

**INQUIRY INTO PLANNING SYSTEM AND THE IMPACTS
OF CLIMATE CHANGE ON THE ENVIRONMENT AND
COMMUNITIES**

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Portfolio Committee No 7
Planning and Environment
NSW Legislative Council
Parliament House
Macquarie Street
Sydney 2000

Inquiry into the planning system and the impacts of climate change on the environment and communities

Thank you for providing the opportunity to lodge a late submission, which has been extended until today, and also for the work the Portfolio Committee No. 7 undertakes and champions.

I am an individual landowner living in Orion Drive, in Yamba, in the Northern Rivers in the Clarence Valley Council Local Government Area (CVC). I have lived in the Lower Clarence since 1984 and have seen a lot of changes. I also volunteered with and from March 2022 until October 2023 and thus the human cost of climate change was continually reinforced for me while volunteering at Woodburn, Wardell and Broadwater.

I am very concerned about how our unique but fragile environment is not being considered as development on the Yamba floodplain is being approved at an alarming rate. There does not appear to be a coordinated approach to planning and how to manage floodplains by the North Coast Councils.

I would like to invite the Portfolio Committee 7 to visit Yamba to undertake a site inspection of elevated development mounds in Carrs Drive, Orion Drive and Park Avenue impacting existing residents' lives and livelihoods.

I have attempted to address most of the Terms of Reference in the following pages. I do not wish to provide evidence at the hearing. This submission, is in response to the Portfolio Committee 7 inquiry into how the planning system can best ensure that people and the natural and built environment are protected from climate change impacts and changing landscapes.

(a) developments proposed or approved:

(i) in flood prone areas or areas that have become more exposed to natural disasters as a result of climate change.

On 28 February 2022 Yamba received 274mm of heavy rain in 24 hours. This rainfall was not unprecedented. Stormwater inundated homes and many roads were closed. After the stormwater dissipated the Clarence River flood crest reached Yamba two days later and homes were again inundated and roads remained closed. Yamba has one road in and out and the town was cut off for seven days.

I was in Sydney, after the birth of my first grandchild, and I was booked to fly home on the 28th February. However, my flight to Ballina was cancelled and continued to be so until March 7 as not only was the Yamba Road cut but Ballina and the new highway at New Italy. I ended up having to fly into the Gold Coast. When flying over Woodburn etc. the place looked like an inland sea.

Residents in the whole of the west Yamba area were unable to reach the SES designated evacuation centre, the Yamba Bowling and Sporting Club. Yamba Fair was closed due to stormwater inundation in the carpark and Treelands Drive and Coles closed after running out of food.

The SES did a sterling job trying to deliver food and milk to isolated properties but “town people” tended to be ignored. Residents of Orion Drive could not get out of Orion Drive and the manufactured home estate on Lot1 Orion Drive has over 190 homes; whereby the residents are over fifty to sixty. Indeed, Orion Drive also has 93 private residences and over 250 residents of 4/4A Orion Drive onwards, Newport Island Circuit, Bayview Drive, Arakoon Circuit and Kallatina Place and that is not counting the new residents of Lot 2 Orion Drive. None of these people could leave Orion Drive.

There were Facebook pages that were continually giving updates but there are a lot of elderly people who do not use Facebook. The ABC Radio were wonderful but one thing the Woodburn/Wardell/ Broadwater/Lismore flood showed was that you needed a radio that could also use batteries, in case power was cut off. However, what was very worrying was that Orion Drive got cut for the first time and this had nothing to do with stormwater. The problem will become even worse as the developers of Lot 2 Orion Drive immediately began with filling this area and building. It was almost as if they were in a race and were concerned that development operations could cease.



PHOTO 1. The photo above shows the devastation of the February/March 2022 floods; and this is BEFORE they cleared Lots 2 and 3 and put more fill in. Also it clearly shows the village and Bayview Drive (and how close it is to Carrs Drive) and how much water is surrounding these areas.



PHOTO 2. The photo above is of the entrance to Yamba with Yamba Quays Estate on the left and Oyster Channel to the right with Cannon's paddock in the background. Note how much water has come into Quays Estate but building has continued unabated. Furthermore, due to the building on Quays Estate, it limited where the rain could leach into the ground. This contributed to Kolora Lake overflowing, across Yamba Road, (which was cut for the first time here) and also cutting Orion Drive. Residents of Orion Drive could not get out for at least three days.

PHOTOS 3.4 and 5 **Top Left:** End of Osprey Drive and flooded Yamba Road; **Top right and bottom:** Flooded carpark at Treeland Drive Shopping Precinct.

