

COUNCIL ASSESSMENT REPORT

Panel Reference	2017NTH014 DA
DA Number	2017/244
LGA	Ballina Shire
Proposed Development	<p>Stage 1 of a residential subdivision of Lot 6 in DP 1225206, involving 229 residential lots, and other associated works/easements in Lot 4 DP1184436, Lot 7 DP1225206, Lot 50 DP755684 and Lot 5 DP1225206.</p> <p>The development involves:</p> <ul style="list-style-type: none"> • Torrens Title subdivision to create 229 residential lots (ranging in size from 451m² to 789m²) for future dwellings; and • The creation of: <ul style="list-style-type: none"> ○ Three (3) lots for a proposed drainage reserve dedicated to council (444, 349 and 160); ○ One (1) lot associated with drainage functions (Lot 635) to remain in private ownership; ○ One (1) lot for proposed sewer pumping station (Lot 163) to be dedicated to Council; ○ Five (5) lots for proposed Public Reserves (Lots 347, 348, 442, 632, and 633); ○ Six (6) super lots (ranging in size from 1,453m² to 13,332m²) for future Development Applications for subdivision to accommodate a neighbourhood centre and additional residential lots; and ○ One (1) residual lot (3,501m²) – Lot 524
Street Address	Lot 6 in DP 1225206, 505 North Creek Road/The Coast Road, Skennars Head
Applicant/Owner	Intrapac Skennars Head Pty Ltd C/- Elton Consulting
Date of DA lodgement	17 May 2017
Number of Submissions	114 submissions received in total
Recommendation	Deferred Commencement
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	Clause 20 (CIV exceeding \$20 Million)
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Ballina Local Environmental Plan (BLEP) 2012; • Ballina Local Environmental Plan (BLEP) 1987; • Ballina Development Control Plan (BDGP) 2012; • Section 94 Plans <ul style="list-style-type: none"> ○ S94 Open Space and Community Facilities Contributions Plan 2016 ○ Ballina Shire Roads Contributions plan (s94 Roads

	<p>plan)</p> <ul style="list-style-type: none"> • Section 64: Sewer Servicing, Water Supply, Rous Water • State Environmental Planning Policy 1 – Development Standards; • State Environmental Planning Policy No. 55 – Remediation of Land’; • State Environmental Planning Policy (Infrastructure) (ISEPP) 2007; • State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71); • Coastal Management State Environmental Planning Policy (Coastal Management SEPP) 2018; • State Environmental Planning Policy 14 - Coastal Wetlands • State Environmental Planning Policy 26 - Littoral Rainforests • State Environmental Planning Policy 62 - Sustainable Aquaculture • State Environmental Planning Policy (Rural Lands) 2008
List all documents submitted with this report for the Panel’s consideration	<ul style="list-style-type: none"> • Attachment 1 – Proposed Plans • Attachment 2 - Draft Conditions of Consent • Attachment 3 – DCP Compliance Table • Attachment 4 – Public Submissions • Attachment 5 - Drainage Reserve Dedication Plan
Report prepared by	SJB Planning (NSW) Pty Ltd
Report date	28 November 2018

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
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Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?	Yes
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e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	N/A
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SEPP 1 Objection

If a written request for a contravention to a development standard has been received, has it been attached to the assessment report?	Yes
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Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions	N/A
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Conditions

Have draft conditions been provided to the applicant for comment? Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report	Yes
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EXECUTIVE SUMMARY

Development consent is sought for the development of the first stage of the Skennars Head Expansion Area (SHEA), incorporating the delivery of 229 residential lots, subdivision over Lot 6 in DP 1225206 (The Coast Road SKENNARS HEAD), and other associated works/easements over Lot 4 DP 1184436 (The Coast Road SKENNARS HEAD), Lot 7 DP 1225206 (305 The Coast Road SKENNARS HEAD), Lot 50 DP 755684 (The Coast Road SKENNARS HEAD) and Lot 5 DP 1225206 (North Creek Road SKENNARS HEAD).

The proposal has a Capital Investment Value over \$20 million and therefore the proposal is required to be reported to the Joint Regional Planning Panel for determination. SJB Planning (NSW) Pty Ltd was engaged by Ballina Shire Council to undertake an assessment of the DA and prepared the following report.

The Development Application is for the Stage 1 development of the site. The development involves the Torrens Title subdivision of the site to create 229 residential lots ranging in size from 451m² to 789m².

The proposed subdivision also includes the creation of:

- Three (3) lots for a proposed drainage reserve to be dedicated to council (Proposed Lots 444, 349 and 160);
- One (1) lot for associated drainage works to be retained in private ownership (Proposed Lot 635);
- One (1) lot for proposed sewer pumping station (Proposed Lot 163) to be dedicated to Council;
- Five (5) lots for proposed Public Reserves (Proposed Lots 347, 348, 442, 632 and 633) to be dedicated to Council;
- Six (6) super lots (ranging in size from 1,453 to 13,332m²) for future Development Application for subdivision, to accommodate a neighbourhood centre and additional residential lots (Proposed Lots 162, 345, 344, 346, 343, 631); and
- One (1) residual lot of 3,501m² (Proposed Lot 524).

Development consent is also sought for the following:

- Public domain landscaping and infrastructure provision;
- All subdivision works required to prepare the land for the future development;
- Utilities augmentation;
- Registration of an easement for sewer purposes;
- Construction of a new intersection on The Coast Road, comprising a roundabout that will provide new access to The Coast Road, Sharpes Beach car park and a new connection into Headland Drive. Construction of internal road network and lanes serving the proposed subdivision for residential lots; and
- Revegetation of degraded Freshwater EEC land with Melaleuca Forest on Proposed Lot 635, along the western edge of the site.

Permissibility and land use

The proposed residential subdivision part of the site is zoned part R2 Low Density Residential and part B1 Neighbourhood Centre under the BLEP 2012. The “coastal buffer” land along the eastern side of the site is identified as “Deferred Matter” under the BLEP 2012, which means this LEP does not apply. The BLEP 1987 applies to this land and zones the land 7(d) Environmental Protection (Scenic/Escarpment) Zone.

The proposed subdivision meets with the objectives of the R2 Low Density Residential and B1 Neighbourhood Centre zones, and will enable the future development of ancillary uses within the subdivision.

The proposed rising sewer main and recycled water main are proposed across Lot 50 DP 755684 and Lot 5 DP 1225206. Lot 50 is zoned R2 Low Density Residential, whereas Lot 5 is zoned RU2 Rural Landscape under BLEP 2012.

The proposed rising sewer main and recycled water main will traverse zones R2 Low Density Residential and RU2 Rural Landscape. These works are categorised as “sewerage system” and “water reticulation system”, both of which are permissible in the R2 Low Density Residential and RU2 Rural Landscape zones with consent.

Key Issues

Key issues identified for the proposed development and site include:

- Lack of provision of a Wildlife Corridor (WLC) and Plan of Management (POM)

The DCP identifies that two (2) wildlife corridors (WLC) are to be provided within the Skennars Head Expansion Area. One WLC running north to south along the western boundary of Stage 2 and the second running east to west along the southern boundary of Stage 2.

The proposed works are predominantly within Stage 1, however the sewerage and reticulated water supply works proposed as part of the development occur within the north-western section of Stage 2.

The DA does not propose to provide or secure a WLC across any part of the site or the adjoining Stage 2 land. A POM has been proposed for an east-west WLC, however there is no commitment or proposal to undertake works as part of this DA.

Council has reviewed the proposal and does not agree with the applicant's POM for the WLC and has therefore requested a POM for a WLC that is more comprehensive than the applicant's. Council's requirement is for a POM for the WLC that extends into allotments relied upon in the applicant's Ecology report regarding Ecologically Endangered Communities (EEC's) and to allotments that do not form part of this DA. Council have also sought for rehabilitation works to be undertaken as part of this DA. These works are restricted to allotments where works are proposed as part of the DA. The request for the provision of a POM

and to undertake rehabilitation works is proposed to be imposed via way of a deferred commencement condition.

- Impact on Ecologically Endangered Communities (EEC's)

Six (6) EECs listed in Schedule 1, 1A and 2 of the *TSC Act* were identified as known or likely to occur in the Study area associated with the site and were assessed.

The proposed DA includes subdivision works that will abut Freshwater Wetlands EEC, while the sewer and water main alignment proposed as part of the DA will traverse across Freshwater Wetlands EEC and intersects Swamp Sclerophyll Forest EEC.

The proposal detailed the extent of the Freshwater Wetland EEC located adjacent to the development site (western edge), however no surveys were undertaken to verify the extent of the Freshwater Wetland EEC located on Lot 5 DP 1225206 and Lot 1 DP449851. Instead, the proposal relied on the vegetation mapping undertaken by different ecological consultants during the rezoning of the land in 2007 and 2013. During a site inspection, Council identified that large areas of grazing pasture (approx. 8 ha) mapped by the proposal as Freshwater Wetland EEC were not entirely accurate. In fact, the local occurrence of Freshwater Wetland EEC occupies an area of approximately 12ha, far less than the applicant had mapped at 19ha.

The development proposes to remove 2.8ha of Freshwater Wetland EEC (24% of the local occurring Freshwater Wetland EEC) at the western edge of the subdivision works and replace it with a forested wetland community (Melaleuca Forest). Council and OEH agreed with this approach, as similar habitats immediately to the north of the site have transitioned into a dense reedland approaching 2 metres in height. In similar habitats the proliferation of dense reeds has prevented the conveyance of surface water which resulted in broad scale tree dieback. Therefore, in this situation this form of wetland community is not desirable and the proposed forested wetland community (Melaleuca Forest) is appropriate.

Given the development will directly impact on a known EEC and to be consistent with Chapter 2 Clause 3.3.3 of the DCP, Council has identified that a Freshwater Wetland EEC Offset is required because 2.8ha of Freshwater Wetland EEC (24% of the local occurrence) is being removed.

- Requirement for a Freshwater Wetland EEC Offset

Council identified that the loss of the Freshwater Wetland EEC is only deemed acceptable if the impacts to the Freshwater Wetland EEC are offset, through the revegetation and rehabilitation of a suitable Freshwater Wetland EEC within the vicinity of the site. The offset will help ensure the local occurrence of Freshwater Wetland EEC remains viable.

Council has proposed a condition requiring the applicant to provide a Freshwater Wetland EEC offset area of 8.4ha (3 x 2.8ha) within 5 kilometres of the site. The offset requirement is in addition to the restoration works within Council's nominated wildlife corridor. The condition will require the preparation of a Freshwater Wetland Offset Plan (FWOP).

The requirement for a Freshwater Wetland EEC offset area and subsequent Freshwater Wetland Offset Plan (FWOP), are recommended to be addressed via way of a deferred commencement condition.

- Inadequate Wetland Rehabilitation & Monitoring Plan (WRMP)

Council generally supports the implementation of the WRMP, however concerns are raised regarding the more technical aspects of the WRMP. The concerns include:

- The length of the restoration program;
- The location of monitoring stations;
- The trigger point levels contained within the WRMP are too high to prevent environmental decline of the wetland system;
- The long-term ownership of the restoration area; and
- Adaptive measures to be implemented if the monitoring project confirms urban development is having an adverse impact on the SEPP 14 No.91 and/or downstream EEC habitats.

Therefore, the WRMP is required to be substantially amended and this is proposed to be imposed by way of a deferred commencement condition.

- Adequacy of existing stormwater infrastructure

The majority of the proposed residential subdivision drains westwards to the wetlands along the western boundary of the site. These wetlands drain to the south and historically flowed into Chickiba Creek. However, it is understood that in the early 1970s the land was cleared and a series of drainage channels diverted the natural flow path from Chickiba Creek westwards along a constructed agricultural drain ultimately flowing into North Creek. Spoil from the excavation works was stockpiled adjacent to the excavated drains creating a series of levee banks. A series of drainage culverts were installed into the levee banks to facilitate the constructed flows from SEPP 14 Wetland.

The proposal seeks to continue to convey stormwater (via the SEPP 14 Wetland) from the development to North Creek, relying on the existing culverts and installed drains.

Council inspected the culverts and has raised the following issues:

- The culverts are in various forms of functionality. In particular, two (2) existing culverts located within an existing farm access track will require ongoing maintenance to ensure they do not fall into disrepair.

