frontage to a main or arterial road.</p>
<p><b>21 Acquisition of land for road purposes</b></p> <p>(1) The owner of land:</p> <p>(a) indicated on the map by medium grey shading, or</p>



**LEP Provision**

(b) indicated on the map by horizontal and vertical cross-hatching, and extending as road widening or relocation between Oyster Channel and Coldstream Street, Yamba,

may, by notice in writing, require:

(c) in the case of land referred to in paragraph (a), the RTA, or

(d) in the case of land referred to in paragraph (b), the Council,

to acquire the land.

(2) On receipt of a notice relating to land referred to in subclause (1) the public authority concerned shall acquire the land.

(3) On receipt of a notice relating to land referred to in subclause (1) (a), the RTA must acquire the land if:

(a) the land is vacant, or

(b) the land is not vacant but:

(i) the land is included in the 5-year works program of the RTA current at the time of receipt of the notice, or

(ii) the RTA has decided not to give concurrence under subclause (4) to an application for consent to the carrying out of development on the land, or

(iii) the RTA is of the opinion that the owner of the land will suffer hardship if the land is not acquired within a reasonable time,

but the RTA is not required to acquire the land if it might reasonably be required to be dedicated for a public road.

(4) Before its acquisition by the RTA, a person may, with development consent granted with the concurrence of the RTA, carry out development on land referred to in subclause (1) (a):

(a) for a purpose for which development may be carried out on land in an adjoining zone, or

(b) for any other purpose which is compatible with development which may be carried out in an adjoining zone.

Sub-clause (5) lists those matters which the RTA must consider in deciding whether to grant concurrence, while sub-clause (6) provides that land referred to in subclause (1) (a) or (1) (b) and acquired under this clause may be developed with consent for any purpose, until it is required for the purpose for which it was acquired.

Sub-clause (7) provides that the Council need not acquire land referred to in subclause (1), if the land is required to be dedicated to the Council as a condition of an existing development consent or subdivision approval.

Sub-clause (8) provides that where Council is of the opinion that development cannot be carried out on land referred to in subclause (1) (b) for road purposes within a reasonable time after the appointed day, consent may be granted to the carrying out of development on the land for any other purpose.



<b>LEP Provision</b>
<p>(9) Nothing in subclause (2) requires the Council to acquire land referred to in subclause (1) (b) while a consent is in force to the carrying out of development on that land.</p> <p>(10) Notwithstanding subclause (2) and without affecting subclauses (7), (8) and (9), the Council is not required to acquire land the subject of a notice referred to in subclause (1) unless:</p> <p>(a) a development application has, since the land last became subject to this clause, been made in respect of the land, and</p> <p>(b) the development the subject of the development application consists of development for a purpose for which development could have been carried out on the land (whether or not with development consent) immediately before the land last became subject to this clause, and</p> <p>(c) the Council has refused its consent to the development application.</p> <p>(11) In this clause:</p> <p>RTA means the Roads and Traffic Authority constituted under the Transport Administration Act 1988.</p> <p>It should be noted that “vacant land” means land on which, immediately before the day on which a notice under subclause (1) is given, there were no buildings, other than fences.</p>
<p><b>47 Subdivision controls in residential, business and industrial zones</b></p> <p>All subdivisions in any residential, business or industrial zone which are not exempt development require development consent.</p>
<p><b>55 Acquisition of land zoned for open space purposes</b></p> <p>(1) The owner of land within Zone ... 6 (c) may, by notice in writing, require the Council to acquire the land.</p> <p>(2) On receipt of a notice the Council shall acquire the land.</p> <p>(3) The Council is not required to acquire land, the subject of a notice referred to in subclause (1), if the land is required to be dedicated to the Council as a condition of an existing development consent or subdivision approval.</p> <p>Sub-clause (4) deals with land in the 6(b) zone.</p> <p>(5) Notwithstanding subclause (2) and without affecting subclause (3), the Council is not required to acquire land the subject of a notice referred to in subclause (1) unless:</p> <p>(a) a development application has, since the land last became subject to this clause, been made in respect of the land, and</p> <p>(b) the development the subject of the development application consists of development for a purpose for which development could have been carried out on the land (whether or not with development consent) immediately before the land last became subject to this clause, and</p> <p>(c) the Council has refused its consent to the development application</p>



## 4.4 Clarence Valley Council Development Control Plan (DCP)

Council has a consolidated DCP which contains a comprehensive set of controls applying to development in different zones as well as based on the type of development. It includes numerous controls relevant to development within the 2 (a) Residential (Low Density). Table 2 below summarises these controls.

Table 2 – DCP Provisions.