(ii) in areas that are vulnerable to rising sea levels, coastal erosion or drought conditions as a result of climate change.

There is no doubt that climate change is resulting in rising sea levels, coastal erosion or drought. However, the situation is compounded by overdevelopment and the fact that “checks and balances” are not being put in by some local Councils. This raises another point and that is the lack of consistency between Councils on the North Coast, and indeed the whole of the eastern seaboard. For example, the developer of Orion Drive, Palm Lakes Works Pty Ltd was taken to Court by Ballina Shire Council and Ballina Shire Council won.

<https://www.caselaw.nsw.gov.au/decision/5ea78e44b0f66047ed8da3>

Judgment went in Council's favour in **Ballina Shire Council v Palm Lake Works Pty Ltd [2020] NSWLEC 41**. "I find the Council has established five of the grounds of error on questions of law. The appeal should be upheld and the Commissioner's decision and orders set aside." and "The Commissioner, in exercising the functions of the consent authority in determining Palm Lake's development application for the proposed seniors housing development, was required by s 4.15(1)(b) of the EPA Act to take into consideration “the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.”

However, the Clarence Valley Council continually uses the fact that they have to approve questionable DAs because they may be sued and they “don't want the ratepayers to have to deal with unnecessary expenses.” However, it is okay to approve DAs that have a detrimental effect on the environment and has no ring of social justice

(iii) in areas that are threatened ecological communities or habitat for threatened species

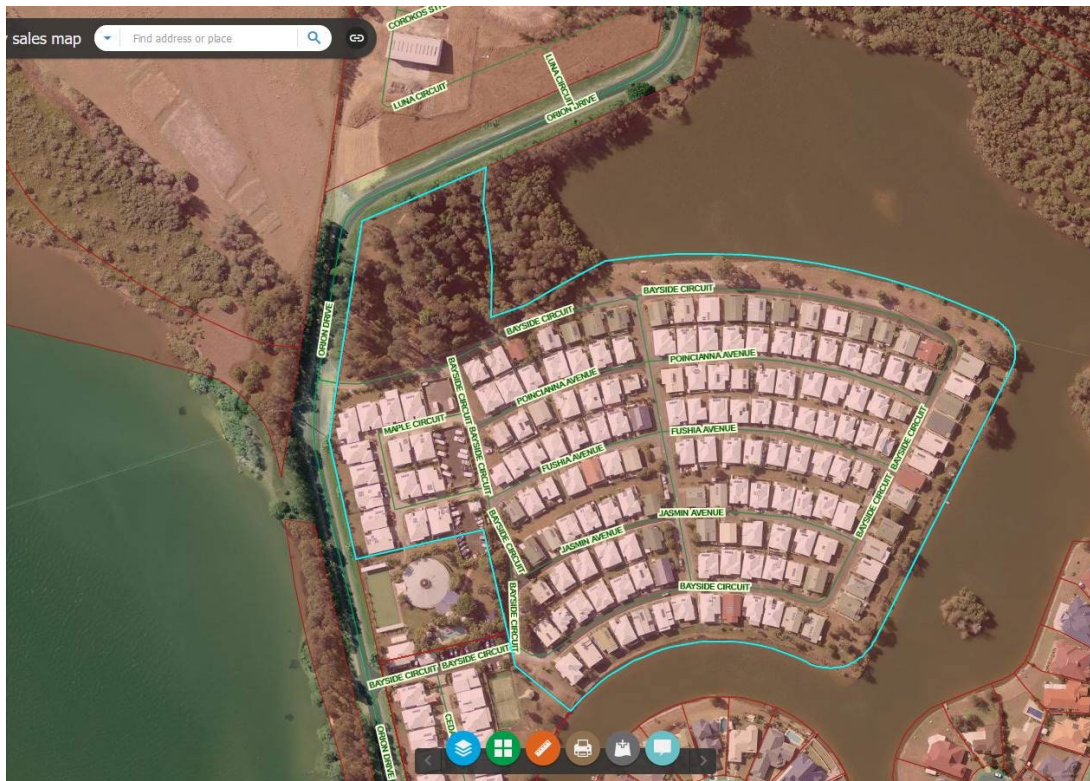


PHOTO 6. View of Lot 1 Orion Drive, and the original manufactured home estate. Note timbered recreation area (top left) and the designated wetland as agreed to by both DA93/ 3007 and DA 2007/0084



PHOTO 7. Timbered area next to flooded paddock has been cleared and is Lot 2 Orion Drive. However, on both sides of Orion Drive there is supposed to be a SEPP 14 wetland but these wetlands have been severely compromised.

