

JRPP No:	2009NTH004
DA No:	DA 2010/143
PROPOSED DEVELOPMENT:	Alterations and Additions to a Residential Aged Care Facility, Lots 1 & 2 DP 546712 Hackett Lane, Part Lot 1 DP 781534 & Lot B DP 445363 Fox & Owen Streets, Ballina
APPLICANT:	TSA Management Pty Ltd
REPORT BY:	Ballina Shire Council

Assessment Report and Recommendation

File Reference	DA 2010/143
Applicant	TSA Management Pty Ltd
Property	Lots 1 & 2 DP 546712 Hackett Lane, Part Lot 1 DP 781534 & Lot B DP 445363 Fox & Owen Streets, Ballina
Proposal	Integrated Development Application - To Undertake Alterations and Additions to a Residential Aged Care Facility. The application is submitted under State Environmental Planning Policy (Housing for Seniors or people with a Disability) 2004.
Effect of Planning Instrument	The land is zoned No. 2(a) – Living Area under the provisions of the Ballina LEP and designated M1 – Medium Density under Council's Combined DCP No.1
Locality Plan	The subject land is depicted on the locality plan attached

1. SUMMARY

Brief Background of JRPP Involvement

As the capital investment value exceeds \$10 million for the proposed redevelopment of the Ballina Ex-Services Aged Care Facility, the proposal was referred to the Joint Regional Planning Panel on 22 September 2009 for consideration and determination.

A Northern JRPP Briefing Meeting was subsequently held at Ballina Council and on-site on 25 November 2009.

The issues raised at this meeting were:

- Crown Land complications in relation to owner consent for Part Lot 1 DP 781534.
- Public submissions received during the exhibition period.

These matters (and others) will be discussed further throughout the report.

Brief Background of the Proposal

A development application was originally received by Council to undertake alterations and additions to an existing residential aged care facility involving the demolition of the Remembrance Wing and the construction of Twenty-two (22) serviced self-care apartments, including ancillary landscaping, and provision of additional car parking area.

The original application submitted to Council could not proceed to determination, as the proponent was unable to obtain consent to lodge an application over that part of land that was owned by the Crown, being Part Lot 1 DP 781534.

The parcel of land owned by the Crown (Land & Property Management Authority) upon which the proponent proposed to demolish the existing Remembrance Wing and construct the proposed Twenty-two (22) serviced self-care apartments (Independent Living Units) was a significant component of the application, and was partially located upon the above mentioned lot.

As a result of the Crown withholding its consent to lodge a development application in relation to the above mentioned parcel of land, the proponent has amended the application to the effect that no works will be undertaken upon Crown land, including the Twenty-two (22) serviced self-care apartments (Independent Living Units).

As a consequence of the Joint Regional Planning Panel's Order 2009, the development application is to be determined by the Northern Region Joint Planning Panel due to the estimated cost of development exceeding \$10 million. The proposed works contained within this development application have a capital investment value of \$17 million.

Permissibility

The site is zoned 2(a) – Living Area pursuant to the *Ballina Local Environmental Plan* 1987 (BLEP). For the purposes of the BLEP, the proposal is defined as a residential aged care facility and is permissible in the 2(a) – Living Area Zone with development consent.

Consultation

The application currently before the Panel for consideration has been modified such that there are no works proposed on any part of Lot 1 DP 781534 and therefore the Crown's consent is not required for the making of this modified application.

The original application was placed on public exhibition from the 23 September 2009 to 9 October 2009. At the close of the exhibition period, twenty seven (27) submissions had been received raising objections to the proposal.

The amended plans received at Council on 4 August 2010 were placed on public exhibition from 24 August to 13 September 2010.

The public notification included a statement advising all interested parties that had previously lodged written objections to the original application that they were required to contact Council in writing indicating that their original objection still stands. The statement further indicated that should Council not receive any response from previous submitters that it would assume that they no longer objected to the amended proposal.

At the close of the second exhibition period five (5) submissions had been received, reiterating their original objections.

Council has addressed all issues raised during both exhibition periods within the body of this report.

Conclusion

This application has been assessed having regard to the relevant matters for consideration prescribed by Section 79C (1) of the *Environmental Planning and Assessment Act 1979*.

The proposed development is permissible with development consent in the 2(a) – Living Area Zone and has been submitted for approval under the provisions State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. The proposal has been examined with regard to its environmental, social and economic impacts. This assessment has not raised any significant issues with regard to the impacts of the proposed development on the surrounding environment that cannot be addressed by conditions of consent. Detailed consideration has also been given to the comments provided within public submissions in this assessment. Based on the merits of the proposed development, and the consistency of the proposal with Seniors Living SEPP, relevant land use planning provisions, and development controls, it is considered that the proposed development can be favorably considered.

RECOMMENDATION

Based on the outcomes of the assessment, it is recommended that Development Application 2010/143 be approved pursuant to Section 80 (1) (a) of the *Environmental Planning & Assessment Act 1979*.

2. ASSESSMENT REPORT

Site Description

Location and Property Description

The subject land comprises a number of lots, details of which are provided below:

Property	Frontage	Area
Lot B DP 445363	Hackett Lane	2126
Lot 1 DP 546712	Hackett Lane & Owen Street	2816
Lot 2 DP 546712	Hackett Lane	6464
Pt Lot 1 DP 781534	North Creek, fox Street & Owen Street	2619
Total		(11416) 14025

A locality/zoning plan and an aerial photograph of the development site and associated adjoining lands is provided by **Attachment 1 and 2**.

Site Analysis

The subject site is made up of a number of regular and irregular shaped lots with dual road frontage and frontage to a pedestrian footway adjacent to North Creek. The Ballina Ex-Services Aged Care Facility has a total site area of 14025m² (inclusive of the Crown Land). However the site area that the actual works are proposed to be carried out on, being the subject of this development application, is 11416m².