- Both culverts are located within land recommended to be included into Council's recommended wildlife corridor.
- The culverts are also located on land where the applicant proposes to install their water and sewer infrastructure.

Therefore, Council proposes to require the applicant to upgrade the drainage culverts and an easement created to permit Council to maintain and service this infrastructure. This requirement will be imposed by way of condition and has been agreed to by the applicant.

- Concessions for the dedication of the coastal buffer

The DCP seeks the coastal buffer, being that part of the site zoned 7(d) – Environmental Protection along the eastern boundary, to be dedicated at no cost to Council.

The DA proposes the dedication of the coastal buffer to Council in accordance with the DCP, but subject to concessions or in lieu of Section 94 Contributions towards regional open space. The coastal buffer is not identified as regional open space under the Ballina Open Space and Community Facilities Contributions Plan 2016. On this basis, Council does not support any such concessions, and therefore there are essentially two options available:

1. The applicant accepts to dedicate the entire coastal buffer to Council at no cost as per the requirements of the DCP; or
2. The applicant dedicates only those areas of the coastal buffer that contain stormwater infrastructure such as treatment and detention basins (including maintenance access) and public open space. The applicant creates easements and rights of way over public pedestrian and cycleway pathways, stormwater flow paths and conveyance structures and any associated land required for the maintenance of such infrastructure.

Option 1 is Council's preference, however in the absence of S94 Plan or VPA that would apply to the entire coastal buffer, dedication of the entire coastal buffer is problematic unless proposed by the applicant.

The difficulty with Option 2 is that the infrastructure and open space occupy a substantial portion of the coastal buffer area. While this infrastructure is required to be dedicated to Council in accordance with Council policy, the remaining land outside this infrastructure and open space, is not necessarily required to be dedicated to Council. This results in Council owned land being fragmented amongst privately owned land, requiring complicated legal access arrangements to be created over the various allotments for maintenance and access to the Neighbourhood Park (NP) and coastal buffer. Further the lack of delineation between public and private land will make access to the coastal buffer and NP by the local community unclear and confusing.

Therefore, it is proposed to require the applicant to provide a plan that nominates the land that will be dedicated to Council and the land to remain in private ownership by way of a Deferred Commencement Condition.

It is also proposed to require the applicant to provide a detailed access arrangements plan that addresses those areas of the coastal buffer that contain public infrastructure such as drainage facilities, public open space, public pedestrian and cycleway pathways and any associated land required for the maintenance of such infrastructure. This plan will need to include details of easement, rights of way and other legal instruments required to facilitate access.

It is proposed to impose the requirement to provide a plan of land ownership and access arrangements plan by way of deferred commencement conditions.

- Location of the Neighbourhood Park (NP)

As the entire coastal buffer may not be dedicated to Council and land required to be dedicated (to Council) is fragmented amongst privately owned land, requiring complicated legal access arrangements to be created over the various allotments for maintenance and access by both Council and the local community, the NP will become disconnected from the coastal promenade (located between Lots 346 and 348) and future neighbourhood centre. To address this issue, it is proposed to require the applicant to provide an easement for pedestrian access over the coastal promenade. This will be imposed by way of a deferred commencement condition.

- Redesign of Local Park (LP) to address stormwater plan

The LP design and landscaping treatment was based on a previous stormwater design. The new stormwater plan proposes additional batter and works around the infiltration basin (within the centre of the LP), while a large area of the LP will be used for sub-surface infiltration. Information demonstrating how water is going to get into the sub-surface infiltration has not been provided and will be requested to be provided by way of condition. In addition, an amended landscaping design for the LP will be required to reflect the new stormwater works, and will also be requested by way of condition.

- Removal of Norfolk Island Pines along The Coast Road

Approximately 76 Norfolk Island Pines are located along the eastern boundary of the site adjacent to The Coast Road property boundary. The trees are located within the coastal buffer part of the site. At the request of Council, the DA now proposes to remove between 60 - 80% of these trees.

The arborist report identifies that the tree removal aims to improve the current health of the larger trees and to maximise their future viability. Trees with co-dominant trunks are proposed for removal which is a sign of decline, as well as other smaller trees which are located too close to larger more dominant trees.

Council agrees with the trees nominated for removal on the plan prepared by Landsite, dated 8 November 2018, and a condition of consent is proposed to require compliance with the plan.

- S94 Concessions

The proposal seeks multiple exemptions from the Open Space and Community Facilities Contributions Plan and Ballina Shire Roads Contribution Plan.

Council supports the request for an exemption from a contribution towards local parks as the development provides the equivalent of two (2) LP's, being one (1) x LP within the centre of the development and one (1) x NP within the coastal buffer, as per the requirements of the S94 Open Spaces Plan. Exemptions from contributions towards Regional Open space or District Parks are not supported.

Regarding the Ballina Shire Roads Contribution Plan, the applicant is seeking that a portion of the cost of providing the relocated and upgraded intersection between Headlands Drive and The Coast Road (The Roundabout) be offset against the total contribution applicable to their development. Council does not support the variation to offset the intersection works against S94 Roads Contributions. The offset would redirect contributions generated by the development away from the adopted S94 Roads Plan.

- S64 Concessions

The S64 contributions plan requires a contribution to be paid (per allotment), for the provision of water, sewerage and rous water services to any new development. The DA proposes to upgrade the existing sewer infrastructure to accommodate future loading from the Sharpes Beach car park, the current loads generated from the existing Headlands Estate, as well as the proposed development (Stage 1) and future Stage 2. These works include constructing a sewerage pumping station (SPS) on Proposed Lot 163. The applicant considers that this infrastructure provision/upgrade, be considered as an additional benefit for works in kind, as per the Ballina Shire Council Development Servicing Plan for Wastewater and Recycled Water Supply.

The applicant estimates that at least 20% of the costs of the new SPS is attributable to the required upgrade.

Council does not agree that the neighbouring developments sewer system are underserviced. Council has never requested allowances to be made within the proposal's sewer or water systems to address alleged underservicing of adjacent developments nor the upgrade to the Sharpes Beach carpark. The applicant has been advised to design the sewer and water system to cater for the proposed development only. Furthermore, at the applicant's request, Council has agreed to provide the development with base level sewer flows from a neighbouring pump station to aid the initial stages of the development.

Therefore, as Council has not sought any additional water and sewerage works to service an unrelated development, Council does not agree with the additional concessions being sought. A condition of consent is proposed requiring all applicable contributions to be paid.

- SEPP 1 Objection to minimum lot size (40ha) – Coastal Buffer

A SEPP 1 objection to Clause 11(2)(b) of the Ballina Local Environmental Plan 1987 has been lodged with the application regarding minimum lot size. The standard is for a minimum lot size of 40Ha. Proposed Lot 347 has an area of 4.6049ha, equating to a variation of 885%. Proposed Lot 348 is also located within the coastal buffer and has an area of 5390m² (0.5390ha). However, Lot 348 is for the creation of a public reserve, being the Neighbourhood Park, and can be created as exempt development, under clause of Clause 2.75 State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

The SEPP 1 objection only relates to Lot 347. Concurrence from the Department of Planning and Environment (DPE) was provided regarding Lot 347 when the application was originally lodged. Lot 348 did not exist at that point (i.e. the neighbourhood park was not located on an individual lot). The DPE was provided an amended subdivision layout that included Lot 348. The DPE has since advised that their concurrence still applies.

The proposed subdivision generally incorporates a road network that runs in an east west direction, with perimeter roads running north to south as sought by the DCP, maximising the number of allotments that have a north/south orientation. The proposed road and allotment orientation is consistent with the DCP and is considered to promote maximum solar access to the allotments. The allotment areas comply and some instances exceed the minimum lot size required under the LEP and DCP.

The proposed subdivision will provide increased housing that will service the growing number of residents within the locality. The proposal provides a new intersection that will facilitate improved vehicle access to the Sharpes Beach Public Car Park as well as embellishment of a coastal buffer that will include a neighbourhood park and landscaped public reserves.

The proposed subdivision will create a pedestrian friendly residential development which reflects its coastal location, providing increased connections to local parks, coastal wetlands, Sharpes Beach and the public car park, as well as adjacent residential communities.

Therefore, the proposed subdivision is considered to be consistent with the Skennars Head Village Expansion Area of the DCP.

Exhibition period and submissions

The application was placed on public exhibition between the 7 June 2017 to 17 July 2017 and again on the 22 November 2017 to 22 December 2017, in accordance with the requirements of Chapter 1 of the Ballina Development Control Plan (BDGP) 2012. Council received a total of 114 submissions (90 Individual letters/emails and 24 proforma letters) in relation to the application, raising a number of issues regarding the proposed development. The matters raised have been considered within this report, and each issue has been addressed and responded to.

All relevant matters under Section 4.15 of the *Environmental Planning and Assessment (EP&A) Act 1979* have been considered in the assessment of the application. The assessment raises a number of issues, many of which are interrelated and dependent on one another to be resolved. Therefore, it is proposed to address each of the key issues via way of a deferred commencement condition.

1.0 Introduction

Development Application 2017/244 was lodged with Council on 17 May 2017. An assessment of the Development Application (DA) has now been completed and the application is presented to the Joint Regional Planning Panel for determination.

2.0 Description of Site and Surrounds

2.1 The Site

The site forms part of the land commonly referred to as Dr Stewart's Farm, located approximately 1.6km north of East Ballina, and 6km north-east of Ballina and immediately to the south of Headlands Estate. The DA site consists of an area of 34.05ha within Lot 6 DP 1225206, extending from The Coast Road to the edge of the coastal wetlands on the western edge of the site. The DA site also extends to Lot 50 DP 755684 and Lot 5 DP 1225206 where a new recycled water main and sewer line are proposed.

The land is zoned part R2 Low Density Residential under the Ballina Local Environmental Plan 2012 (BLEP 2012) and part 7(d) under Ballina Local Environmental Plan 1987 (BLEP 1987).

Figure 1 illustrates an aerial view of the site's location and the location of the proposal within the urban release area.



Figure 1: Location of site within Skennars Head Expansion Area

The Survey Plan in Figure 2 details the location of the site and allotments included as part of the proposed Development Application.

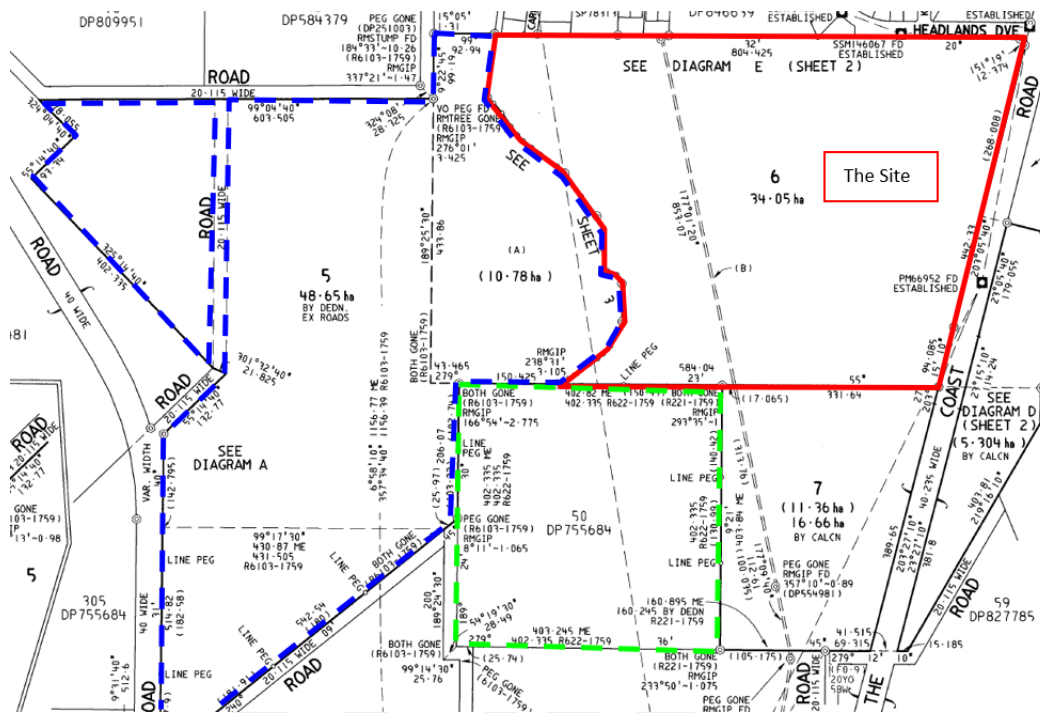


Figure 2: Site of proposed DA subdivision works (red) and DA related sewer and reticulated water works (green and blue)

The eastern boundary of the site is lined with Norfolk Pines, which front onto a shared path running alongside The Coast Road. Figures 3 to 6 detail the location of the site relative to The Coast Road and Sharpe's Beach, which lies to the east of the site.