The original DA for Lots 1 and 2 Orion Drive, DA93/3007, required an area approximately 3.4ha to be cleared and filled. Development Consent was granted on

the provision the applicant provide a suitable compensatory area as a result of filling the land which reduced tidal flushing of the estuarine wetland area.

To assist in this loss a small area located on the eastern side of the lot shall be rehabilitated and improved to create a non-wetland area. The applicant has nominated Part Lot 11 in DP 1029899 for the compensatory wetland area. It must be noted that the Department have granted Permits on Micalo Island in the past. Council can condition an approval requiring the wetlands area be at the satisfaction of the Department of Primary Industries and Council prior to the release of the construction

The subject site has been cleared and filled in accordance with DA93/3007. As part of that approval a licence was required from the Department of Primary Industries for dredging works and reclamation activities to allow the filling. Because these activities were considered to cause harm to marine vegetation associated with the filling site, Primary Industries required the applicant to provide an artificial wetlands on eastern side of the lot as well as a compensatory Wetland on Part Lot 11 DP 109899, 251. These wetlands were put in place but development continually intrudes on them.

(b) the adequacy of planning powers and planning bodies, particularly for local councils, to review, amend or revoke development approvals, and consider the costs, that are identified as placing people or the environment at risk as a consequence of:

(i) the cumulative impacts of development,

Wandering Star/Oyster Cove/Pelican Point/Newport Estates/Palm Lakes Resort have had problems since 1983 because there has been no organised and coherent management of the different DAs and continual *ad hoc* decisions have been made by local government authorities. The problem has been further compounded by different developers being forced to liquidate their holdings; being mortgagee in possession; and/or going into receivership.

The development at Orion Drive was part of the “Wandering Star Resort” which was developed by Kumagai Pty. Ltd and Yamdevco Pty. Ltd in 1983. Development was purchased by Copestone Pty Ltd in late 1989 and renamed Oyster Cove Resort. In late 1992 Esanda Finance acquired Oyster Cove but the Pelican Point subdivision was still allowed to occur in 1991-3 and this was followed by Bayview Drive and Newport Island. I believe Acegrange Pty Ltd, which became Lifestyle Resorts bought certain sections in 2003 but went into receivership in 2011 and Oyster Cove,

now known as Palm Resort, was acquired by Walter Elliott Pty Ltd (Palm Lake Resorts Pty Ltd) in 2012.

Originally, we had access to the Sports Centre, swimming pool and tennis courts at Oyster Cove but this was all overturned when this public infrastructure was destroyed and instead replaced with manufactured homes. One of the problems is that you have a continual turn over of both Council staff and elected Councillors.

Australia is one of the most overgoverned countries in the world as we have three tiers of government. Even if the third tier is not abolished there does to be more consistency between Councils in the same state, while acknowledging their different geographical and residential density.

(iii) biodiversity loss

Yamba has lost a lot of its natural habitat in the 41 years I have lived here. There are now Biodiversity Reports that supposedly needed to be put with DAs that involve large developments but often these are a “tick the box” exercise. There are often inconsistencies between the same developer reports and even when this is pointed out in an objection, it is often ignored by local government planning authorities.

(c) short, medium and long term planning reforms that may be necessary to ensure that communities are able to mitigate and adapt to conditions caused by changing environmental and climatic conditions, as well as the community's expectation and need for homes, schools, hospitals and infrastructure.

First and foremost, development needs to be stopped on the Yamba floodplains. It is a disaster waiting to happen. There has been many residents of Yamba who are appalled at the fill that has been coming into Yamba for years. However, they were often in the minority until it started affecting more and more ratepayers. This can be seen as apathy of the part of Yamba residents but we should be able to assume that the local government authorities should be looking after their residents. This does not appear to be happening and I have heard similar allegations about other council areas.

The legislation needs to be followed. In the development at the end of Orion Drive it was pointed out that both the applicant and Council staff have ignored the fact that continual references are made to the dwellings and the club house being 9 metres in height and yet it is clearly stated in SEPP (Housing for Seniors) 2004 that in Division 4 Self-contained dwellings: A consent authority must not refuse consent to a development application (as long as) (a) building height: if **all proposed buildings are 8 metres**

or less in height.” Furthermore, the dwellings and club house are much higher, due to all the fill, than what was foreseen in the original DA. However, this was ignored and thus the only redress is if an individual resident took both the developer and the Council to the Land and Environment Court or the Ombudsman. Furthermore with the development at Lot 1 Orion Drive the modified DA was not sent to the Regional Planning Panel. Why are these panels put in place if they are not used by local planning authorities? Indeed, Palm Lakes Works finally put in a “Request to Amend Application and Response to Additional Information”. I asked Clarence Valley Council why wasn’t the first and subsequent modifications and reviews of DA2007/0084 passed onto the Northern Regional Planning Panel (NRPP) in 2021 especially considering MOD 2021/0029 was first put to Council on 25 May 2021? I received no reply.