Existing upon the land is an aged care facility comprising a number of single and double storey brick and tile buildings containing:

- total of 118 beds (being 48 high care and 70 low care)
- laundry, boardroom, workshops, offices, kitchen and dining room, hairdresser
- site landscaping and pathways
- car parking area and bus shed

A road reserve (being Lots 1 and 2 DP 1012493) within which a constructed public footpath exists is situated along the foreshore of North Creek for the full frontage of Lot 1 DP 781534.

Topography

The subject land is situated on the Richmond River coastal flood plain and is generally flat with levels of 1.8-2.0m AHD.

Acid Sulfate Soils

The subject land is identified on Council's Acid Sulfate Soils Planning Map as being Class 2 land. Consent is required for:

- Works below the ground surface
- Works by which the watertable is likely to be lowered

The acid sulfate soils investigation accompanying the Statement of Environmental Effects indicates that the "subsurface conditions across the site are not actual or potential acid sulfate soils within the potential area of disturbance."

A condition of consent is recommended to be imposed on the development requiring appropriate treatment of acid sulfate soils should they be encountered during the proposed re-development.

The proponent has indicated that the re-development is required as a significant proportion of the existing buildings and services on the holding, which provide aged persons accommodation and care, do not satisfy current standards and best practises.

The proponent has indicated that the purpose of the application is to obtain consent for alterations and additions to the existing facility to provide an integrated aged persons' accommodation facility that will facilitate "aging-in-place".

2.1 Proposal

The proposed re-development of the aged care facility involves the following:

- retention of the Remembrance Wing and the construction of 2 new visitor/staff parking areas containing a total of 15 parking spaces with access thereto being provided by Hackett Lane and Owen Street;
- ground floor alterations and additions to the existing buildings known as the McDonald Wing, Clark Wing, Wilson Wing, Achievement Wing and Price Block. The alterations will create 113 ground floor rooms;
- Price Block will be internally renovated to upgrade the existing administrative offices and refurbish existing rooms to enable these to be used for library, physiotherapy and gymnasium facilities;
- first floor alterations and additions to the existing buildings known as Wilson Wing and Achievement Wing. In association with the first floor renovations a new building is proposed to be constructed over the existing parking area adjacent to Hackett Lane. In combination with the renovated buildings, the new wing will provide for a total of 37 first floor rooms;
- create a new main entrance off Hackett Lane with associated Portecochere and water feature;
- provide new landscaping to the site and the Hackett Lane and Owen Street verges;
- within the landscaped open space area provide recreational facilities including gazebos, water features, secure internal walkways, raised garden beds and aviaries for the residents enjoyment;
- provide external concrete pathways and fencing to the perimeter of the site and into the main Courtyard No. 1 such that the residents can circulate externally whilst being secure within the facility;
- renovate the external facades of the buildings as shown on the development plans. This will include rendering and painting the external walls of the buildings to provide the facility with integrated street and courtyard facades on completion; and

- entry awning and new ramp to the Fox Street entrance incorporating the original brick columns.

The new and renovated buildings are proposed to be constructed of a mix of rendered and painted masonry and light-weight cladding and large expanses of glazing and pitched tile roofs with angle and profile to match the existing roofs.

The colour scheme comprises a varied palette of colours of subdued and earthy tones.

Vehicular access to the development is proposed from Hackett Lane and Owen Street. Existing on-street parking in Fox and Norton Streets will remain. On-street parking in Owen Street will be reduced slightly (loss of 2 spaces) to provide an entry/exit to the proposed car park adjacent to the Remembrance Wing.

A new car park is proposed on the southern side of the Remembrance Wing, with a combined entry/exit off Hackett Lane. This new parking area will contain 6 spaces.

A new car park is proposed on the eastern side of the existing Remembrance Wing, with a combined entry/exit off Owen Street. This new parking area will contain 9 visitor parking spaces.

A total of 28 on-site car parking spaces (including 1 disabled space) have been provided in compliance with the provisions of the Seniors Living SEPP to service the development.

A Porte-cochere is provided to the main entrance to the aged care facility building in Hackett Lane for the pick-up and set-down of people and will also function as an ambulance bay. Bus parking is available in a separate enclosed garage adjacent to the bin storage area, with access off Hackett Lane.

Hackett Lane is a 2 lane, 2 way urban street with a 7.5m wide bitumen seal, part layback/part upright kerb and gutter, and a 50km/hr speed limit.

The subject land is serviced with reticulated water, sewerage, electricity and telecommunication services. The proposed development will be connected to such services.

The land is situated within a built urban environment which is predominantly residential in nature.

The adjoining and adjacent land uses comprise:

- single, double and three storey residential buildings (both single dwellings, duplexes and residential flat developments)
- open space/playing fields/parks
- motel
- general store
- professional consulting rooms
- North Creek (including pedestrian pathway along the southern bank of the creek).

The subject land is identified as being subject to flooding. Policy Statement No. 11 – Flood Levels of Chapter 1 of the Combined DCP requires a minimum fill level of 2m AHD and a minimum floor level required of 2.5m AHD.

A row of Norfolk Island Pine trees exists along the northern boundary of the site (within Pt Lot 1 DP 781534) and are visually prominent in the local area. These trees are to be retained.

It is proposed to carry out the building works in a manner that will cause minimal disruption to the existing residents within the facility. To achieve this, development will proceed in a manner that will enable the construction of the second floor additions and the new component of the dementia building without disturbing the existing residents. In this regard the two (2) storey component of the dementia block may be constructed first and then the remaining building work within the western portion of the land. Staging details are expected to be submitted with the Construction Certificate drawings.

A copy of the development plans are attached.

2.2 Environmental Planning and Assessment Act 1979

The application has been assessed under Section 79C of the Environmental Planning and Assessment Act 1979, and is recommended for approval. The proposal is employment generating development for the Shire and is beneficial to the community by updating and increasing the availability of accommodation for seniors and people with disabilities.

2.2.1 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

The following assessment of the development proposal in relation to compliance with the provisions of the Seniors Living SEPP submitted within the Statement of Environmental Effects in support of the proposal has been reviewed by the Council and found to be an accurate assessment of the proposal.

The proposed development has been designed under the provisions of the Seniors Living SEPP. The objective of the proposal is to undertake alterations and additions to a dated purpose-built residential aged care facility.