<b>2 (a) Residential (Low Density)</b>
<b>Building Height</b>
<p>The height of buildings is restricted to 9 metres.</p> <p>All development in any residential zone must not exceed the maximum building height to the top plate of 6.5 metres and 9 metres to the highest point on the roof.</p>
<b>Cut and Fill</b>
<p>The maximum height for cut and fill is 1.2 metres above or below the existing ground level, except where the cut and fill is incorporated into the design of the building.</p> <p>Council may consider a variation to the 1.2 metre requirement, where an adequate area is available for battering and benching the cut area.</p>
<b>Carports and Garages</b>
<p>Carports and garages should be compatible with the building design and adjacent development in terms of height, roof form, detailing, materials and colours.</p> <p>For each dwelling, the maximum width of a garage or carport opening that faces the street should be 2 car widths.</p>
<b>Minimum Allotment Size for Dwelling Houses and Cluster Development</b>
<p>A minimum lot size of 400 m<sup>2</sup> for dwelling houses applies in all residential zones in sewered areas. Within this area it must be possible to fit a rectangle suitable for building measuring 10 metres by 15 metres behind the building line.</p> <p>Any subdivision application to create lots less than 560 m<sup>2</sup> in any zone must include an application for the dwelling house/building showing siting of the building on the lot, setbacks, height, window/door placements, location of private open space, access and car parking. The impact of the proposed dwelling on adjoining properties needs to be assessed, particularly in relation to privacy, overshadowing and access.</p>
<b>Minimum Allotment Size for Dual Occupancies and Duplexes</b>
<p>The minimum site area for dual occupancies is 800m<sup>2</sup>.</p> <p>A variation to the minimum site area requirement may be permitted if;</p> <ul style="list-style-type: none"> <li>– all other requirements of this plan are met, i.e. height limit, landscaped area requirements, private open space provisions, setbacks and car parking;</li> <li>– the allotment utilises two formed street frontages; and</li> <li>– the streetscape and character of the neighbourhood are not detrimentally affected.</li> </ul>



Development on Flood Liable Land
The floor level of the habitable rooms of any dwelling must be a minimum of 0.3 metres above the 1 in 100 year flood level adopted by Council.
Building Height on Internal Lots
<p>All rear dwellings must not exceed a maximum building height to the top plate of 4 metres and 6.5 metres to the highest point on the roof (that is, single storey).</p> <p>All dual occupancies and residential development on internal allotments, that being allotments served by rights-of-carriageway, battleaxe lots, or other non street frontage allotments, are also limited to a maximum building height to the top plate of 4 metres and 6.5 metres to the highest point on the roof for the same reasons.</p> <p>Dwellings located at the rear or on internal lots that exceed the 6.5 metre height limit may be considered where;</p> <ul style="list-style-type: none"> <li>- the predominant form of development is 2 storeys or more, and</li> <li>- topography enables 2 storeys without loss of amenity, views and privacy from neighbouring dwellings.</li> </ul> <p>Variation to the requirements for single storey development (the 6.5 metre height limit) on internal lots or buildings without street frontages will be considered if it can be demonstrated that there is no unreasonable loss of privacy (overlooking) or over-shadowing caused by the additional height of the proposed building.</p>
Setbacks
<p>A 6m front setback is necessary.</p> <p>Side and rear setbacks are to be 1.5m.</p> <p>For development on corner sites, the secondary frontage should have a minimum setback of 3.5 metres.</p>
Variation to Setbacks
<p>Variation to the front setback will be considered where existing front setbacks are not 6 metres. A variation to a setback will be considered on merit.</p> <p>Variation to side and rear setbacks will be considered on merits if a better development outcome or clear advantages in other aspects of the design are achieved with regard to overshadowing and overlooking.</p> <p>Compensatory setbacks elsewhere in a development will be considered in granting variation to side and rear setback requirements.</p> <p>Applications for zero lot line development (zero setbacks) will only be considered where the relevant lot or lots are part of an integrated subdivision design and provision is made for adequate easements on adjoining properties for maintenance and support.</p> <p>A zero side setback can apply if;</p> <ul style="list-style-type: none"> <li>- the setback is the southern or western boundary;</li> </ul>