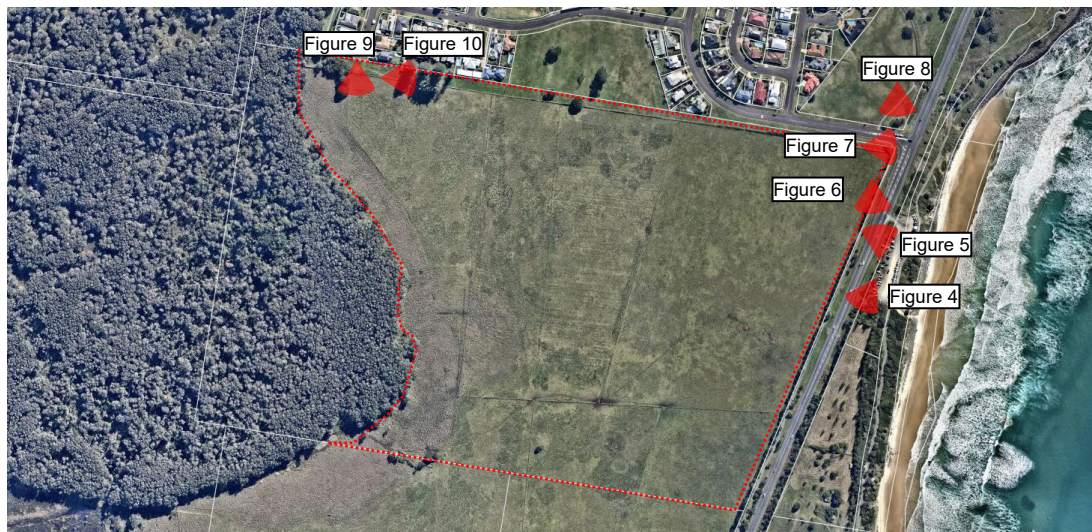


Figure 3: Aerial view of the site and corresponding view cones



Figure 4: Photo taken from the eastern side of The Coast Road, looking south. The site is located behind the Norfolk Island Pines.



Figure 5: Photo taken from the eastern side of The Coast Road, looking north. Note, access to Sharpes Beach car park shown in top right of photo. The site is located behind the Norfolk Island Pines, on the opposite side of the road.



Figure 6: Photo taken from the from the pedestrian and bicycle pathway on the western side of The Coast Road, looking south.

Figures 7 to 10 details the site from the north-western corner, looking south towards the SEPP 14 Wetlands (tall trees) and across the site towards The Coast Road.



Figure 7: Photo taken from the corner of Headlands Drive and The Coast Road, looking east. The site is located behind the wire fence (right hand edge of the photo).



Figure 8: Site when viewed from the corner Headlands Drive and The Coast Road, looking south



Figure 9: Site when viewed from the north-western corner, at the end of Carroll Ave, looking south along the western boundary towards the SEPP 14 Wetlands (tall trees)



Figure 10: Site when viewed from the north-western corner, at the end of Carroll Ave, looking east, towards the backyards of the properties within Redford Drive. Note. Norfolk Island Pines which are proposed to be protected during construction.

The topography of the site essentially comprises a ridge running parallel to the eastern boundary along the length of the site. This results in the majority of the site sloping to the west, towards the SEPP 14 Wetlands, while the eastern edge falls towards The Coast Road. The vegetation across the site is primarily grass with the exception of a row of Norfolk Island Pines along the eastern boundary. An area of dense tree coverage is located to the west of the site being the SEPP 14 protected Wetlands.

The site is currently used for agricultural purposes, with a history of cattle grazing. Agricultural infrastructure is limited to fencing with two (2) dwellings and some cattle yards on the land to the south of the DA site, within existing Lot 7 DP 1225206 (outside the DA site).

There is currently no vehicular access to the site, with access only via the driveway associated with the two (2) dwellings within existing Lot 7 DP 1225206.

2.2 Surrounds

The Coast Road and Sharpe's Beach lies to the east of the site. The Headlands Estate established residential subdivision lies directly to the north, which includes two schools, a Primary School (Holy Family Catholic Primary School) a High School (Xavier Catholic College) and a Child Care Centre (St Anne's Long Day Care Centre). Headland Drive runs along the eastern part of the north boundary of the site, before diverting into the Headlands Estate. The remainder of the northern boundary of the site is fronted by dwellings and an open space area being Spoonbill Reserve.

A coastal wetland lies to the west of the site, with the boundary of the wetland (as designated under SEPP 14 – Coastal Wetlands) located to the west of the western boundary of the site.

The site forms part of a larger urban release area. The current application relates predominately to Lot 6 DP 1225206, however construction of a new rising sewer main and reticulated water supply through Lot 6, Lot 50 DP 755684 and Lot 5 DP 1225206 is also proposed to service the proposed subdivision.

3.0 Details of Proposal

The Development Application (DA) is for the Stage 1 development of the site. The development involves:

- Torrens Title subdivision to create:
 - 229 residential lots ranging in size from 451m² to 789m²;
 - Three (3) lots for a proposed drainage reserve to be dedicated to council (Proposed Lots 444, 349 and 160);
 - One (1) lot for associated drainage works to be retained in private ownership (Proposed Lot 635);
 - One (1) lot for proposed sewer pumping station (Proposed Lot 163) to be dedicated to Council;
 - Five (5) lots for proposed Public Reserves (Proposed Lots 347, 348, 442, 632 and 633) to be dedicated to Council;
 - Six (6) super lots (ranging in size from 1,453m² to 13,332m²) for future Development Applications for subdivision to accommodate a neighbourhood centre and additional residential lots (Proposed Lots 162, 345, 344, 346, 343, 631) and
 - One (1) residual lot of 3,501m² (Proposed Lot 524).

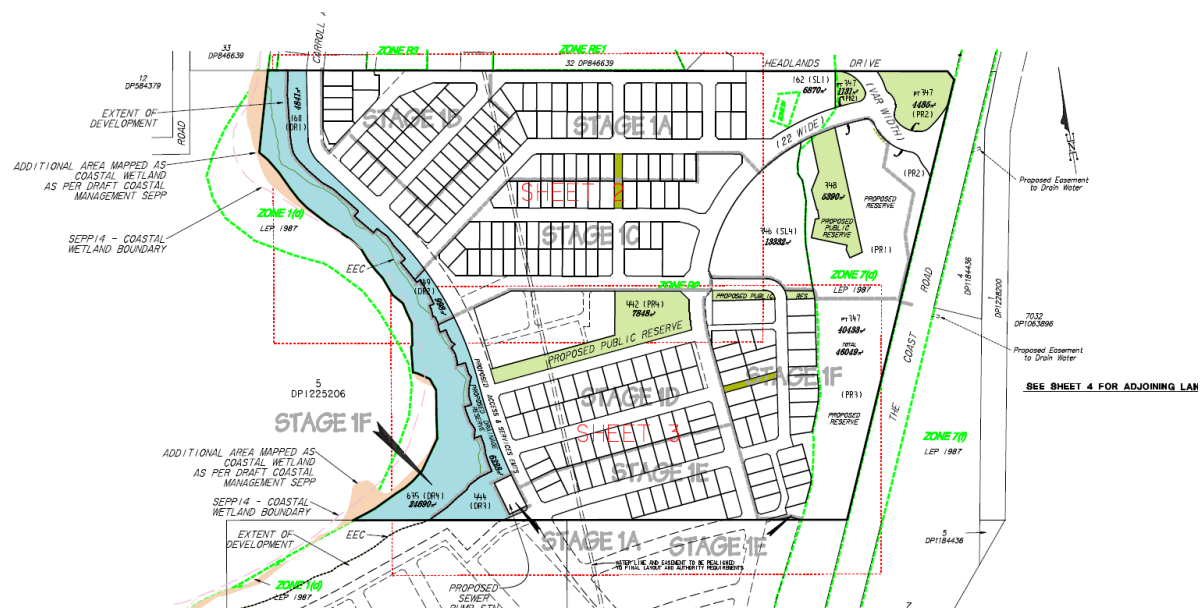


Figure 11: Proposed subdivision

- Public domain landscaping and infrastructure provision for the local park, neighbourhood park and public reserve lots (coastal buffer). It is proposed to dedicate 2,000m² of the local park (Proposed Lot 442), 4,000m² of the neighbourhood park (Proposed Lot 348), the public reserves of 812m² and 325m² (Proposed Lots 632 and 633) and drainage reserves (Proposed Lots 160, 349 and 444) to Council.



Figure 12: Proposed landscape masterplan, detailing the proposed local park (centre of site), neighbourhood park (within the coastal buffer) and coastal buffer to the eastern edge of the site.



Figure 13: Proposed local park

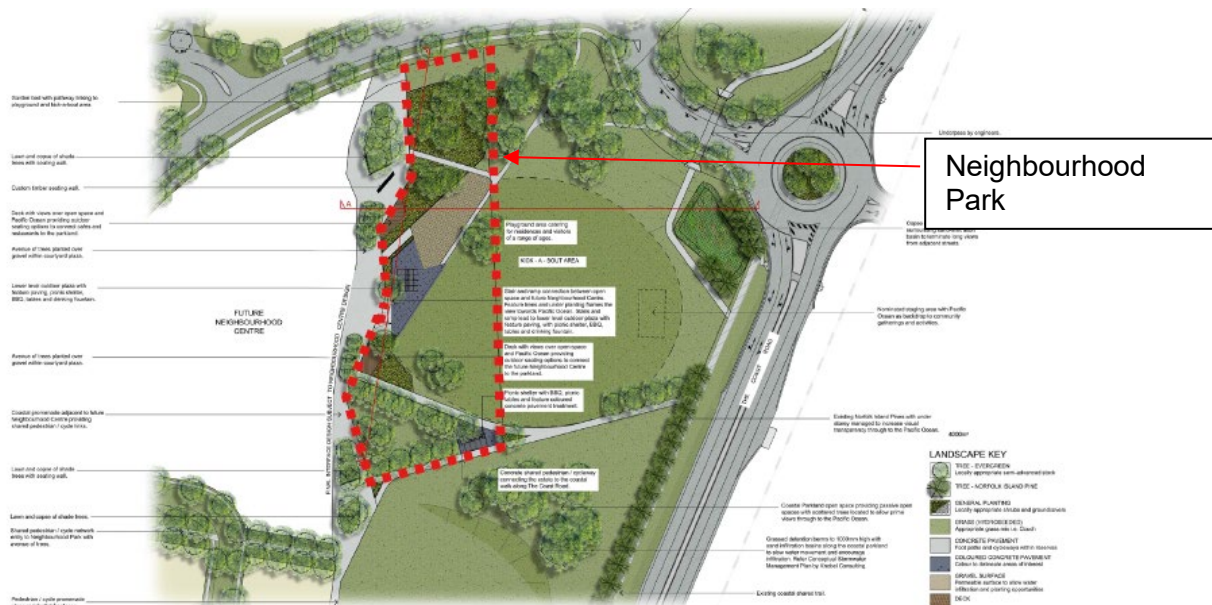


Figure 14: Proposed neighbourhood park and coastal buffer

- All subdivision works required to prepare the land for the future development comprising:
 - Site preparation and earthworks including the importation of fill material and regrading works; and
 - Stormwater management and drainage works including the continued discharge of stormwater to the coastal wetlands and to The Coast Road.
- Road and pavement construction including the construction of a new access to The Coast Road and associated upgrading of the existing The Coast Road and Sharpes Beach car park. Access junction within the road reserve with a roundabout controlled intersection for:
 - Connection into Headland Drive; and
 - Construction of internal road network and lanes serving the proposed subdivision for residential lots.
- Tree removal in accordance with staged development and generally as shown on the landscape plan and earthworks plan.
- Utilities augmentation including:
 - The relocation of the existing water supply trunk main in stages through the site to the western boundary;
 - Construction of a new recycled water main through the site and through Lot 50 DP 755684 and Lot 5 DP 1225206 to connect to the existing recycled water main;
 - Construction of a new rising sewer main through the site and through Lot 50 DP 755684 and Lot 5 DP 1225206 to connect into the existing sewerage pumping station on North Creek Road; and
 - Stormwater works and augmentation of the existing stormwater network under The Coast Road to outlets in Lot 4 DP1184436 and Lot 7 DP121248, and registration of easement on the two (2) respective lots.
- Registration of an easement through Lot 50 DP755684 and Lot 1 DP184117 for sewer purposes.