The following comments are made with respect to the relevant clauses of the SEPP.

Clause 2 – The proposed development is consistent with the objectives of the SEPP in that it will provide housing that will:

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability
- (b) make more efficient use of an existing aging facility, existing infrastructure and services
- (c) be of good design

Clause 4 – The SEPP applies to the subject land as it applies to all land in NSW that is zoned primarily for residential purposes.

Clause 5 – The SEPP prevails to the extent of any inconsistency with any other environmental planning instrument.

Clause 7 – There are no agreements or restrictive covenants applying to the land that would preclude or restrict the proposed development.

Clause 8-10 – The proposed development involves the provision of permanent residential accommodation for seniors (including persons with a disability).

Clause 11-12 – The proposed development involves alterations and additions to an existing residential aged care facility (containing both low and high care accommodation).

Clause 14 – The objective of the proposal is to provide housing that will be located and designed in a manner that is expressly suited to those seniors who are ambulant through to those requiring a high level of care (including those affected by dementia) so as to facilitate aging-in-place.

Clause 18 – The facility is being expressly constructed to be occupied by those persons permitted by Clause 18(1).

Clause 21 – This application does not propose subdivision of the facility.

Clause 26 – The subject land is located approximately:

- 1.5km from the Ballina Central Shopping Centre (contains general practitioner, dentist and pharmacy)
- 1.8km from the Ballina Fair Shopping Centre
- 1.5km from the Ballina Post Office/Ballina CBD
- 700m from the Ballina Hospital (including ambulance station)
- 600m from the Ballina Bowling and Recreation Club
- 800m from a number of churches

Blanch's buses service the immediate locality. Route 640 – Ballina-Lennox Head-Suffolk Park-Byron Bay-Mullumbimby travels along Bentinck Street during the following approximate times:

- Weekdays: 7.00am, 7.40am, 9.10am, 10.40am, 12.10pm, 1.55pm, 3.30pm, 5.20pm
- Saturday:: 8.00am, 9.10am, 11.20am, 1.10pm, 2.55pm, 4.50pm
- Sunday: 8.00am, 11.20am, 2.55pm

Kirkland's buses also service the immediate locality. Route 667 – Ballina Island Circle travels along Norton Street during the following approximate times:

- Weekdays: 9.14am, 11.24am, 2.24pm, 5.24pm
- Saturday: 9.24am, 11.54am

A bus shelter and timetable hoop (J pole) exists on the northern side of Bentinck Street in front of the RSL LifeCare's Bentinck Street accommodation facility situated on Lots 4 & 5 DP 21663. This bus shelter is accessible via a level constructed pathway through Lots 4 & 5 and is some 100m from the subject land.

The Norton Street bus route is also approximately 100m from the subject land via either the pavement of Hackett Lane or a constructed pathway along North Creek and Meldrum Park.

Bus services along these routes are “hail and ride” and thus buses will pick up passengers when hailed if the driver determines that it is safe to do so.

Clause 27 – The land is not mapped as being bush fire prone.

Clause 28 – Reticulated water and sewerage services exist in the immediate locality.

Clause 30 – Detailed site analysis and locality information plans have been prepared which address the relevant matters required by Clause 30.

Clause 31 – The proposed development does not comprise “in-fill self-care housing” as defined in Clause 13(2).

Clause 32 – Council must not consent to a development application made pursuant to Chapter 3 unless it is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2 (being Clauses 33-39).

Clause 33 – In respect of neighbourhood amenity and streetscape:

- (a) The broader locality is characterised by a mix of residential uses and densities being single dwellings and medium density residential flat buildings. The buildings in the locality are predominantly single and double storey with a number of 3-storey residential flat buildings existing in Namitjira Place. The proposed development has architectural merit and will contribute to the quality and identity of the area.
- (b) There are no heritage items or conservation areas within the vicinity of the site.
- (c) Reasonable neighbourhood amenity and residential character will be maintained as:
 - (i) The alterations and additions have been architecturally designed and have been setback from boundaries so as to reduce bulk and protect privacy of adjoining properties – the relationship of the land to adjacent private property is fortunate in that the adjoining private residences are situated either to the north-east or west of the subject land – as a consequence shadows are and will continue to be generally cast over the subject land itself and onto Hackett Lane – the building setbacks are as follows:
 - minimum building setback (excluding Porte cochere) to Hackett Lane is 925mm (as per existing building line).
 - minimum setback to the western boundary is 1.5 metres.
 - minimum building setback of the ground floor to the northern boundary is 9290mm with the average being approximately 12.5 metres.
 - the average building setback of the first floor to the northern boundary of the hostel is 43 metres.

- the average building setback to the eastern boundary is in excess of 4.6m.

- the new building setback to the southern boundary of the hostel is 7.45 metres.

As a consequence of the above, there will be limited overshadowing of any adjacent private residential buildings. Overshadowing will occur generally on the land itself and along Hackett Lane and Owen Street.

- (ii) The site is flat – the building form and siting is not constrained by the landform.
- (iii) The local streetscape is characterised by a significant number of double storey buildings (and also 3 storey buildings in Namitjira Place) – the street elevation of the building is consistent with the visual appearance, bulk, height and built form of the streetscape.
- (iv) The only adjoining dwellings are those situated in Fox Street and Norton Street to the north-western and western boundaries respectively – rear yard areas exist for a number of these adjoining dwellings – a small unit complex exists on the corner of Hackett Lane and Norton Street – the private open space of the eastern-most unit adjoins the western boundary of the land (being Lot B DP 4453630) which may be subject to some overshadowing in the early to mid-morning – the proposed development will not substantially over-look or overshadow these adjoining properties.
- (d) The development has been designed such that the new building works would be behind the existing setback to Hackett Lane. The building line of the Remembrance Wing to Owen Street as existing would be maintained.
- (e) The site will be intensively landscaped to soften the built form and beautify the development.
- (f) The existing mature Norfolk Island Pine trees are to be retained and protected at all times.
- (g) The building works will be situated on private land outside of the riparian zone. The land is physically and spatially separated from the riparian zone by a road reserve and constructed public footpath (being Lots 1 & 2 DP 1012493).