<ul style="list-style-type: none"> <li>- there are no windows or openings;</li> <li>- the eaves do not overhang;</li> <li>- the building is no higher than 4 metres to where the roof beams meet the top plate and 6.5 metres to the highest point on the roof; and</li> <li>- The wall has the applicable fire rating under the BCA.</li> </ul> <p>Consideration of zero setbacks for infill development, where the proposal is not part of an integrated development, will only be considered for garages, carports and similar buildings/structures and where the wall on the boundary has a maximum length of 7 metres.</p>
<p>Landscaped Area Requirements</p>
<p>All development in any residential zone must have a minimum of 45% of the site area as landscaped area.</p>
<p>Private Open Space Requirements</p>
<p>For dwelling houses, dual occupancies and duplexes, private open space must meet the following requirements:</p> <ul style="list-style-type: none"> <li>- An area of 50m<sup>2</sup>;</li> <li>- An area in one parcel, with a regular shape and a minimum dimension of 4.5 metres;</li> <li>- A level area, or if terraced, a minimum width of 4.5 metres;</li> <li>- Located with direct access to living areas of the dwelling;</li> <li>- Located behind the front setback line; and</li> <li>- Located on the northern or eastern side of the dwelling.</li> </ul>
<p>Provision of Services</p>
<p>All services including reticulated sewer, power, reticulated water and telephone are to be provided to all new dwellings.</p> <p>Where connection to a reticulated sewerage system is not possible, wastewater disposal must comply with the Clarence Valley Council On-site Wastewater Management Strategy 2005. A development application for a new dwelling in an unsewered area must meet the standard criteria in the On-site Wastewater Management Strategy.</p> <p>Where the criteria can not be met, then the Development Application must include an Effluent Management Report prepared by a suitably qualified waste water consultant or Engineer.”</p>
<p>Parking and Vehicular Access Controls</p>
<p>Dual occupancy /duplex - 1 covered space per dwelling, located behind the building setback line.</p> <p>Dwelling house /caretaker’s dwelling - 1 covered space per dwelling.</p> <p>Seniors housing (self-contained dwellings) - 0.5 spaces per bedroom, or 1 space per 5 dwellings for Department of Housing, local government or community housing providers. See SEPP (Seniors Living) 2004.</p>



## 5 Development Consent 1973/92

Development Consent 1973/92 was granted on the 24 August 1973 providing for the subdivision of the site for low density residential purposes and the construction of canals.

The consent provides for the creation of 105 residential allotments within the site (77 of which have direct water frontage), including the creation of a foreshore park along the north western part of the site near Oyster Channel. The consent also provides for vehicular access to Yamba Road in the south eastern part of the site, via a roundabout.

Development Consent 1973/92 is included in Appendix B, along with correspondence from S J CONNELLY CPP PTY LTD and Clarence Valley Council regarding the approved plan of subdivision.

Further details regarding Development Consent 1973/92 are to be included in the contract for sale.

## 6 Conclusion

The site is approximately 17 hectares in area and relatively level. A significant part of its perimeter has direct water frontage to constructed canals, which give access to the Clarence River.

The site is in part bounded by Yamba Road to the south, low density residential housing to the north east, with access presently gained via Witonga Drive to the north-east.

The majority of the site is zoned 2(a) Residential (Low Density), with a small portion zoned 6(c) Open Space Buffer under the Maclean Local Environmental Plan 2001.

The aim of the 2(a) Residential (Low Density) zone is to “... enable the provision of housing, characterised by low density residential development.” Consistent with this aim, the range of permissible uses within the 2(a) Residential (Low Density) zone include cluster housing, dual occupancies, dwelling houses and professional consulting rooms.

The Clarence Valley Council Development Control Plan provides further controls for residential development on the site, specifying a height limit of 9m, front setbacks of 6m and side and rear setbacks of up to 1.5m. In addition, the minimum allotment size is 400m<sup>2</sup>, with 45% of site's to be landscaped, and dwelling houses also required to provide at least 50m<sup>2</sup> of private open space and 1 car space.