- Staging of the subdivision works and landscaping works in Stage 1 in accordance with the staging plan accompanying the DA.
- Variation under State Environmental Planning Policy No 1 of the Deferred Matter land for the reduction on the minimum lot size of the future Lot 347.
- Variations to Council's Infrastructure funding and provision standards as follows:
 - Open Space and Community Facilities Contributions Plan 2016 are as follows:
 - Exemption from contribution for local parks @\$247.04/lot;
 - Exemption from contribution for district parks @ \$1,093.38/lot;
 - Exemption from contribution for regional open space @ \$1,789.36/lot; and
 - This will result in the reduction of the contribution from \$7,812.75/lot to \$4,682.97/lot based on the un-indexed contribution rates stated in the Section 94 Plan.
- The contribution rate per lot under the Ballina Open Space and Community Infrastructure Contributions Plan 2016 be reduced from \$7,812.75/lot to \$4,682.97/lot to allow for the provision of open space facilities within the subject development.
- That the cost of the treatment of the intersection of the realignment of Headlands Drive and The Coast Road be offset against the contribution payable under Ballina Shire Roads Contribution Plan Version 4.0.
- Compensation, if necessary, for any additional water and sewerage works provided, that Council requests to serve development that is not part of this proposal.

4.0 Background of Proposal

4.1 Skennars Head Rezoning

On 3 October 2013, the Planning Proposal (PP) for 163.9 hectares known as the Skennars Head Expansion Area (SHEA) was presented to the Joint Regional Planning Panel (JRPP) for consideration. The PP included a range of key environmental commitments that would be implemented if a portion of the land within the site was rezoned for urban purposes. Key environmental commitments included:

- Conserving and protecting to the full extent significant wetlands and vegetation communities;
- Conserving areas of Aboriginal significance;
- Establishing a planning and management framework for a rural, ecological and visual green belt across the south of the subject site; and
- Maintaining rural pursuits on those parts of the land unsuitable for urban or conservation purposes or intensive landscape management.

The PP included a Concept Environmental Management Plan (CEMP). The CEMP described how the environmentally significant portions of the land would be managed.

The CEMP recommended:

- The creation of a planted wildlife corridor to link ecologically important; habitats located in the south portion of the land subject to the rezoning;
- Establishment of a 50m buffer zone to SEPP 14 wetland and residential development;
- The exclusion of cattle from ecologically significant habitats;
- A detailed hydrological study to restore the original flow path from the SEPP 14 Wetland to Chickiba Creek;
- The replanting of land zoned 7d; and
- Feral animal and weed control.

On 11 April 2014, the Ballina LEP 2012 was amended to rezone part of Lot 265 DP 1212348, Lot 50 DP 755684 and Lot 1 DP 1184436 from RU1 (Primary Production) to R2 (Low Density Residential) with a parcel of land in Lot 265 DP 1212348 zoned B1 (Local Neighbourhood Centre) measuring approximately 870m².

The Minimum Lot Size, Floor Space Ratio and Height of Buildings Maps were also amended to:

- Reduce the minimum lot size from 40ha to 450m² in the area zoned R2 and B1; and
- Introduce an FSR of 0.8:1 to the area zoned B1.

At this time, an Urban Release Area Map was also included in the BLEP, identifying the area zoned R2 as an Urban Release Area. Clause 6.3 of the BLEP required that development on land in an urban release area occur only after a development control plan that included specific controls had been prepared for the land.

On 27 October 2016, Council adopted the Skennars Head Expansion Area DCP. The current application relates to Stage 1 as identified in the Structure Plan which forms part of the DCP.

4.2 Current Planning Proposal

A Planning Proposal (PP) for the relocation and expansion of neighbourhood commercial facilities within the Skennars Head Expansion Area was submitted on 14 December 2017 for Gateway approval.

The PP seeks to achieve the following amendments to Ballina LEP 2012:

- Apply a neighbourhood commercial zoning (B1 Neighbourhood Centre zone) to an area of approximately 13,200m²;

- Apply a medium density zoning (R3 Medium Density Residential) to parts of the site with a total combined area of 29,250m²;
- Rezoning an area of land measuring 870m², currently zoned B1 Neighbourhood Centre, to a combination of R3 Medium Density zone and R2 Low Density zone;
- Apply a floor space ratio of 0.8:1 to the area subject to the neighbourhood commercial zoning (consistent with the existing FSR applicable to the current B1 Neighbourhood Centre zone on the land); and
- Include a site-specific development control provision that would limit the total area of commercial floor space permissible on the site to floor space ratio of 0.4:1.

The PP received Gateway approval on 15 February 2018 subject to conditions and was submitted to a Council meeting on 25 October 2018 for finalisation and was deferred. However, at a subsequent Council meeting on 22 November 2018, the decision to defer the PP was rescinded and Council resolved to endorse the PP.

4.3 Other Development Applications relating to the site

Development Application No. DA2016/123 was approved on 6 September 2016 and granted consent to a three (3) lot boundary adjustment between Lot 265 in DP1212348, Lot 1 in DP1184436 and Lot 1 in DP184117 on The Coast Road, Ballina.

The approved boundary adjustment dissolved the abovementioned lots and created Lots 5, 6 and 7 DP 1225206. Lot 6 is essentially the residential zoned portion of the site, proposed to be subdivided under this DA. Lot 5 is the adjoining wetlands to the west and Lot 7 being residue agricultural land to the south.

The Subdivision Certificate for the associated boundary adjustment was lodged with Council on 7 February 2017. The plan was formally registered with NSW Land Registry Services on 29/6/2017.

The subject Development Application was lodged on 17 May 2017 before the boundary adjustment plan was formally registered, therefore the DA originally referred to the site as Lot 265 in DP1212348, Lot 1 in DP1184436 and Lot 1 in DP184117. However, in responding to request for additional information, the applicant also amended the site description/address to reflect the newly created Lot 6 DP 1225206. In doing so, the applicant removed the SEPP 14 Wetland area from the site of this DA which is located on the newly created lot, Lot 5 DP 1225206, however, works associated with the proposed water and sewer lines to the service the development are located on the southern section of Lot 5 DP 1225206.

4.4 Development Application History

A pre-lodgement meeting was held on the 13 February 2017.

17 May 2017	Development Application (DA) – DA2017/244 lodged with Council.
7 June 2017 – 17 July 2017	DA placed on exhibition for a period of 40 days.
8 June 2017	Request for Information (RFI) sent. The issues raised included owners consent and fees.
7 August 2017	RFI sent. The issues raised included tree retention, lot sizes, density, coastal reserve interface, intersection treatment, road and lane widths, stormwater, wildlife corridor enhancement, Freshwater Wetland EEC restoration works and habitat protection, groundwater recharge, sewerage works and NSW OEH concerns.
21 September 2017	Email RFI sent. The issues raised related to the Acid Sulfate Soils Investigation Report.
06 Nov 2017	Amended DA submitted responding to Council's RFI's dated 8 June 2017, 7 August 2017 & 21 September 2017. Addendum 2 and completely updated DA package with updated consultant reports provided.
10 Nov 2017 – 22 Dec 2017	Amended DA placed on exhibition for a period of 42 days.
22 February 2018	RFI sent. The issues raised related to the protection of trees, lot sizes, stormwater, detention and conveyance, groundwater, laneway access, APZ, wildlife corridor, interface between development and SEPP 14 buffer and NSW OEH concerns.
29 March 2018	Amended application submitted addressing Council's RFI dated 22 February 2018. SEE Addendum 3, stormwater and response to public submissions.
9 May 2018	RFI sent. The issue raised related to amended plan options to be relied on and associated tree retention.
11 May 2018	Email RFI sent. The issue raised related to road alignment and laneway width.
18 May 2018	Amended application submitted responding to Council's RFI dated 9 May 2018.

12 June 2018	Amended application submitted (Addendum 4) responding to referral issues raised by Office Environment Heritage (OEH) and NSW Department of Primary Industry (Fisheries).
25 June 2018	Additional information received from Applicant's Ecologist relating to wetland interface.
6 July 2018	Additional Information submitted – SEE Addendum 5, heritage, ecological, engineering/infrastructure, landscape, sewer & water, subdivision and visual assessment.
20 July 2018	Email RFI sent and meeting held between Applicant and Council. The issues raised related to wildlife corridors, coastal buffer, local parks and dedication, underpass, management of SEPP 14 Wetlands and EEC/SEPP 14 Wetland buffer, stormwater drainage reserves and groundwater.
27 August 2018	Additional Information submitted - SEE Addendum 6, Geotech and stormwater.
9 September 2018	Additional Information submitted – Stormwater modelling data and request for the application to be determined in its current form, based on the information submitted to date.

5.0 Referrals

Internal

Referral Type	Recommendation
Engineering	
o Flooding	Approval subject to conditions
o Stormwater	Approval subject to conditions
o Traffic	Approval subject to conditions
o S94 contributions	Approval subject to conditions
o Open Space	Approval subject to conditions
Environmental Scientist	Approval subject to conditions
Environmental Health Officer	Approval subject to conditions

Table 1: Internal Referrals

External

Referral Type	Recommendation
Rural Fire Service (RFS) (Integrated Development)	Bushfire Safety Authority issued
NSW Office of Environment & Heritage – General referral	Approval subject to conditions
NSW Office of Environment & Heritage – Heritage referral (Integrated Development)	GTAs issued
NSW Department of Primary Industries (Fisheries) – SEPP 62 referral	Concerns raised by fisheries, however they been addressed in this report.
NSW Office of Water (Integrated Development)	GTAs issued
Roads & Maritime Services (RMS)	Approval subject to conditions
NSW Department of Planning & Environment (DPE) – SEPP 1	Concurrence issued
NSW Department of Planning & Environment (DPE) – Clause 6.1 of BLEP 2012	Satisfactory Arrangements Certificate issued

Table 2: External Referrals

Issues raised in referrals are addressed in Section 6.2.9.

6.0 Statutory Assessment

6.1 Environmental Protection and Biodiversity Conservation Act 1999

The Commonwealth *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* requires consideration of the potential for a “significant impact” to be imposed by an activity on any “matter of national environmental significance” (MNES). The nine matters of national environmental significance to which the *EPBC Act* applies are:

- World heritage properties;
- National heritage places;
- Wetlands of international importance (often called 'Ramsar' wetlands after the international treaty under which such wetlands are listed);
- Nationally threatened species and ecological communities;
- Migratory species;
- Commonwealth marine areas;
- Great Barrier Reef Marine Park;
- Nuclear actions (including uranium mining); and
- A water resource, in relation to coal seam gas development and large coal mining development.

Under the *EPBC Act*, any action which “*has, will have, or is likely to have a significant impact on a matter of national environmental significance*”; is defined as a ‘controlled action’ and required approval from the Commonwealth Department of the Environment (DoE) who is responsible for administering the *EPBC Act*.

The proposed development is accompanied by an Ecological Assessment prepared by Ecological Australia Pty Ltd, dated November 2017 and subsequent Addendum dated July 2018 (ELA Report) for the proposed Stage 1 works. The Ecological Assessment identified MNES on or near the Study Area.

The ELA Report undertook an impact assessment under the *EPBC Act* on those species known or likely to occur in the Study Area that could be directly or indirectly impacted by the proposed development, identifying two threatened flora species, two (2) threatened fauna species and three (3) migratory species as known or likely to occur in the Study Area and potentially impacted by the proposed development.

The two (2) Threatened Flora Species identified are:

- Southern Swamp Orchid (*Phaius australis*)
- Hairy Joint Grass (*Arthraxon hispidus*)

The ELA Report highlighted that a previous survey of Hairy Joint Grass in 2013 indicated a decline in the abundance of the plants at the site and species were not recorded in the current survey. The ELA Report concludes that the species no longer occurs at the site. The ELA Report concluded that the Study Area does not contain an important population of this species and neither species would be impacted by the proposed development.