It is clearly stated that the NRPP is tasked to determine “DAs with a capital investment value (CIV) over \$30 million” AND “determines site compatibility certificates under the State Environmental Planning Policy (Housing for Seniors or People with a Disability 2004).” (CIV 27/1/2022) In all the Modification and Reviews Palm Lakes Works have proposed in the last 1½ years, they clearly state the CIV is \$31,440,000; and this was the amount still on the DA publicised on the CVC DA site. However, the developers now state on the 16th September, 2022 that there are revised development costs which reduces it to under the \$30 million trigger. Their justification is that it is now \$28,970,000 due to the deduction of three dwellings and the inclusion of a single storey design.

An interesting explanation but it is almost made laughable by the fact that the developer was able to get all their modifications and reviews of DA2007/0084 under the guise it was a “modification.”

Indeed, the Clarence Valley Council allowed the developers to change the proposed modification from a S4.55(1A) to a S4.55(2). I had stated from my first objection to MOD2021/0029 that this “*Section 4.55(1A) is for modifications involving minor error, misdescription or miscalculation*” and that this was certainly not the case with this modification.

As I stated, it was not ‘substantially the same as the development the subject of the original development consent for which content was originally granted’ as the clubhouse had a dining room that supposedly sits 120 patrons, bars, a stage, a large lounge area, meeting rooms, billiards room etc ... which suggests this Club house is going to be a large business proposition.... The second reason why this is not a “minor modification” is that 29 of the 78 houses, under the modification, have been changed to double storey which is roughly 37% of the houses. This is certainly more than a simple modification.

The developers were then asked by the Clarence Valley Council to change to S4.55(2) and then write the first part of this section which is that the proposed modification needs to be substantially the same as the original DA. However, what they don't include are (b) to (d) inclusive of this section of the EPA 1979 which states a consent authority has to "consult with the relevant Minister etc" and (d) "it has considered any submissions made concerning the proposed modification".

There also needs to be consistency between Councils over function centres. A developer has put in a DA2023/0615 to put in a function area on 151 Micalo Island. The subject land is zoned RU2 Rural Landscape with a portion of the land, located to the north of the property, being zoned E2 Environmental Protection. It should be noted that DA2018/0011 – Temporary Use of Land (Wedding Venue) decided upon by Council in June 2018 agreed to 15 events per year but restricted all amplified music to be in the barn/saloon and that there would be a curfew of 10.30pm.

A function centre is defined within the LEP as:

***function centre** means a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres, but does not include an entertainment centre.*

However, there appears to be a very fine line being walked here by the company owners. They are trying to make the whole of Riverside Ranch a "function centre" (or "function area" as they call it in their S of EE) which will then give them *carte blanche* to do what they want. Is it a function area or a function centre? Is a "function area" allowed under the LEP? Instead of the wedding receptions being limited to an area that has soundproofing, they want to cover an area that is at least two thirds the size again. The developer's Statement of Environmental Effects noted that previously the subject site had been temporarily used as a Function Centre but they now want to make it permanent due to an Amendment to the Clarence Valley Local Environment Plan 2011. This amendment does allow a Function Centre but it must be "permitted with consent" and this includes taking into account whether the function centre:

- encourages sustainable primary industry production by maintaining and enhancing the natural resource base.
- maintains the rural landscape character of the land.
- minimises conflict between land uses within the zone and with adjoining zones.
- ensures that development does not unreasonably increase the demand for public services or public facilities.
- ensures development is not adversely impacted by environmental hazards.

This DA shows the problem facing residents living in a riverine environment. Often rural land may be closer to a residential area than actual neighbours on the designated rural land. See Photo and caption below.



PHOTO 8. This shows the proximity of Pelican Point to Riverside Ranch (Wedding Reception Area) at low tide. The noise comes directly across the water and there are limited natural buffers. Any resident on Micalo Island is 200 metres or more further away than the residents of Pelican Point.

It is interesting to note that the Ballina Shire Council has a “Rural Function Centres” November 2020 (V3. Exhibition 20/91470) which clearly outlines the hazards of even giving “temporary” approval to a function centre on rural land. Why isn’t there more consistency between Councils? If one Council is more lenient than others, then obviously developers will go to areas where there are less restrictions. However, this is not protecting the local residents or the environment. There definitely needs to be more consistency.

Thank you for taking the time and making the effort to read my submission. There is considerably more I can write but unfortunately I have run out of time.