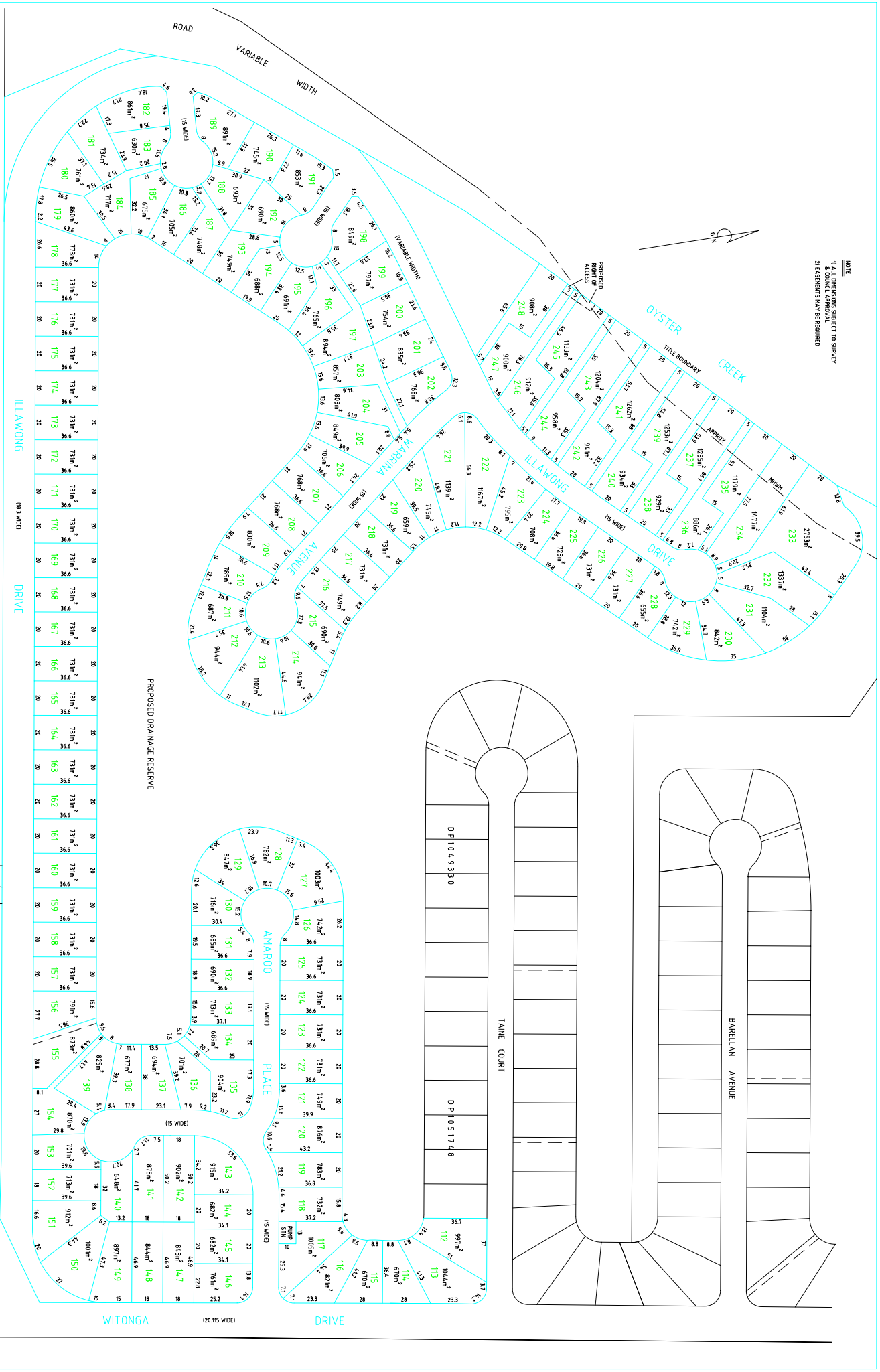
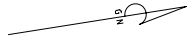
The site has development consent for residential subdivision, accommodating a further 105 allotments, 77 of which have direct water frontage, with these ranging between 630m<sup>2</sup> and 1167m<sup>2</sup> in area. The consent also provides for the creation of a foreshore park in the north western corner of the site, and a roundabout in the south eastern part providing access to Yamba Road.

The site is identified as a “sensitive coastal location”. Accordingly, prior to the grant of any consent for further subdivision, the Minister would need to either approve a “master plan” or waive the need for the plan to be prepared (SEPP 71); and, any further proposed development may well be a project which requires the consent of the Minister (Part 3A of the Environmental Planning and Assessment Act).



## Appendix A – Plan of Subdivision

NOTE:  
 1. ALL DIMENSIONS SUBJECT TO SURVEY  
 2. COUNCIL APPROVAL  
 3. EASEMENTS MAY BE REQUIRED



PROJECT: **YAMBA KEYS**  
 PLAN TITLE: **OVERALL LOT LAYOUT**  
 DATE: **SEPT 2007**  
 HR: **1:1000**



## Appendix B – Development Consent 1973/92

4 May 2007

ALL CORRESPONDENCE TO BE

ADDRESSED TO:

The General Manager

Locked Bag 23

GRAFTON NSW 2460

or

The General Manager

PO Box 171

MACLEAN NSW 2463

Betula Pty Ltd  
C/- SJ Connelly Pty Ltd  
PO Box 538  
LENNOX HEAD NSW 2478

Connelly

Received  
Project  
 to be returned  
 reviewed  
 approved for use  
 noted, file - no action required  
 approved for payment ledger  
 action as follows

*25-07*  
*Yamba Quays*

Dear Mr Connelly

CUSTOMER SERVICE CENTRES:

Grafton Office

2 Prince Street

Tel: 02 6643 0200

Fax: 02 6642 7647

Maclean Office

50 River Street

Tel: 02 6645 2266

Fax: 02 6645 3552

**Notice of Determination of Amendment under Section 96(2) of the Environmental Planning and Assessment Act**

<b>Application No:</b>	MOD2005/5003
<b>Previous Application No:</b>	DA1973/92
<b>Development Proposal:</b>	Modifications - Section 96 (2)
<b>Property Address:</b>	Yamba Quays Estate
<b>Legal Description:</b>	Lot 91 DP 1069070

Pursuant to Clause 122 of the Environmental Planning & Assessment Regulations, 2000, notice is hereby given of the determination of your application of 20 July 2005 under section 96(2) of the Environmental Planning and Assessment Act, 1979 to amend LDA 1973/92 relating to Yamba Quays Estate in Lot 88 DP 1063917.

The application has been determined by granting consent to the amendment. This section 96 amendment varies your previous approval in line with Council's resolution of 11 April 2007 and in line with the negotiations held between Council staff and the applicant. The approval shall be amended as follows:


1. Delete Condition 27.
  27. Earthworks and revetments are to be completed approximately to final levels (typically + 600mm) within 4 years of the date of consent of this amendment – 10 June 1997.
2. Addition of the following conditions:
  36. The applicant shall enter into a Planning Agreement or other legally binding arrangement with Council for the amount of \$210,000 that will be directed toward the provision of sporting facilities within the community of Yamba.

37. No additional fill shall be transported to the site until the completion of the roundabout at the intersection of Yamba Road and Illawong Drive.
38. Prior to the transportation of land fill the applicant shall provide details on where the fill is sourced from, which is to be from a registered quarry and nominate all traffic routes from the registered to quarry.
39. The applicant shall gain written advice from the Department of Environment and Climate Change for any approval or license that maybe required prior to undertaking subdivision works. The written advice from the Department of Environment and Climate Change shall be submitted to Council prior to the commencement of works.

This amendment is conditional upon compliance with all other conditions of consent issued under DA 1973/92. A copy of the revised notice of determination is attached.

The Act provides that where the applicant is dissatisfied with the determination of the application, an appeal may be lodged with the Land and Environment Court.

Yours faithfully



Greg Long  
Acting Coordinator Planning Services

P00042

24 August 1973



ALL CORRESPONDENCE TO BE  
ADDRESSED TO:

The General Manager  
Locked Bag 23  
GRAFTON NSW 2460

or  
The General Manager  
PO Box 171  
MACLEAN NSW 2463

**Betula Pty Ltd**  
**C/- SJ Connelly**  
**PO Box 538**  
**LENNOX HEAD NSW 2478**

Dear Sir,

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION**

CUSTOMER SERVICE CENTRES:

Grafton Office  
2 Prince Street  
Tel: 02 6643 0200  
Fax: 02 6642 7647

Maclean Office  
50 River Street  
Tel: 02 6645 2266  
Fax: 02 6645 3552

**Development Application No.:** 1973/92  
**Applicant:** Betula Pty Ltd  
**Owner:** Betula Pty Ltd  
**Property Description:** Yamba Quays Estate  
**Subject Development:** Yamba Quays Estate  
**Zoning:** 2(a) Residential (Low Density) Zone

**DEVELOPMENT CONSENT**

Pursuant to Section 81(1)(a) of the Environmental Planning and Assessment Act, 1979, notice is hereby given that Council has considered your application for the subject Development. The subject determination is an "operational" consent which is effective from the date appearing on the bottom of each page of the formal notice.

**The Development Application has been determined by:**

Consenting to the development with conditions.

**Determination of the application was made:**

By Council at its Meeting of 24 August 1973.

**THE DEVELOPMENT SHALL COMPLY WITH THE PLANS LODGED WITH THE APPLICATION AND AS MAY BE AMENDED BY THE FOLLOWING CONDITIONS OF CONSENT AND/OR BY AMENDED PLANS AND DETAILS.**