The two (2) Threatened Fauna species identified are:

- Grey-headed Flying-fox (*Pteropus poliocephalus*)
- Australasian Bittern (*Botaurus poiciloptilus*) (bird)

The ELA Report concluded that the proposed development is highly unlikely to impact adversely on the Grey-headed Flying-Fox as it will not directly impact on habitat for these species and the indirect impacts have been assessed as unlikely to be significant.

With regards to the Australasian Bittern (*Botaurus poiciloptilus*), the ELA Report concludes that the areas of paperbark forest within the SEPP 14 Coastal Wetland where the species has been identified are also highly unlikely to be indirectly impacted by the proposed development, and therefore concludes that the proposed development is considered unlikely to lead to a long-term decrease in the size of a population of the Australasian Bittern.

The three (3) Migratory Specifies identified are:

- Black-faced Monarch;
- Latham's Snipe; and
- White-throated Needletail.

The Black-faced Monarch, Latham's Snipe and White-throated Needletail were identified from wetlands within the Study Area and further south. Only the Latham's Snipe was identified from within the subject land (Stage 1 and 2 and surrounding lots). This species was identified to the west of the proposed development footprint, on the edge of the exotic pasture and freshwater wetland plant communities. There are large amounts of habitat in areas adjacent to the proposed development that will not be impacted, where the species have been identified.

Thus, the ELA Report concluded that the proposed development will not have any substantial effects on populations of these highly mobile and migratory species.

Council's Environmental Scientist reviewed ELA's Report and did not object to the findings and general conclusion that the impacts of the development are acceptable.

Finally, no World Heritage Properties, Commonwealth Marine Areas, or Commonwealth Land will be affected by the proposal.

6.2 Environmental Planning and Assessment Act 1979

The primary state planning legislation for NSW is the Environmental Planning and Assessment Act 1979 (*EP&A Act*). The *EP&A Act* institutes a system of environmental planning and assessment in NSW and is administered by the NSW DPE, and largely implemented by Councils.

The relevant sections for consideration are as follows.

6.2.1 Section 1.7 – Significant effect on threatened species, populations or ecological communities, or their habitats

This section is integrated with the *Threatened Species Conservation (TSC) Act* and impacts are assessed through the application of the Assessment of Significance (7-part test).

The *Threatened Species Conservation Act 1995 (TSC Act)* was recently repealed and replaced by the *Biodiversity Conservation Act 2016*. Under transitional provisions pursuant to Biodiversity Conservation (Savings and Transitional)

Regulation 2017, the former planning provisions continue to apply (and Part 7 of the new *Biodiversity Conservation Act 2016* does not apply) to the determination of a pending or interim planning application.

An Assessment of Significance was undertaken by the applicant's Ecologist 'Ecological Australia Pty Ltd', dated November 2017 ('ELA Report') and subsequent Addendum dated July 2018, as part of the Ecological Assessment of the proposal.

Four (4) listed plant species, 13 listed fauna species and six (6) EECs listed in Schedule 1, 1A and 2 of the *TSC Act* were identified as known or likely to occur in the Study area associated with the site and were assessed.

The location of EEC's is shown in the diagram at Figure 15a, prepared by ELA.

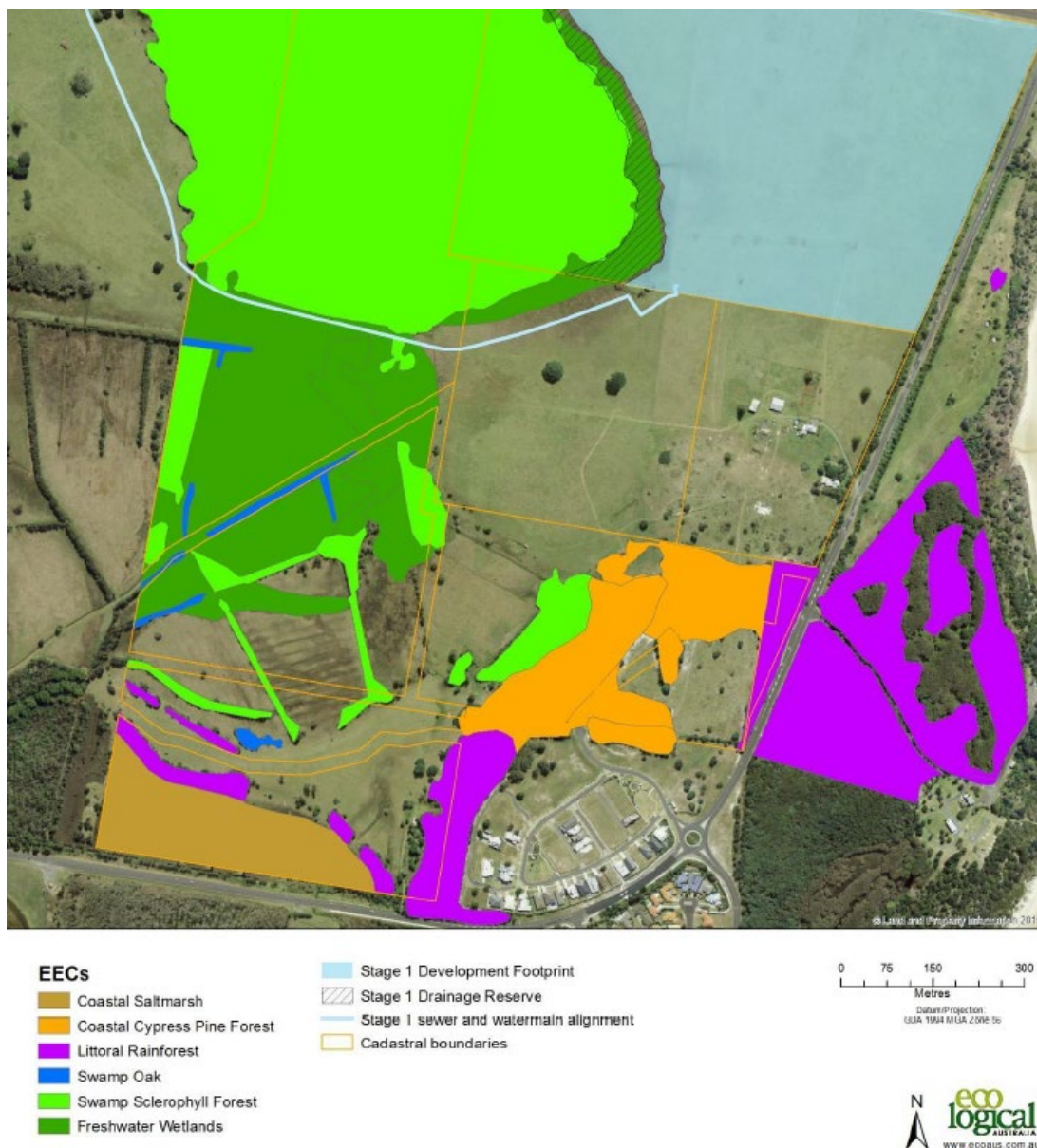


Figure 15a: Map showing location of EEC's (Source: ELA)

The proposed DA includes subdivision works (coloured light blue), that will abut the Freshwater Wetlands EEC (dark green), while the sewer and water main alignment (light blue line) proposed as part of the DA, will traverse across Freshwater Wetlands EEC and intersects Swamp Sclerophyll Forest EEC (light green). Further, the applicant seeks to convey stormwater via existing farm culverts that are currently in various forms of functionality, which traverse Freshwater Wetlands EEC (Dark Green), further south of the sewer and water main alignment.

The ELA Report concluded that no listed species or their associated preferred habitat would be directly impacted by the proposed development. Further, that the proposed development is highly unlikely to significantly impact on the threatened species or ecological communities assessed.

The ELA report included detailed vegetation (plots) and soil surveys to confirm the extent of the Freshwater Wetland EEC located adjacent to the development site (western edge), however no surveys were undertaken to verify the extent of the Freshwater Wetland EEC located on Lot DP 5 1225206 and Lot 1 DP449851. Instead, the ELA Report relied on the vegetation mapping undertaken by different ecological consultants during the rezoning of the land in 2007 and 2013. The ELA Report identified a total of 19ha of Freshwater Wetland EEC occurring with the study area and the development would result in the removal of approximately 2.8ha, equating to 15% of the local occurring Freshwater Wetland EEC.

However, during a recent site inspection, Council's Environmental Scientist identified that the ELA report mapped large areas of grazing pasture (approx. 8 ha) as Freshwater Wetland EEC. While the pasture areas do contain plants listed in the Scientific Determination for Freshwater Wetlands, the areas of exotic pasture do not contain any significant standing water Freshwater Wetland EEC. Further, due to slight changes in topography, Swamp Oak and Paperbark Trees were observed regenerating within areas of pasture grass. Consequently, it has determined that it is highly likely these areas of pasture would regenerate into a forested vegetation community rather than a Freshwater Wetland EEC.

Thus, Council's Environmental Scientist has advised that the local occurrence of Freshwater Wetland EEC occupies an area of approximately 12ha and the development will remove 24% of that local occurrence. A map detailing the local occurrence of Freshwater Wetland EEC within Lot DP 5 1225206 and Lot 1 DP449851 is shown in Figure 15b.

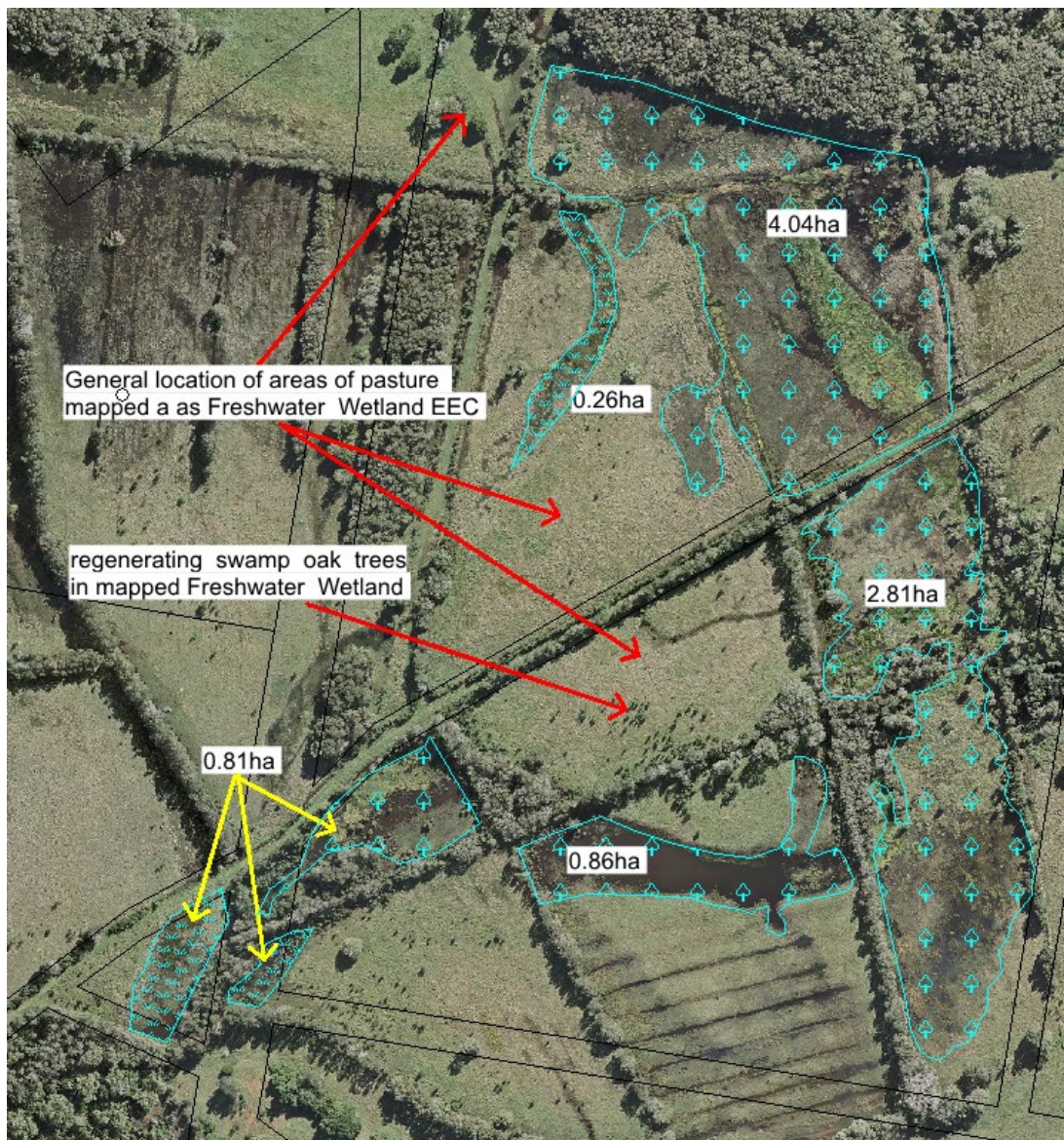


Figure 15b: Map showing Freshwater Wetland EEC and pasture areas undertaken by Council's Environmental Scientist

Otherwise, Council's Environmental Scientist generally agrees with the findings contained within the ELA Report, and is of the view that the impact on the Freshwater Wetland EEC is acceptable, subject to the provision of an EEC offset on neighbouring land. This requirement and the impact of the proposal on EEC's is discussed in greater detail under Section 6.2.9 of the report.