Clause 34 – In respect of visual and acoustic privacy:

- (a) A high level of site and locality planning was undertaken in the design of the building, the placement of windows and balconies and landscaping.

Internal courtyards have been provided to the Residential Aged Care Facility (RACF) building for the use of residents. The use of these courtyards will minimise the potential for noise and overlooking of adjoining properties.

- (b) The RACF rooms are not generally proximate to driveways, parking areas and paths.

Clause 35 – In respect of solar access and design for climate:

- (a) The only private dwellings that adjoin the subject land are situated to the north-east and west of the subject land. As a consequence, the potential for overshadowing of any private residential property (including private open space) is substantially reduced. There will be a small amount overshadowing to a dwelling to the north-west during the early morning which will likely occur prior to 11.00am. There will no shadows cast off-site during the rest of the day.
- (b) The RACF will be mechanically ventilated and air conditioned.

Clause 36 – The proposal adequately addresses all relevant requirements within the documents submitted with the development application.

Clause 37 – Comments in respect of crime prevention are covered within the following sections of this report. This aspect for consideration has been adequately addressed.

Clause 38 – In respect of accessibility:

- (a) A constructed footpath exists through the RSL's property (Lots 4 & 5 DP 21663) that links the subject land to a bus shelter/route in Bentinck Street. Constructed pedestrian pathways and bus routes exist in the immediate locality and service the subject land.
- (b) Convenient access exists to the main on-site car parking area which is situated at the front of the development adjacent to the main entrance. The proponent has indicated that the six (6) space parking area to Hackett Lane and the nine (9) space area to Owen Street will be encouraged to be used by staff. Safe and practical access is provided to the main building via a one-way loop driveway servicing a Porte cochere.

Clause 39 – As is the case with the existing RACF, waste collection and disposal is managed by the facility. Provision has been made for a screened waste bin enclosure which is proximate to the kitchen and is accessible to service vehicles.

Clause 40 – The proposed development must comply with the following development standards:

Development Standard	Requirement	Proposed
40(2) Minimum site area	1000m ²	14025m ² – complies
40(3) Minimum site frontage	20m	157.4m to Hackett Ln – complies
40(4) Height in zones where residential flat buildings not permitted	The land is designated M1 – Medium Density which expressly permits residential flat buildings	No height restriction per Clause 40(4) – not applicable

Clause 48 – Compliance with the following development standards for residential care facilities cannot be used by Council as grounds for refusal.

Development Standard- Clause	Standard	Proposed
48(a) – Building height	All proposed buildings are 8m or less in height	The proposed residential aged care facility has a height when measured from the required minimum fill level of 2.0-2.1m AHD to the ceiling of the topmost habitable floor of 7.9m - complies
48(b) – Density & scale	The density and scale of the building when expressed as a floor space ratio is less than 1:1 or less	Adequately addressed within the supportive information submitted with the development application. 0.58:1
48(c) – Landscaped area	A minimum of 25m ² of landscaped area per residential care facility bed is provided	Complies. 3750m²
48(d) – Parking for residents and visitors	<ul style="list-style-type: none"> - 1 space/10 beds (or 1 space/15 beds if the facility provides care only for persons with dementia) - 1 space for each 2 persons employed in connection with the development and on duty at any one time - 1 space suitable for an ambulance 	<ul style="list-style-type: none"> - 121 beds in RACF @ 1 space/10 beds = 12.1 spaces - 29 dementia beds in RACF @ 1 space/15 beds = 1.9 spaces - 24 staff on duty at any one time – 1 space/2 staff = 12 spaces - ambulance bay available under Porte cochere at main entrance to RACF - the facility owns and operates a bus for the transport of residents – 1 bus parking space provided - a total of 26.0 spaces are required to service the RACF with 28 having been provided (includes 1 disabled space) - complies

Council agrees with the above assessment.

2.2.2 SEPP (BASIX)

**EP&A Act, Section 79C (a)(i) any environmental planning instrument
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

The provisions of this SEPP does not apply to the proposed development due to it being a Class 9c (Residential Aged Care Facility) building under the Building Code of Australia.

2.2.3 SEPP (Infrastructure)

**EP&A Act, Section 79C (a)(i) any environmental planning instrument
State Environmental Planning Policy (Infrastructure) 2007**

The proposed development is not classified in Schedule 3 of this SEPP as being a traffic generating development requiring referral to the Roads and Traffic Authority.

2.2.4 SEPP (Major Development)

**EP&A Act, Section 79C (a)(i) any environmental planning instrument
State Environmental Planning Policy (Major Development) 2005**

The proposed development, being a residential aged care facility with a capital investment value of over \$10 million, is classified as Regional Development in accordance with clause 13B. The proposed development, being Regional Development, is subject to determination by the Northern Joint Regional Planning Panel in accordance with the provisions of Clause 13F.

2.2.5 SEPP 14 – Coastal Wetlands

**EP&A Act, Section 79C (a)(i) any environmental planning instrument
State Environmental Planning Policy 14 – Coastal Wetlands**

The subject site is not located near a wetland identified under the provisions of this SEPP.

2.2.6 State Environmental Planning Policy No. 55 – Remediation of Land

EP&A Act, Section 79C (a)(i) any environmental planning instrument

A preliminary contaminated land assessment was undertaken in accordance with Managing Land Contamination Planning Guidelines (DUAP & EPA 1998).

The assessment involved a systematic soil sampling pattern on the site. The soil analysis confirmed the background site history of no metal or pesticide contamination of the soil.

The assessment concluded that the site can be classified as uncontaminated for the proposed development.

2.2.7 State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71)

EP&A Act, Section 79C (a)(i) any environmental planning instrument

SEPP 71 applies to this proposal as the land is situated within the “coastal zone” (Clause 4). The site is classified as a “Sensitive Coastal Location” due to its proximity to North Creek (i.e. within 100m above mean high water mark).

The development will not contravene any aims of SEPP 71, as although the existing Residential Aged Care Facility is located within close proximity to

North Creek, the proposed alterations and additions are unlikely to have an adverse impact.