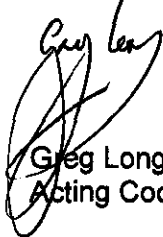
## Conditions of Consent

1. The development shall generally comply with the plans lodged with the Council as modified by Plan 3 (dated December 2006), the section 96 Report prepared by SJ Connelly Pty Limited, Flora and Fauna Assessment prepared James Warren & Associates as approved by Council 17 April 2007 and as may be amended by the following conditions of consent and/or by amended plans and details.
2. The final plan for the subdivision is to be satisfactory to and approved by the Public Works Department, the Public Health Department, the Chief Secretary's Department (Fisheries) and the Council. A copy should be submitted to the Authority.
3. No dwelling house or commercial building is to be erected before the revetment along the foreshores is constructed nor before sewerage is completed and can be provided.
4. The development is to be connected to all available services (water, sewerage, electricity and telephone) upon completion. Such connections, and any extension of services required to the development, are to be carried out at full cost to the developer/applicant. For sewerage and water connections refer to Appendices A and B of this development notice.
5. The earth filling and building up of all lots to a level of 2.4 metres above Australian Height Datum is to be in accordance with Council's 'Engineering Specification for Development'.
6. *The developer shall be responsible for the construction of a roundabout at the intersection of Illawong Drive and Yamba Road and also responsible for the construction of a roundabout at the intersection of Gumnut Road and Witonga Drive. Approval under the Roads Act to be obtained from the RTA for the former, and details of the latter to be submitted to Council for approval.*
7. The minimum area of each allotment from the top of the canal bank to the road boundary shall be 465m<sup>2</sup> as laid down in Council's minimum Standards (August 1971). This would mean deeper blocks than shown, depending on the frontage.
8. Council has agreed for the canal areas to be shown as lot on the final linen plan and transferred to Council in fee simple.
9. Streets servicing lots 58 to 33, 95 to 62, 113 to 103 and 201 to 225 be increased to 18.29 metres wide.
10. Necessary drainage easements be shown on final plans.
11. Lot 77 and 27 are increased in frontage to 24.38 metres along Witonga Drive.
12. *Deleted*
13. Illawong Drive from Lot 226 to Lot 140 is to be not less than 18.29 metres wide.
14. Witonga Drive (previously Mawarra Drive) from Lot 16 to Lot 20 is to be not less than 15.24 metres wide.
15. All other cul-de-sacs are not to be less than 15.24 metres wide and turn rounds are to be not less than 15.24 metres radius.
16. All roads, streets, parks, reserves, easements etc. shown in the plan are to be dedicated to Council.

17. All internal streets shown are to be constructed in concrete kerb and gutter with ancillary drainage structures and bitumen sealed gutter to gutter all to Council's specification.
18. Witonga Drive from Lots 27 to 16 to be constructed in bitumen to at least half width of the road reserve.
19. One suitable and approved street tree adequately protected and maintained for a period of 3 months is to be provided for each lot in positions approved by the Shire Engineer.
20. All service utilities such as water reticulation, sewerage reticulation, electricity mains, storm water drains, are to be constructed prior to the construction of kerb and gutter and bitumen pavements.
21. Plans for registration with the Registrar General will not be signed until a certificate is issued by Council's Engineer that all works have been completed satisfactory.
22. Mean High Water Mark is acceptable for property boundaries. A restriction-as-to-user requiring owners to maintain the revetment wall TO Council's satisfaction will be required.
23. The open space reserve at the end of canals between Nabilla Court and Borellan Avenue is to be retained. This includes the public reserve shown as Lot 216 on the original plan (now lot 31) on the corner of Nabilla Court and Witonga Drive. The proposed reserves on the corner of Nabilla Court and Witonga Drive, and also Taine Court and Amaroo Place (previously Tarook Avenue) may be deleted. This would provide a net product of two reserves along the length of Witonga Drive, both of which provide a visual vista along the length of canals which is very desirable in the overall subdivision.
24. Council agrees that it will re-refer the subdivision to the Lands Department, Fisheries and Public Works, as discussed with you.
25. Oyster Channel armoring should proceed to the extent as to be approved by the Shire Engineer.
26. The deletion of the end battle-axe residential allotment off Witonga Drive (now the reserve allotment No. 20) for the redesigned carpark and boat ramp as per the attached sketch plans "C" and "D".
- ~~27. Earthworks and revetments are to be completed approximately to final levels (typically + 600mm) within 4 years of the date of consent of this amendment - 10 June 1997.~~
28. No open space contribution is payable for the remainder of Stage 1, in lieu of which the developer will upgrade and dedicate to Council those open space reserves indicated on the approved plan of subdivision. A plan of works for each reserve to be submitted for Council's approval.
29. Community Facilities contributions for the balance of Stage 1 (at \$500/lot) are to be discounted by the previous \$10,000 ex-gratia payment by the developer towards the cost of the Witonga Drive boat ramp. As at 14 May 1997, approximately 54 lots remain within Stage 1.