Fisheries Management Act 1994

The *Fisheries Management Act 1994 (FM Act)* provides for the protection, conservation and recovery of threatened species defined under the *FM Act*. It also makes provision for the management of threats to aquatic threatened species, populations and ecological communities defined under the *FM Act* as well as the protection of fish and fish habitats in general.

In this regard, the application was accompanied by an Ecological Assessment (report) prepared by Ecological Australia, dated November 2017 that included an assessment of significance (7-part test) to the species, populations and ecological communities listed in 4, 4A and 5 of the *FM Act*. While the report found that no aquatic habitats or species would be impacted by the proposed works, correspondence from the Department of Primary Industries – Fisheries (DPI Fisheries), dated 18 May 2018, identified that the proposal is likely to impact on key fish habitat and uses of estuarine resources, regarding buffers to Key Fish Habitat. It was further noted that the impacts of the discharge of stormwater from the repurposed agricultural drain has not been adequately modelled or tested in the accompanied consultant reports, specifically the impact of water quality on Priority Oyster Aquaculture Areas which are as close as 500 metres from the drain outlet.

In response to the DPI Fisheries letter dated 18 May 2018, the applicant met with DPI Fisheries on 1 June 2018 (Council was not present at the meeting). On the 12 June 2018, the applicant provided Council a response to the DPI Fisheries letter dated 18 May 2018, including additional stormwater modelling and testing.

The applicant's response was forwarded to the DPI Fisheries for review, who responded and raised the same issues.

Council's Environmental Scientist and Engineer reviewed the fisheries response and identified that there is an existing problem with acid sulphate rich waters entering North Creek. The applicant acknowledged that during times of low flow, water discharged into North Creek via their preferred conveyance will contain acid sulphate rich or low pH levels waters. However, as the development will not increase the volume and/or the frequency of stormwater discharge and their development is not changing the existing situation, Council's Environmental Scientist has identified the applicant is not required to address this broader catchment issue.

Regarding buffers to Key Fish Habitats, according to NSW Fisheries the SEPP 14 and its associated fisheries habitat are Class 3 Minimal Key Fish Habitat. To comply with "Fisheries NSW Policy and Guidelines for Fish Habitat Conservation and Management" Class 3 Fisheries habitats require a buffer zone ranging from 10-50m.

The proposal complies with NSW Fisheries buffer requirement to key fish habitat as the residential portion of the development is located approximately 50m from boundary of SEPP 14. In addition, the primary fish habitat (waterways) are further removed from the development given they are located within SEPP 14. The revegetation works proposed by the developer which is not known as fish habitat will further enhance the ecological value of the fish habitat associated with SEPP 14.

6.2.2 Section 4.46 – Integrated Development

National Parks and Wildlife Act 1974 (NPW Act)

Under section 89A of the *NPW Act*, Aboriginal objects (and sites) must be reported to the Director General of OEH within a reasonable time (unless it has previously been recorded and submitted to AHIMS). Part 6 of the *NPW Act* states that it is an offence to harm or desecrate an Aboriginal object or Aboriginal place, without an Aboriginal Heritage Impact Permit (AHIP).

An AHIP is required where a proposed activity would – directly or indirectly – harm an Aboriginal object or a declared Aboriginal place.

An Aboriginal Cultural Heritage Assessment (ACHA) and Archaeological Technical Report was undertaken by Ecological Australia Pty Ltd, dated May 2017.

The Archaeological Technical Report prepared by Ecological Australia Pty Ltd, identified two (2) new aboriginal sites, along with two (2) previously identified sites. Therefore, a total of four (4) Aboriginal sites within the development area are identified and are as follows:

- Skennars PAD 1 (AHIMS# 04-5-0210) PAD Low Significance
- Location 18 (AHIMS#04-5-0202) Midden High Significance
- SK1 (AHIMS# 04-5-0326) Stone artefact Low Significance
- SK2 (AHIMS# 04-5-0327) Stone artefact Low Significance

Thus, prior to the commencement of any works affecting the site, including soil disturbance an AHIP must be in place.

The development application was referred to The Office of Environment and Heritage (OEH) seeking General Terms of Approval (GTA) in accordance with Section 4.46 of the *EP&A Act*, and is classified as integrated development. The OEH issued the GTA on the 18 May 2018.

The GTAs have been incorporated into the draft conditions (Schedule 2).

Water Management Act 2000

Under Clause 91E (1) of the *Water Management Act 2000 (WM Act)*, a person, who carries out a controlled activity in, on or under waterfront land, requires a controlled activity approval for that activity.

Waterfront land means:

(a) the bed of any river, together with any land lying between the bed of the river and a line drawn parallel to, and the prescribed distance inland of, the highest bank of the river, or

The *WM Act* defines a 'lake' as including 'a wetland, a lagoon, a saltmarsh and any collection of still water, whether perennial or intermittent and whether natural or

artificial' The SEPP 14 wetlands and the freshwater wetlands on the western boundary of the site fall within the above definition of a lake and are defined as waterfront land. The proposed development is within 40m of these areas, and approval under the *WM Act* is required.

Water NSW reviewed the application and issued General Terms of Approval (GTA), dated 13 April 2018, which can be found in Attachment 2 - Draft Conditions of Consent.

Rural Fires Act 1997

The site is nominated as 'Bushfire prone land'. The proposed development (residential subdivision) constitutes 'integrated development' pursuant to s4.46 of the *EP&A Act*. Thus, A Bushfire Hazard and Management Plan, prepared by Stantec, dated May 2017 was submitted with the application pursuant to s100B of the *Rural Fires Act 1997 (RF Act)*.

The application was referred to the New South Wales Rural Fire Service (NSW RFS) seeking general terms of approval for the above Integrated Development Application in accordance with Clause 55(1) of the Environmental Planning and Assessment Regulation 2000. The New South Wales Rural Fire Service (NSW RFS) issued GTAs, under Division 5 of the *EP&A Act*, and a Bush Fire Safety Authority, under Section 100B of the *RF Act*. The GTAs are included as part of the recommended conditions which can be found in Attachment 2 - Draft Conditions of Consent.

Roads Act 1993 (Roads Act)

The Coast Road is a classified (Regional) road (MR545). Ballina Shire Council is the roads authority for all public roads (other than freeways or Crown roads) in the local government area pursuant to Section 7 of the Roads Act 1993 (Roads Act). Council is responsible for setting standards, determining priorities and carrying out works on Local and Regional roads. Roads and Maritime's concurrence is required prior to Council's approval of works on classified (Regional) roads under Section 138 of the Roads Act 1993.

Under Section 138 of the *Roads Act 1993 (Roads Act)*, concurrence of the Roads and Maritime Services (RMS) is required if the following is proposed

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

The application proposes the following works:

- Augmentation of the stormwater infrastructure under The Coast Road
- Connection of access road from site to The Coast Road

- Construction of a roundabout at the intersection of The Coast Road, Sharpes Beach carpark and Headlands Drive.

The RMS advised that The Coast Road is a classified (Regional) Road (MR545) under the Roads Act 1993 (Roads Act), and Ballina Shire Council (Council) is the roads authority for this road, including determining priorities on Regional roads.

6.2.3 Section 4.15 Matters for Consideration

The proposed development has been assessed under the heads of consideration in Section 4.15 of the *EP&A Act*. The assessment has identified the following key issues which are elaborated upon for the Panel's consideration.

6.2.4 Section 4.15(1)(a)(i) provisions of any environmental planning instrument

6.2.4.1 State Environmental Planning Policy No. 1 - Development Standards

A SEPP 1 objection to Clause 11(2)(b) of the Ballina Local Environmental Plan 1987 has been lodged with the application regarding minimum lot size. This is addressed in Section 6.2.4.11 of the report, under Ballina LEP 1987.

6.2.4.2 State Environmental Planning Policy No. 14 - Coastal Wetlands

SEPP 14 Coastal Wetlands was repealed by clause 9 (a) of SEPP (Coastal Management) 2018 (106) with effect from 3 April 2018. However, as transitional provisions apply pursuant to s21 of the SEPP Coastal Management 2018 (106), the former planning provisions continue to apply (and Part 2 of the SEPP Coastal Management 2018 does not apply) to the determination of a pending or interim planning application.

An assessment against the relevant clauses within the SEPP 14 Coastal Wetlands is provided below.

Clause 2 Aims, objectives etc

The proposed development seeks to protect and rehabilitate the land between the eastern edge of SEPP 14 Wetlands and the western boundary of the development, and is thus considered consistent with the aims/objectives which seek for the coastal wetlands to be preserved and protected in the environmental and economic interests of the State.

Clause 7 Restriction on development of certain land

The application does not propose to clear, drain or fill land where SEPP 14 Coastal Wetlands can be found on the site. However, 2.87 hectares of Freshwater Wetland EEC along the western edge of the proposed development site are to be removed and replaced with a treed vegetation community, being *Melaleuca* Forest. These restoration works are described in detail under Clause 7A.

Clause 7A Restriction on carrying out of restoration works

Clause 7A of the SEPP requires consent for any restoration work and requires the applicant to lodge a restoration plan in accordance with the Department's guidelines.

Consent for restoration work to Freshwater Water EEC's has been sought as part of this DA and a restoration plan has been prepared and submitted with the DA. The restoration works are located at the eastern edge of the SEPP 14 buffer.

An assessment of the nature and suitability of the proposed restoration work is discussed in Section 6.2.9.

6.2.4.3 State Environmental Planning Policy No. 26 – Littoral Rainforests

SEPP 26 Littoral Rainforests was repealed by clause 9 (a) of SEPP (Coastal Management) 2018 (106) with effect from 3 April 2018. However, as all Littoral Rainforests areas are more than 100m beyond the extent of the site boundary, this policy would not have applied.

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

Clause 7 of SEPP 55 outlines the Contamination and remediation to be considered in determining development applications.

(1) A consent authority must not consent to the carrying out of any development on land unless:

- (a) it has considered whether the land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The property is not identified on the Environment Protection Authority's list of NSW contaminated sites, contaminated land record or environmental protection licence register. However, given the site's history of agricultural uses, the potential for contamination has been assessed in accordance with clause 7 of the SEPP. A Preliminary Site Investigation (Stage 1) was prepared by Douglas & Partners Pty Ltd, dated May 2017. The report (Stage 1) identified two potential areas of environmental concern (PAEC) which included an area used for cropping and a waste dumping site. The report recommended that the PAEC be further investigated via a Stage 2 Detailed Site Investigation to determine their contamination status and that low density sampling should also be undertaken over the remainder of the site to confirm the absence of contamination.

A Detailed Site Investigation (DSI) prepared by Douglas and Partners, dated May 2017 was subsequently undertaken.

All results of sampling undertaken as part of the DSI were within the health based site assessment criteria with the exception of some exceedances at the dump site for Arsenic, Cadmium, Lead and Zinc. Consequently, the DSI identified the need for remediation of the dump area for the site to be made suitable for residential use.

Although results of soil samples indicated exceedances of the ecological based site assessment criteria (SAC) for copper, nickel, zinc and mercury, the DSI identifies that they are not considered a cause for concern and do not require further investigation based on the 95% upper confidence limit (UCL) results for copper and nickel, and only slight exceedance of the criteria for nickel in silty clays and the minor concentration of mercury.