The development will be suitable given its community nature. There is no significant change/alteration in relation to the existing facility other than to update the buildings and construct a two storey dementia building at the rear of the site (Hackett Lane).

The development will not adversely affect any significant scenic qualities of the existing coastline.

The building footprints do not contain any known threatened species and will not have any significant adverse impacts on any known existing wildlife corridors.

The development has been assessed against coastal hazard reports and mapping and will not be subject to any known coastal processes or hazards (including the potential for sea level rise).

The development will not create any conflict between land based and water-based coastal activities but rather enhance them.

There are no listed or known items of heritage, archaeological or historic significance occurring on the site. The Norfolk Island Pine trees are significant from the RSL's perspective and are to be retained and are proposed to be protected at all times.

The proposed development will not likely impact the Aboriginal significance of the locality.

The development will not have any identifiable impact to water quality of existing coastal waterbodies, particularly North Creek.

Due to the existence of a constructed pathway along the North Creek, the proposed development will not impact on public access along the foreshore.

A reticulated sewerage system exists in the locality.

A comprehensive stormwater management plan has not been provided. However, the proposal appears to provide sufficient treatment and detention capacity to comply with Councils DCP Chapter 13- Stormwater Management. Therefore, the proposal will not have an adverse impact upon water quality due to stormwater in North Creek, the Richmond River or the Pacific Ocean.

**2.2.8 North Coast Regional Environmental Plan 1988 (NCREP)
EP&A Act, Section 79C (a)(i) any environmental planning instrument
North Coast Regional Environmental Plan 1988 (deemed SEPP 1 July 2009)**

The North Coast Regional Environmental 1988 (NCREP) is applicable to the subject land. The following clauses are relevant to the proposed development.

The proposal is generally consistent with the Clause 30 objectives in relation to coastal planning. The proposal will not adversely impact upon the visual quality of the coastal environment.

Clause 15 – Development control – wetlands or fishery habitats

Clause 15 provides that Council must consider such matters as the provision of public foreshore access, habitat loss, pollution, water quality etc in considering any development application for development within, adjoining or upstream of a river.

Subject to appropriate erosion and sedimentation controls being implemented and maintained during construction, and stormwater controls being installed and maintained in perpetuity for the development, the proposed development will not adversely impact on matters raised within Subclauses a), b), c), d), e), f) & h).

In relation to subclause g) - Section 21AB of the Soil Conservation Act 1938 has been repealed – the north-eastern boundary of the property is within 40m of the mean high water mark of the creek and any works therein will require a Controlled Activity approval. This matter is not relevant as the amended proposal does not involve any works within this portion of the site.

Clause 32B – Development control – coastal lands

Clause 32B applies due to the fact that the land is within the region to which the NSW Coastal Policy 1997 applies. In accordance with clause 32B – Development control (coastal lands) of the NCREP, the proposed development is designed to enhance rather than impede public access to the foreshore (North Creek) and will not cause significant overshadowing of the open space areas.

The land is adjacent to the foreshore of North Creek however is not identified as being, or likely to be, subject to coastal processes or hazards. The land is not identified as being subject to Section 38 or 39 of the Coastal Protection Act 1979. Under the circumstances the Coastline Management Manual is not considered to be strictly applicable to this application.

Clause 43 – Development control – residential development

This clause relates to urban housing and provides several heads of consideration, not all of which are relevant to this development. The following comments are made only in respect of the relevant considerations:

- (a) *that the density of the dwellings have been maximised without adversely affecting the environmental features of the land*

Comment: The density is permissible having regard to the development standards of the Seniors Living SEPP.

- (b) *that the proposed road widths are not excessive for the function of the road*

Comment: No new roads are proposed. The development will be serviced by the existing urban road network. Vehicular access to the development will be via Hackett Lane and Owen Street which are sealed roads of a standard that will adequately service the proposed development.

- (c) *it is satisfied that site erosion will be minimised in accordance with sedimentation and erosion management plans*

Comment: The site will be subject to some minor filling to ameliorate flooding and to create a level surface on which to undertake construction. Appropriate erosion and sedimentation controls will be required to be implemented during

infrastructure works and construction of the building, such that there will be no adverse impacts upon the environment.

2.2.9 Local Environmental Plan

EP&A Act, Section 79C (a)(i) any environmental planning instrument

Ballina Local Environmental Plan 1987

Zoning

The current zoning of the subject allotments of land under the Ballina Local Environmental Plan 1987 (BLEP) is zoned 2(a) – Living Area Zone under the provisions of the BLEP.

The objectives of the 2(a) zone are as follows:

- A. *The primary objectives are -*
 - (a) *to regulate the subdivision and use of land to permit housing and ancillary development where the scale, type and traffic generating characteristics of the ancillary development are compatible with the character and amenity of the surrounding residential area;*
 - (b) *to permit development which is considered by the council to be an essential land use within the urban living area, but not including a shop (other than a general store); and*
 - (c) *to allow detailed provision to be made, by means of a development control plan, to set aside specific areas within the zone for varying housing densities as well as other associated urban and tourist facilities.*
- B. *The secondary objective is to allow a variety of housing types and designs and to encourage greater visual amenity by requiring site landscaping.*
- C. *The exception to these objectives is development of land within this zone for public works and services, outside the parameters specified in the primary objectives.*

The proposed development relates to an existing residential aged care facility. The development will provide much needed purpose-built, integrated aged person's accommodation in the area. The design, bulk, scale and traffic generating characteristics of the proposed development are compatible with the character and amenity of the adjacent residential area and the broader streetscape.

The proposed development is consistent with the relevant zone objectives in that it will provide for a range of permanent residential accommodation for seniors persons.

Clause 17 provides a maximum building height of 6.4m from the ceiling of the topmost floor to the ground level immediately below that point. The proposed buildings comply with this height provision.

Clause 36 relates to acid sulfate soils. The acid sulfate soils assessment submitted with the development application identifies that the subsurface conditions across the site are not actual or potential acid sulfate soils within

the potential area of disturbance. Council will impose a condition of consent requiring the proponent to notify Council should any acid sulfate soils be encountered during the construction phase of the development.