30. Payment to Council of all Section 64 contributions, including sewer headworks current at the time of release of the linen plan for all lots (including all unreleased lots in Stage 1).
31. Payment to Council for all lots in Stages 2 –8, of all Section 94 contributions applicable at the time of linen plan releases, at the rate applicable at those times. This includes the Yamba urban Area Bypass Contribution.
32. All bulk earthworks and dredging are to be carried out in accordance with accepted environmental practice current at the time of works, details are to be submitted with engineering plans, for Council's approval prior to the commencement of any work.
33. Consent to Development Application No. 73/92 to be extended for 20 years from the date of approval of this S102 amendment by Council (10<sup>th</sup> June 1997), within which period all lots will be completed and released.
34. The developer shall meet the cost of widening to full width, kerbing and guttering and drainage work to the lake in Witonga Drive.
35. The proponent shall meet the costs of Council carrying out the embellishment of Kolora Lake Reserve, generally shown in Plan 4 to the Section 96 amendment application up to a maximum expenditure of \$131,000 plus provision of a footpath from the Reserve to Yamba Fair Shopping Centre along the northern side of Yamba Road.

Yours faithfully



Greg Long  
Acting Coordinator Planning Services

## **APPENDIX A**

### **CONDITIONS REQUIRED FOR APPROVAL UNDER SECTION 68 OF THE LOCAL GOVERNMENT ACT FOR WATER RETICULATION BEING NEW WORKS, UPGRADINGS OR AUGMENTATION**

#### **WATER**

1. The obtaining from North Coast Water of a Certificate stating that the development complies with their requirements under Division 2 of Part 3 of the Water Supply Authorities Act, 1987 in regard to water works and;
2. The construction of water works is a condition of consent for the subject development. All water works to serve the development are to be in accordance with the specifications of the Director of Technical Services; and
3. A payment to North Coast Water will be required towards the cost of existing and projected works which will be of a benefit to the Development. The contribution shall be made at the time specified by Director of Technical Services.

In the event of any subsequent amendment to the approved plans the above contribution may vary and if so will become the amount required.

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Attachment to Development Application No. 1973/92 being a reference to S.68 of the Local Government Act 1993 (conditions for levying of water costs and constructing water works as per Condition No. 4)

## **APPENDIX B**

### **CONDITIONS REQUIRED FOR APPROVAL UNDER SECTION 68 OF THE LOCAL GOVERNMENT ACT FOR SEWER RETICULATION BEING NEW WORKS, UPGRADINGS OR AUGMENTATION**

#### **SEWERAGE**

1. The obtaining from Council of a Certificate stating that the Development complies with Council's requirements under Division 2 of Part 3 of the Water Supply Authorities Act, 1987 in regard to Sewerage works; and
2. The construction of sewerage works is a condition of consent for the subject development. All sewerage works necessary to serve the Development are to be in accordance with Council's Engineering Specification for Development; being Chapter 13 Design and Construction – Sewerage; and
3. The payment to Council of \$3,422.00 per lot towards the cost of existing and projected works which will be of benefit to the Development.