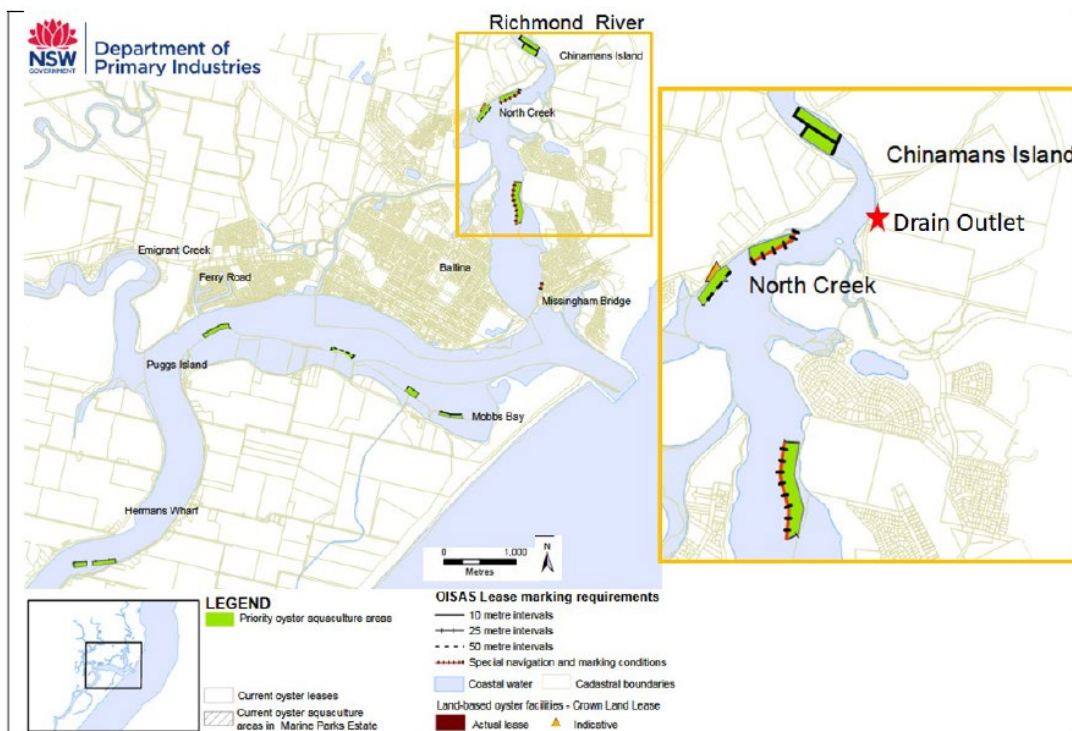
The report concluded that the dumping area of environmental concern can be made suitable from a contamination perspective for residential use subject to the removal of the dumped material and the area impacted by arsenic, cadmium, lead and zinc via a remediation action plan. The DSI recommends the preparation of Remediation Action Plan (RAP).

Council's Environmental Health Officer (EHO) has reviewed the proposal and the DSI, recommending a RAP and validation report be prepared by a suitably qualified and experienced person and submitted to Council for approval, prior to the issue of the Construction Certificate.

Upon completion (within 30 days of completion) of the RAP, the applicant must notify Council in accordance with Clause 17 and 18 of the SEPP. A condition has not been imposed by Council's EHO regarding this matter, as it is a requirement under the SEPP.

6.2.4.5 State Environmental Planning Policy No. 62 – Sustainable Aquaculture

State Environmental Planning Policy No. 62 - Sustainable Aquaculture (SEPP 62) is relevant because the proposed development may impact the Priority Oyster Aquaculture Area that is located within 500m of the proposed stormwater outlet to North Creek, detailed in the image provided by DPI Fisheries as follows.



Part 3A of SEPP 62 requires the consideration of the effects of a proposed development on oyster aquaculture, specifically clause 15B requires the consent authority to consult with the Director-General of the Department of Primary Industries if they suspect the development may have an adverse effect on oyster aquaculture development or a priority oyster aquaculture area.

Council requested the Department of Primary Industries – Fisheries review the proposal. Correspondence was received from the Department of Primary Industries – Fisheries, dated 18 May 2018, identifying that the proposal is likely to have deleterious impact on key fish habitat and uses of estuarine resources and does not satisfy DPI Fisheries policy advice regarding buffers to Key Fish Habitat. The DPI – Fisheries correspondence also noted that the impacts of the discharge of stormwater from the repurposed agricultural drain has not been adequately modelled or tested in the accompanied consultant reports, specifically the impact of water quality on Priority Oyster Aquaculture Areas which are as close as 500 metres from the drain outlet.

The applicant met with DPI Fisheries on 1 June 2018 in response to their issues raised in the letter dated 18 May 2018, providing additional stormwater modelling and testing.

The referral comments provided by Council's Environmental Scientist identifies that there is an existing problem with acid sulphate rich waters entering North Creek. The applicant has confirmed during times of low flow, water discharged into North Creek via their preferred conveyance will contain acid sulphate rich or low pH levels waters. However, as the development will not increase the volume and/or the frequency of stormwater discharge and their development is not changing the

existing situation, Council's Environmental Scientist has identified the applicant is not required to address this broader catchment issue.

Clause 15C states that development consent may be refused if development adversely affects oyster aquaculture. The proposed development is not considered to increase the amount of acid sulphate rich or low pH levels into the local estuaries and makes up approximately 7% of the overall catchment area, thus the impact on the local oyster aquaculture is considered to be minor and the development should not be refused on this basis.

In relation to the issue raised by Fisheries in respect of the discharge from the agricultural drain, this drain is not located on the site and is not proposed to be used or augmented under this DA. For this reason, issues associated with discharge are not a matter for this assessment.

6.2.4.6 State Environmental Planning Policy No. 71 - Coastal Protection

SEPP 71 Coastal Protection was repealed by clause 9(a) of SEPP (Coastal Management) 2018 (106) with effect from 3 April 2018. However, transitional provisions apply pursuant to s21 of the SEPP Coastal Management 2018 (106), the former planning provisions continue to apply (and Part 2 of the SEPP Coastal Management 2018 does not apply) to the determination of a pending or interim planning application.

Thus, an assessment against the relevant clauses within SEPP 71 is provided.

The site falls within the Coastal Zone which is defined on maps issued by the NSW Department of Planning & Environment. The provisions of State Environmental Planning Policy No 71 - Coastal Protection (SEPP 71) require the consent authority to consider the aims of the SEPP. 71 together with the matters for consideration listed in Clause 8 of the SEPP (and other relevant clauses) when determining an application within the Coastal Zone.

Clause 8 Matter for Consideration

(a) the aims of this Policy,

(1) This Policy aims:

a. to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and

The proposal is located on the western side of The Coast Road. The proposal seeks to embellish the coastal reserve that extends along the western edge of The Coast Road, providing a Neighbourhood Park, bicycle and pedestrian pathways as well as new tree planting and turf areas. The coastal reserve will serve as a buffer to the residential development that occurs to the west and maintains a continuance of the coastal reserve that extends north and south of the proposal, along The Coast Road. Thus, the proposal is considered to protect and manage the natural, cultural,

recreational and economic attributes of the local coast line and is consistent with this particular aim of the policy.

b. to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and

Footpaths are proposed on both sides of collector, local and access streets.

A 2.5m shared path network is also proposed linking the development to The Coast Road shared path and Sharpes Beach underpass via an underpass on the realigned Headlands Drive. A shared path network is also proposed on the western edge of the development linking the development to the adjoining residential area to the north and future stages of the proposed development to the south. There is a shared path connection through the centre of the development via the central road.

Thus, the proposal is considered to be consistent with this particular aim of the policy.

c. to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and

As mentioned above, the proposal seeks to provide bicycle and pedestrian pathways without impacting upon the natural attributes of the adjacent wetland and coastal foreshore. Thus, the proposal is considered to be consistent with this particular aim of the policy.

d. to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and

This issue has been addressed in Section 6.2.2.

e. to ensure that the visual amenity of the coast is protected, and

The proposal is located on the western side of The Coast Road. The proposal seeks to embellish the coastal reserve that extends along the western edge of The Coast Road, providing a Neighbourhood Park, bicycle and pedestrian pathways as well as new tree planting and turf areas. The coastal reserve will serve as a buffer to the residential development that occurs to the west and maintains a continuance of the coastal reserve that extends north and south of the proposal, along The Coast Road. Thus, the proposal is considered to be consistent with this particular aim of the policy.

f. to protect and preserve beach environments and beach amenity, and

The proposal occurs on the western side of The Coast Road and will not impact the amenity of Sharpes Beach.

g. to protect and preserve native coastal vegetation, and

The proposal seeks to replace a Freshwater Wetland EEC with Melaleuca Forest, which will provide a buffer between the western edge of the residential development and complement the adjacent SEPP 14 Wetlands with vegetation that will better maintain a healthy environment for the wetlands.

h. to protect and preserve the marine environment of New South Wales, and

The proposal has been designed to minimise the impact upon the local marine environment and is accompanied by a WRMP. However substantial amendments are required to the submitted WRMP to ensure the local marine environment is protected and preserved. It is proposed to amend the WRMP via condition.

i. to protect and preserve rock platforms, and

The proposal occurs on the western side of The Coast Road and will not impact rock platforms.

j. to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6(2) of the Protection of the Environment Administration Act 1991), and

The proposal is considered to be in accordance with the ecological sustainable principles through adoption of the following:

- Detailed studies to ascertain the impacts or mitigation measures to ensure protection of native vegetation communities and flora and fauna habitat.
- Implementation of a Construction Environmental Management Plan during Construction.
- Implementation of a WRMP to ensure ongoing retention and management of biodiversity in the wetland buffer area.
- Development of a stormwater plan that maintains pre and post development flows, and does not worsen water quality of nearby creeks and estuaries.

k. to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and

The proposal is for the subdivision of land to accommodate 229 residential lots. Bulk earthworks are also proposed as part of the proposal, seeking to re-contour the land to accommodate the residential subdivision. The allotments are subject to a maximum height of 8.5m and will be required to respect the natural environment and views. However, future residential and commercial development will be subject to separate development applications which provide more detail on the bulk, scale and size of the development proposed. Further, the proposal also includes embellishment the coastal buffer, ensuring the scenic quality of the area is maintained.

1. to encourage a strategic approach to coastal management.

The proposed works are permissible and are in accordance with the zoning of the site and its identification as an urban release area.

- (b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,*

The proposal will improve pedestrian and cyclist access by providing a coastal shared path adjacent the western edge of the development and within the coastal reserve improving pedestrian access across The Coast Road and to nearby parkland. The majority of the pathways are 2.5m in width and will be able to accommodate person with a disability to a large extent.

- (c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,*

See above comment under point B.

- (d) the suitability of development given its type, location and design and its relationship with the surrounding area,*

The proposed development will create 229 residential lots in Stage 1 and eight (8) super lots for future residential and neighbourhood centre uses is in accordance with the zoning of the site and its identification as an urban release area.

A buffer is maintained to the coastal wetlands to the west of the site and to the east of the site along The Coast Road with the coastal reserve to be embellished.

The development will serve as an extension to the Headlands Estate development to the north of the site and is considered to be commensurate with other residential developments along The Coast Road.

- (e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,*

The proposal occurs on the western side of The Coast Road and will not impact the amenity of Sharpes Beach or the coastal foreshore. The coastal reserve will serve as a buffer to the residential development that occurs to the west and maintains a continuance of the coastal reserve that extends north and south of the proposal, along The Coast Road. Therefore, it is anticipated impacts in relation to the amenity of the foreshore including overshadowing or view loss will not occur.

- (f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,*

The proposed residential subdivision will not create any unreasonable impact on the scenic qualities of the coast. It will not lead to any unreasonable view loss and the visual impact of the development is commensurate with the zoning of the land. The proposal seeks to dedicate the coastal buffer which will ensure the scenic qualities of the coastal foreshore will be maintained.

- (g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,*

Refer to Section 6.2.1 in relation to the TSC Act.

- (h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats,*

The proposed development was accompanied by detailed hydrology and ecological assessments that determined the hydrology impacts are minimal on adjacent areas and no aquatic habitats or species will be impacted.

- (i) existing wildlife corridors and the impact of development on these corridors,*

The issue of the provision of wildlife corridors is addressed in Section 6.2.9.