2.2.10 Draft Local Environmental Plan

EP&A Act, Section 79C(a)(ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority

The Draft Ballina LEP 2010 (DBLEP 2010) was publicly exhibited during the period 15 March to 4 June 2010. Notwithstanding that DA 2010/413 was lodged well prior to the exhibition of the Draft BLEP, the following comments are made in respect of the provisions of the draft plan as required by Section 79C(1)(a)(ii) of the Act.

The subject land is proposed to be zoned R3 – Medium Density Residential, the objectives of which are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide development compatible with the character and amenity of the surrounding neighbourhood.*
- *To encourage housing and infrastructure that supports the aging population.*
- *To provide for development that meets the social and cultural needs of the community.*
- *To encourage development that achieves the efficient use of resources such as energy and water.*

The proposal involves alterations and additions to an existing Residential Aged Care Facility (RACF) of a medium density nature that is considered to be expressly consistent with the objectives of the R3 zone.

2.2.11 Development Control Plan

EP&A Act, Section 79C(a)(iii) any development control plan

The proposed development is subject to a number of provisions as contained in the Ballina Shire Combined Development Control Plan (DCP). Whilst the DCP is not an environmental planning instrument, Clause 8 of the Seniors Living SEPP is interpreted as having the effect of overriding any provisions of the DCP that are inconsistent with those of the Seniors Living SEPP.

Chapter 1 – Urban Land

Part 3 – Control Plan Areas

The subject land is designated M1 – Medium Density. The control plan area objectives are:

- “To encourage introduction and infill of medium density development into residential areas whilst minimizing the impact on the residential amenity of neighbourhoods.

- To enable the development of non-residential activities which would complement the amenity of the residential neighbourhood.
- To encourage the amalgamation of small allotments where medium density development is proposed.”

The preferred land uses are “Residential flat buildings and duplex developments.”

The development has been designed having regard to the development standards contained in the Seniors Living SEPP which prevails to the extent of any inconsistency with any local planning provisions.

The development will not adversely impact on the residential amenity of the neighbourhood as there is an existing facility operating on the land.

Policy Statement No. 1 – Multiple Dwellings

Section 13 outlines Council’s policy in relation to medium density development.

The Seniors Living SEPP contains development standards relating to density, height, scale, car parking, landscaped open space and the like which prevail over the DCP.

The SEPP is silent in respect of building setbacks. The proposed setbacks are detailed within the body of this report. The proponent has indicated that the western setback to the extension on Lot B DP 445363 has been configured so that it is consistent with the setback of the existing building and is appropriate for construction and operational purposes.

Policy Statement No. 2 – Car Parking and Access

The Seniors Living SEPP contains car parking standards which prevail over the DCP requirements. The proposal complies with the requirements of the SEPP.

Policy Statement No. 3 – Urban Building Lines

Section 3.2 provides that the building line for Owen Street and Hackett Lane is 4.6m and 3.5m respectively.

The proposed building line is as per the existing setback to the Remembrance Wing. The minimum building line (excluding the Porte cochere) to Hackett Lane is 925mm as per the existing buildings.

Policy Statement No. 11 – Flood Levels

The subject land is identified as being likely to be subject to the 1 in 100 year flood event. The minimum fill requirement for this land (as prescribed by Section 4.1) is RL 1.9-2.0m AHD. The minimum floor level requirement is RL 2.5 AHD.

The land varies in height, as detailed on the plan showing spot levels and boundary information. Some relatively minor filling will be required on the land to comply with these minimums.

Chapter 11 – Mosquito Management

In accordance with the mandatory requirements of Section 3.2.1, effective insect screening will be provided to all bedrooms within the facility.

Chapter 13 – Stormwater Management

Run-off from the site will be directed over landscaped areas where possible to improve water quality. Significant landscaped areas have been provided on the site which will assist in the management of stormwater on the site.

Roof-water is to be collected in storage tanks and reticulated into the RACF building and used in the laundry.

2.2.12 Environmental Planning and Assessment Model Provisions 1980

Clause 6 (Part 1 – Preliminary) of the Ballina Local Environmental Plan 1987 (BLEP) adopts certain clauses of the EP & A Model Provisions 1980. These provisions are identified and addressed below:

Clause 5 – Consideration of certain applications

Clause 5(1) provides that consideration is to be given to the probable aesthetic appearance of the development that is within the view of any waterway or is adjacent to any public reserve or land zoned as open space.

The proposed development is consistent with the bulk, scale, height and external appearance of the existing development in the locality.

The development will be intensively landscaped.

The view of the site from North Creek is buffered by existing Norfolk Island Pine trees. These trees are to be retained and protected at all times.

Clause 5(2) provides specific considerations for any development likely to cause increased vehicular traffic on any road in the vicinity of the development.

Clause 30 – Services

Reticulated water and sewerage services exist to the site. Sufficient spare capacity exists within both to service the demands of the development.

Other Planning Policy and Related Statutes

This section identifies and provides comments on the EPI's and EP & A 1979 provisions that are of relevance to the proposed development.

Commonwealth Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act)

The proposed development will not have any actions that could have a significant impact on matters of National Environmental Significance.

Threatened Species Conservation Act (TSC Act)

There will be no impact on any threatened species likely to occur in the locality as no potential habitat will be removed or altered.

Section 64 and 94 Plans

Section 94 contributions will be payable in accordance with Council's adopted contributions plans.

Integrated Development

The proposed development comprises integrated development as defined in Section 91 of the EP & A Act 1979 on the basis that works are proposed within 40m of North Creek.

Under the circumstances, a Controlled Activity approval under Part 3, Chapter 3 of the Water Management Act 2000 is not required.

Crime Prevention Through Environmental Design (CPTED)

The aims of crime prevention through environmental design are to:

- Enhance the safety of developments for all users; and
- Minimise the opportunities for crime to be committed.

The safety and security of all residents and staff (including the perception of safety and security that the facility will provide) is of paramount importance to the amenity of the facility.