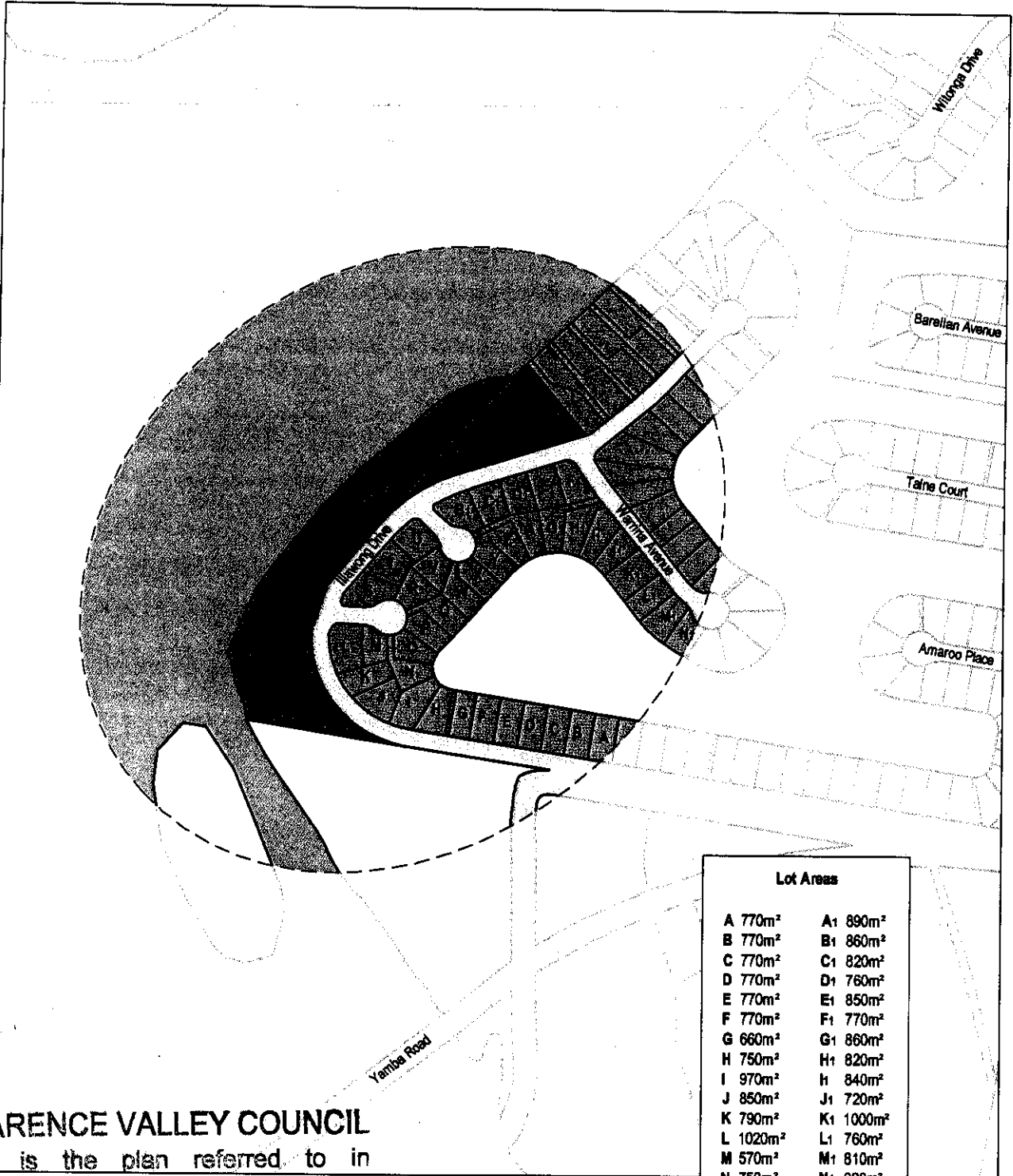
The contribution (as assessed) will hold until the 31 December 2004. Contributions not received by that date will be adjusted in accordance with the adopted Schedule of Fees and Charges current at the time of payment.

Payment shall be made prior to release of the Linen Plan.

In the event of any subsequent amendment to the approved Plans, the above calculated contribution amount may vary, and if so, will become the contribution payable.

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Attachment to Development Application No. 1973/92 being a reference to S.68 of the Local Government Act 1993 (conditions for levying of sewer costs and constructing sewerage works as per Condition No. 4)



Lot Areas	
A 770m <sup>2</sup>	A1 890m <sup>2</sup>
B 770m <sup>2</sup>	B1 860m <sup>2</sup>
C 770m <sup>2</sup>	C1 820m <sup>2</sup>
D 770m <sup>2</sup>	D1 760m <sup>2</sup>
E 770m <sup>2</sup>	E1 850m <sup>2</sup>
F 770m <sup>2</sup>	F1 770m <sup>2</sup>
G 660m <sup>2</sup>	G1 860m <sup>2</sup>
H 750m <sup>2</sup>	H1 820m <sup>2</sup>
I 970m <sup>2</sup>	I1 840m <sup>2</sup>
J 850m <sup>2</sup>	J1 720m <sup>2</sup>
K 790m <sup>2</sup>	K1 1000m <sup>2</sup>
L 1020m <sup>2</sup>	L1 760m <sup>2</sup>
M 570m <sup>2</sup>	M1 810m <sup>2</sup>
N 750m <sup>2</sup>	N1 690m <sup>2</sup>
O 660m <sup>2</sup>	
P 720m <sup>2</sup>	
Q 760m <sup>2</sup>	
R 700m <sup>2</sup>	
S 870m <sup>2</sup>	
T 900m <sup>2</sup>	
U 820m <sup>2</sup>	
V 690m <sup>2</sup>	
W 760m <sup>2</sup>	
X 700m <sup>2</sup>	
Y 700m <sup>2</sup>	
Z 760m <sup>2</sup>	

**CLARENCE VALLEY COUNCIL**

This is the plan referred to in  
 Council's Notice of Determination of  
 Development Application No. *MDV.2005/5003*  
 File No. *Y.0042...D3101520*

General Manager  
 pe: *[Signature]* Date *4 MAY 2003*

**NOTE:**  
 Lot concept is subject to detailed design and  
 conditions of development consent. Areas are  
 approximate only and are subject to council  
 approval and registration of survey plans.