The applicant has submitted the following formal crime risk assessment prepared in accordance with the Department of Planning's *Crime prevention and the assessment of development applications – Guidelines under section 79C of the EP & A Act 1979*.

Surveillance

The subject land is situated within a developed urban environment. The built form of the general locality is a mix of single, double and three storey residential buildings.

Those sections of the site that front North Creek are visually prominent when viewed from the creek and from the land to the north and east. Other sections of the property are also visible from Hackett Lane (157m frontage), Owen Street (69m frontage) and Fox Street (21m frontage). The land is surrounded on all other sides by residential development.

The front of the arrival point/reception area to the main building and the adjacent public car parking area are highly visible when viewed from the adjacent public roads and footpaths.

The ground floor of the front (Hackett Lane) (southern) elevation of the building contains large expanses of glazing to the foyer, reception and offices. This glazing provides high visibility from inside the building to the Porte cochere and the adjacent public road and footpath (and vice versa).

Selected landscaping vegetation does not unreasonably interfere with the natural monitoring of public spaces. Plants have been sited and selected so as not to obstruct sight lines nor provide concealment areas or predator traps.

Low intensity lighting will be provided to increase night-time surveillance of the car parking areas and to the landscaped areas of the site.

Surveillance and security will be provided on a daily basis by the staff who are on site 24 hours/day, 7 days/week.

Access Control and Target Hardening

The safety and security of residents has been expressly considered in the design of the development (both site planning and buildings).

The courtyard based design has been adopted to provide maximum protection for all higher care residents. There is one main entry to the main facility

building that will either be staffed or monitored 24 hours/day, 7 days/week. All other entries will be fenced and keypad protected.

There are clear distinctions between public and private spaces. Pedestrian routes will be clearly defined on the site and will direct and channel visitors to the main entrances of the buildings. The main entrance of the building is obvious and will be appropriately marked/sign-posted.

Private and public areas will be clearly identified by fencing, signage, pavement treatments and landscaping.

Security measures will be determined and implemented by the facility manager and will include staff security patrols of the site during the night.

Territorial Reinforcement

The facility has been designed and will be managed in a manner that makes it an attractive and safe place for its residents and staff.

The sense of ownership and care of the facility and the adjacent public footpaths will be clearly evident to the local community (refer to comments above in Surveillance).

The development has been designed so that there are clear transitions and boundaries between public and private spaces. Pedestrian routes to the main building entrance have been clearly defined by paving and by the entrance treatment (Porte cochere).

There are clear distinctions as to who is able to use certain areas and as to what such areas are to be used for – signage, line-marking and other like controls will be installed to achieve this.

There is a distinct transition from the car parking area to the building which includes the use of a Porte cochere.

The visitor and staff car parking areas are situated at the front of development (to Hackett Lane and Owen Street) and are thus clearly identifiable as the on-site parking for the facility. Appropriate signage will also be erected to identify any parking controls.

The facility manager will be responsible for space management and site supervision.

Space Management

The facility will be managed on a 24/7 basis by the duty manager. The manager will be responsible for ensuring that the site is kept in a clean, tidy and presentable manner. This will be generally achieved by the caretaker/cleaner/gardener.

The operational efficiency and attractiveness of the facility and surrounds is of paramount importance to the level of residential amenity that it will provide to residents.

The facility manager will be generally responsible for activity co-ordination and over-seeing site cleanliness, maintenance and the rapid repair of vandalism or damage to the property.

Council concurs with the above CPTED assessment.

Coastal Hazard & Sea Level Change/Rise

The development as proposed is classified as infill development and is removed from the significant coastal action that would occur if it was in close proximity to the beach. However, it is still a matter that needs to be taken into consideration in relation to sea level rises and the impact on the coastal river systems.

More recent NSW Government Sea Level Rise Policy Statements and the *Draft NSW Coastal Planning Guideline: Adapting to Sea Level Rise (November 2009)* adopts a sea level rise of 900mm by 2100.

The WBM Oceanics report “estimated” coastal recession due to 500mm sea level rise at approximately 25 metres. An estimate of beach recession at 2100, with 900mm sea level rise may be approximately 45 metres. As noted above, the proposed development is not impacted by beach recession due to its distance from the shore line.

Council flood modeling data, as at 2010, has adopted a minimum floor level for infill development on Ballina Island. This minimum fill level has taken into account potential sea level rise, and has identified a minimum fill level of 1.9-2 metres. The development proposal identifies a fill level of between 2 and 2.1 metres.

2.2.13 Built Environment

EP&A Act, Section 79C(1)(b) the likely impacts of development

Context and setting

It is considered that the proposed upgrading of the existing residential aged care facility and the construction of an additional dementia care building is in keeping with the existing character of the site and the adjoining residential building forms.

Density

The proposed development complies with the density requirements as stipulated within the Seniors Living SEPP.

Visual Amenity

The proposed development retains the existing visual amenity of the site when viewed from within and without the site. The proposed alterations and additions are in keeping with the existing buildings on the subject site, whilst considerably upgrading the internal operation of the facility.

Roads and Traffic

The proposed upgrading of the facility will not adversely affect the existing traffic situation within the vicinity. Council will recommend the imposition of conditions of consent requiring the upgrading of the Fox Street access to the site thus alleviating a number of concerns raised by adjoining residents. In relation to the provision of on site parking associated with the development, the proposal complies with the requirements of the Seniors Living SEPP

2.2.14 Social Impacts

EP&A Act, Section 79C(1)(b) the likely impacts of development

It is considered that the social impacts of the proposed development will be positive when considering the increasing aged population within the region and the demand for aged care facilities such as this. The upgrading of the facility will significantly benefit the existing residents within the facility and the associated staff.

2.2.15 Economic Impacts

EP&A Act, Section 79C(1)(b) the likely impacts of development

The economic impacts for the region as a result of the proposal are considered to be positive in that the proposal would update an antiquated facility and will offer a high standard and quality of aged care that is desperately needed within Ballina.

2.2.16 Suitability Of The Site

EP&A Act, Section 79C(1)(c) the suitability of the site for development

The location of the facility is in an ideal position on the river bank and once upgraded will offer the residents a peaceful and functional lifestyle in their sedentary years.

2.2.17 Submissions

EP&A Act, Section 79C(1)(d) any submissions made in accordance with this Act or the regulations

The original application was placed on public exhibition from 24 September 2009 to the 9 October 2009. At the close of the exhibition period, twenty seven (27) submissions had been received raising objections to the proposal.

The amended plans received at Council on the 4 August 2010 were placed on public exhibition from the 24 August to the 13 September 2010. The public notification included a statement advising all interested parties that had previously lodged written objections to the original application that they were required to contact Council in writing indicating that their original objection still stands. The statement further indicated that should Council not receive any response from previous submitters that it would assume that they no longer objected to the amended proposal.

At the close of the second exhibition period five (5) submissions had been received, reiterating their original objections.

Council has addressed all issues raised during both exhibition periods within the body of this report.

These issues raised within the objections are summarised as follows:

Increased traffic and inadequate provision for on-site carparking;

In relation to the issue of inadequate provision of on-site carparking, the application was submitted under the requirements of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 and hence a consent authority cannot refuse the development on carparking grounds if the development complies with the standards as identified in the SEPP.

The proposed redeveloped facility provides twenty eight (28) spaces for off street parking. An assessment of the proposal in accordance with the requirements of the SEPP requires the provision of Twenty-six (26) spaces on-site

Closure of Owen Street;

The applicant has removed all reference to the closure or upgrade of Owen Street.

Fox Street Carparking problems;

Council is responding to the issues raised by the residents in Fox Street in relation to the on-street carparking problems, by recommending that a condition be imposed on the consent requiring the proponent to upgrade the relevant section of Fox Street by constructing a cul-de-sac turning head at the end of Fox Street and to place "no parking signs" within the cul-de-sac head.

Inappropriate planting of additional Norfolk Pines;

The planting regime of Norfolk Pines has been revised to remove all reference to the planting of additional Norfolk Pines.

Loss of historical features of the site;

The proponent has submitted a Statement of Heritage Impact (SOHI) The SOHI indicates that the site has contextual heritage content as opposed to the heritage component of the buildings. In this regard the contextual importance of the facility is retained as there is no change in use of the Residential Aged Care Facility.

Council's Cultural Heritage Officer has reviewed the revised Statement of Heritage Impact Report submitted with the development application. Where appropriate, the matters raised within this review have been recommended for inclusion as conditions of consent. Other matters raised will be referred to Council's Strategic Services Group for further action.

Overshadowing of dwellings adjoining the two storey dementia building in Hackett lane;

The proponent has amended the plans for the design of the two (2) storey Dementia block to be developed within the south western section of the site fronting Hackett Lane. This redesign has reduced the bulk of the second storey of the building by retaining the existing single storey Clark Wing building along the western boundary. This results in a 50% reduction in the second storey western elevation of the new Dementia building.

The resultant impact in relation to the residential unit fronting Hackett Lane adjoining the proposed development to the south west is significantly reduced. The main overshadowing impact is on the side yard space between the hours of 9:00am to 11:00am with no impact upon the rear yard of the dwelling. The proposal complies with the requirements of the Seniors Living SEPP requirement of allowing at least three hours of sunlight between the hours of 9:00am and 3:00pm to the outdoor open space areas.

The predominant cool summer breezes being North-easterlies will not be reduced as a result of the development.

The impact of reflective summer heat from the proposed building adjacent to unit 3 should be minimal as it is proposed that the western wall is to be rendered, which should minimise reflective heat transferral.

It should also be mentioned that a covered outdoor area is located on the eastern side of unit 3, which reduces the impact from overshadowing and reflective heat that may currently exist.

Sea level change and the associated impacts on the development;

In relation to future sea level changes expected in the vicinity of 500mm, the natural ground level of the site varies from 1.44m AHD to 2.17m AHD. The minimum fill level is 1.9 – 2.0 metres with a minimum floor level for the site 2.4m-2.5m AHD has factored in a sea level rise component. The floor levels of the proposed buildings comply with Council's requirements.

Preservation of the health of the existing Norfolk Pine trees along North Creek portion of the site; and

The amended plans will have no impact upon the Norfolk Pines adjacent to North Creek.

Loss of open space on site;

The proposal identifies the provision of a total of 3750m² of open space. The SEPP requires the provision 25m² per bed, which equates to 3,750m² - Open space provision complies with the requirements of the SEPP.

2.2.18 Public Interest**EP&A Act, Section 79C(1)(e) the public interest**

It is acknowledged that there are residents concerns in relation to the proposed upgrading of the existing residential aged care facility, however the proposal complies with all the statutory requirements as defined within the Seniors Living SEPP. The determining authority does not have the statutory right to refuse applications due to non-compliance with the specified minimum standards (i.e. carparking rates) as contained within this SEPP. It is considered that the proposal that is currently before the panel has minimal impacts on the surrounding area whilst providing a modern facility for the staff and the associated aged residents and one that has extended the operational life of the existing aged care facility. It should also be noted the revised proposal has resulted in a development that a large number of the original objectors find acceptable.

3 CONCLUSION

Although there are still concerns within the public realm regarding the upgrading of the existing Residential Aged Care Facility, it is considered that as a result of the amendments to the original proposal, a majority of persons who initially raised concerns are satisfied with the current application that is before the panel for consideration.

The applicants, via a number of amendments to the originally submitted plans, have allayed the majority of previous concerns raised by Council's Technical Officers and/or objectors.

The proposed development is consistent with Council's current requirements and any impact is considered reasonable in the circumstances for a community building and service of this nature.

4. RECOMMENDATION

That the Northern Region Joint Planning Panel approves the proposal subject to the conditions detailed in the schedule attached to the report.

Attachment(s)

1. Locality Plan
2. Site Plan overlaid on aerial photography
3. Existing Site Plan
4. Proposed Plans
5. Submissions
6. TSA Management Pty Ltd (Director's Names)
7. Draft Conditions of Consent