- (j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,*

The development proposal was accompanied by an Ecological Assessment which assessed the impacts of the development onto the adjacent Freshwater Wetland EEC, SEPP 14 Wetland, local creeks and estuaries, surrounding properties and the flora and fauna within. The impacts of the development were deemed to be acceptable, however where required, rehabilitation as well as monitoring of the proposed development will occur to ascertain if any impacts do occur they can be identified and addressed.

- (k) measures to reduce the potential for conflict between land-based and water-based coastal activities,*

The proposed subdivision and associated works will not impact land based or water based coastal activities.

- (l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,*

Refer to Section 6.2.2 in relation to the NPW Act.

(m) likely impacts of development on the water quality of coastal waterbodies,

Refer to Section 6.2.9 on Water Quality.

(n) the conservation and preservation of items of heritage, archaeological or historic significance,

The site is not identified or known to have any items of historical significance.

(o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,

There are no draft Local Environmental Plans applicable to the site. However, a DRAFT Planning Proposal applies to the site and is discussed in Section 4.2.

(p) only in cases in which a development application in relation to proposed development is determined:

(i) the cumulative impacts of the proposed development on the environment, and

There are no significant anticipated cumulative impacts on the surrounding environment as a result of the proposed development, provided all conditions are adhered to

(ii) measures to ensure that water and energy usage by the proposed development is efficient.

The proposed development is for subdivision, infrastructure and drainage works. The proposed subdivision has considered in detail and integrated the ecological assessment and impacts with the hydrological and water quality outcomes, as well as linking the water and sewer network and efficiency managing the wetland buffer area.

It is considered that the integration of the assessments and recommended conditions have minimised any cumulative impacts on the natural environment.

Clause 14 Public Access

A consent authority must not consent to an application to carry out development on land to which this Policy applies if, in the opinion of the consent authority, the development will, or is likely to, result in the impeding or diminishing, to any extent, of the physical, land-based right of access of the public to or along the coastal foreshore.

The proposed development will improve access by providing a coastal bicycle and pedestrian pathways along the western and eastern edges of the development, providing improved access across The Coast Road to Sharpes Beach and north to the neighbouring development where local parks can be found. Therefore, it is

considered that the proposed development will not have any effect on the coastal foreshore or any access thereto.

Clause 15. Effluent Disposal

The consent authority must not consent to a development application to carry out development on land to which this Policy applies in which effluent is proposed to be disposed of by means of a non-reticulated system if the consent authority is satisfied the proposal will, or is likely to, have a negative effect on the water quality of the sea or any nearby beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or a rock platform.

Effluent generated by the development will be directed to Council's reticulated sewerage system via proposed sewerage pumping station at the south western corner of the site.

The proposed effluent disposal is not anticipated to have any negative impacts on the water quality.

Clause 16 Stormwater

The consent authority must not grant consent to a development application to carry out development on land to which this Policy applies if the consent authority is of the opinion that the development will, or is likely to, discharge untreated stormwater into the sea, a beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or onto a rock platform.

Untreated stormwater is not proposed to be discharged. The proposed stormwater systems included separate treatment and modelling at each discharge point being, west (wetlands), north east (Sharpes Beach car park), south east (Sharpes Beach car park south).

The treatment measures to the wetlands consists of roadside grassed swales, bio retention basins and infiltration trenches before discharge via level spreaders to the wetland.

The treatment measures to the east consist of sand infiltration basins associated with the detention berms.

Modelling at each discharge location demonstrated compliance with Council's pollutant reduction parameters.

Following the above assessment of the proposal in regards to the provisions within the SEPP 71. The proposed development is considered to be consistent with the aims and objectives and the matters for consideration set out in Clause 8 of this policy.

Clause 18 (1) requires the provision of a Masterplan where the subdivision of land within a residential or rural residential zone is proposed, if part or all the land is in a

sensitive coastal location. However, clause 18(2) permits the Minister to waive the requirement for a Masterplan.

The applicant applied for the requirement to provide a masterplan to be waived and the Minister agreed. Evidence of the waiver was provided with the application lodged with Council.

6.2.4.7 State Environmental Planning Policy (Coastal Management) 2018

SEPP 14 Wetlands, SEPP 26 Littoral Rainforests, SEPP 71 Coastal Protection were repealed by clause 9(a) of SEPP (Coastal Management) 2018 (106) with effect from 3 April 2018. However, transitional provisions apply pursuant to s21 of the SEPP Coastal Management 2018 (106) and the former planning provisions continue to apply (and Part 2 of the SEPP Coastal Management 2018 does not apply) to the determination of a pending or interim planning application.

The Coastal Management SEPP consolidates and improves current coastal-related SEPPs, ensuring that future coastal development is appropriate and sensitive to the coastal environment and public access to beaches and foreshore areas are maintained.

The site is identified under the SEPP as being on the Coastal Use Area Map. The following provisions are relevant to the assessment of the application.

Clause 11, 12, 14, 16 and 17 have not been addressed as they are either not applicable or have been addressed in the SEPPs which have been repealed by the State Environmental Planning Policy (Coastal Management) 2018.

Clause 15 - Development on land within the coastal use area

Development consent must not be granted to development on land that is wholly or partly within the coastal use area unless the consent authority:

(a) is satisfied that the proposed development:

- (i) if near a foreshore, beach, headland or rock platform—maintains or, where practicable, improves existing, safe public access to and along the foreshore, beach, headland or rock platform, and*
- (ii) minimises overshadowing, wind funnelling and the loss of views from public places to foreshores, and*
- (iii) will not adversely impact on the visual amenity and scenic qualities of the coast, including coastal headlands, and*
- (iv) will not adversely impact on Aboriginal cultural heritage and places, and*
- (v) will not adversely impact on use of the surf zone, and*

(b) has taken into account the type and location of the proposed development, and the bulk, scale and size of the proposed development.

The proposed development is consistent with the provisions contained in Clause 15. The site is not located in close proximity to a foreshore, beach, headland or rock

platform and therefore will not have impacts on these areas. The site is not known to contain any items of heritage or known to be a place of historic significance. The proposed bulk, scale and size of the development is considered to be appropriate for the location.

Clause 16 - Development in coastal zone generally—development not to increase risk of coastal hazards

- (1) *Development consent must not be granted to development on land within the coastal zone (other than land to which clause 13 applies) unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.*

The proposed development is unlikely to cause increased risk of coastal hazards on the subject land or any other land as it is well removed both physically and spatially from any coastal foreshore or area.

The proposal is considered to be consistent with the aims and relevant provisions of the Coastal Management SEPP 2018.

6.2.4.8 State Environmental Planning Policy (Rural Lands) 2008

Clause 10 sets out the matters to be considered in determining development applications for rural subdivisions or rural dwellings. The SEPP applies to rural zoned land and the Environmental Protection zones or equivalent.

The Coastal buffer area (Proposed Lot 347) is zoned 7(d) – Environmental Protection Scenic/ Escarpment) Zone in Ballina Local Environmental Plan 1987. Accordingly, this SEPP applies to this part of the site.

Clause 10(2) of the SEPP requires the consent authority to consider the matters for consideration under subclause (3), if the proposal is:

- Subdivision for the purposes of a dwelling; or
- Erection of a dwelling.

Given the proposed works within the 7(d) zoned land are for the purposes of roads, infrastructure and open space, these provisions of the SEPP do not apply.

There are no other provisions in the SEPP that relate to this proposal.

6.2.4.9 State Environmental Planning Policy (Infrastructure) 2007

The Coast Road is a classified (Regional) road (MR545). Roads and Maritime's concurrence is required prior to Council's approval of works on classified (Regional) roads under Section 138 of the *Roads Act 1993*.

Clause 101 – Development with frontage to Classified Road

In accordance with Clause 101 of the State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) the Consent Authority is to have consideration for the safety, efficiency and ongoing operation of the classified road as the development has frontage to a classified road.

The DA initially proposed a signalised intersection on The Coast Road, however both Council and the RMS did not support a signalised intersection as the warrants were not met for signalisation.

Consequently, the application was amended to include a two-lane roundabout on The Coast Road providing primary access to the development. Secondary access to the development is proposed via the realigned Headlands Drive. The amended intersection is supported by the RMS and Council.

Clause 104 – Traffic Generating Development

The proposed development is Traffic Generating Development under Schedule 3 of the ISEPP as it is for the 'Subdivision of land' for 200 or more allotments where the subdivision includes the opening of a public road. In this regard Clause 104 is applicable. Clause 104(3) requires notice to be given to RMS.

RMS provided the following comments on the proposed development.

1. *The proposed roundabout at the intersection of The Coast Road and Headlands Drive is to be designed in accordance with AUSTROADS Part 4B – Roundabouts and cater for the largest design vehicle's movements*
2. *In accordance with Section 138 of the Roads Act 1993 plans of the proposed Coast Road roundabout at Headlands Drive will need to be referred to Roads and Maritime for concurrence prior to approval by Council*
3. *Consideration should be given to the distance between the subdivision access on Headland Drive and the proposed Coast Road and Headland Drive roundabout. The two intersections should be sufficiently separated to achieve required sight distances and to meet Council's design specifications for the collector road.*
4. *Consideration should be given to the scope of works required to connect the northern end of the beach car parking area to the proposed eastern leg of the proposed Coast Road roundabout*
5. *Pedestrian and cyclist connectivity should be provided to the proposed southern indented bus bay on the eastern side of the Coast Road and Maritime for consideration and approval*
6. *All regulatory devices and markings should be referred to Council's Traffic Committee for recommendation*
7. *Roads and Maritime recommends that all road works should be undertaken in accordance with the standards set out in the RTA Traffic Control at Worksites Manual*

All works on the classified road will need to be designed and constructed in accordance with the current AUSTROADS Guidelines, Australian Standards and Roads and Maritime Supplements.

These comments have been considered in the assessment of the application and, where appropriate, have been addressed by way of condition.

6.2.4.10 Ballina Local Environmental Plan 2012 (BLEP 2012)

Aims of BLEP 2012 (Clause 1.2)

The particular aims of this Plan are as follows:

(a) to provide for a sustainable Ballina that recognises and supports community, environmental and economic values through the establishment and maintenance of the following:

- (i) a built environment that contributes to health and wellbeing,*
- (ii) a diverse and prosperous economy,*
- (iii) a healthy natural environment,*
- (iv) diverse and balanced land uses,*
- (v) healthy, resilient and adaptable communities,*
- (vi) responsible and efficient use of resources,*

(b) to provide for development that is consistent with Council's established strategic planning framework for Ballina,

(c) to achieve the objectives of the land use zones set out in Part 2 of this Plan,

(d) to promote the orderly and efficient use of land having regard to the social and environmental characteristics of the land,

(e) to provide for the development of public services and infrastructure.

The land has been identified for development in the BLEP 2012 as an urban release area and zoned for R2 Low Density Residential and B1 Neighbourhood Centre. The proposed subdivision seeks to realise this and provide a variety of residential allotments throughout the site. The proposed subdivision also includes civil and stormwater works which have been designed to accommodate the land uses and minimise their impact on the sensitive environment in which it is located.

The proposed subdivision and ancillary infrastructure works are generally in accordance with the aims and objectives of the BLEP 2012.

Zoning & Permissibility (Clause 2.3)

The proposed residential subdivision part of the site is zoned part R2 Low Density Residential and part B1 Neighbourhood Centre under the BLEP 2012. The "coastal buffer" land along the eastern side of the site is identified as "Deferred Matter" under the BLEP 2012, which means the LEP does not apply. The BLEP 1987 applies to this land.

The proposed rising sewer main and recycled water main are proposed across Lot 50 DP 755684 and Lot 5 DP 1225206. Lot 50 is zoned R2 Low Density Residential, whereas Lot 5 is zoned RU2 Rural Landscape under BLEP 2012.

The proposed subdivision meets with the objectives of the R2 Low Density Residential and B1 Neighbourhood Centre zones, and will enable the future development of ancillary uses within the subdivision.

The proposed rising sewer main and recycled water main will traverse zones R2 Low Density Residential and RU2 Rural Landscape. These works are categorised as “sewerage system” and “water reticulation system”, both of which are permissible in the R2 Low Density Residential and RU2 Rural Landscape zones with consent.

An assessment of the land identified as Deferred Matter is addressed under Ballina LEP 1987.

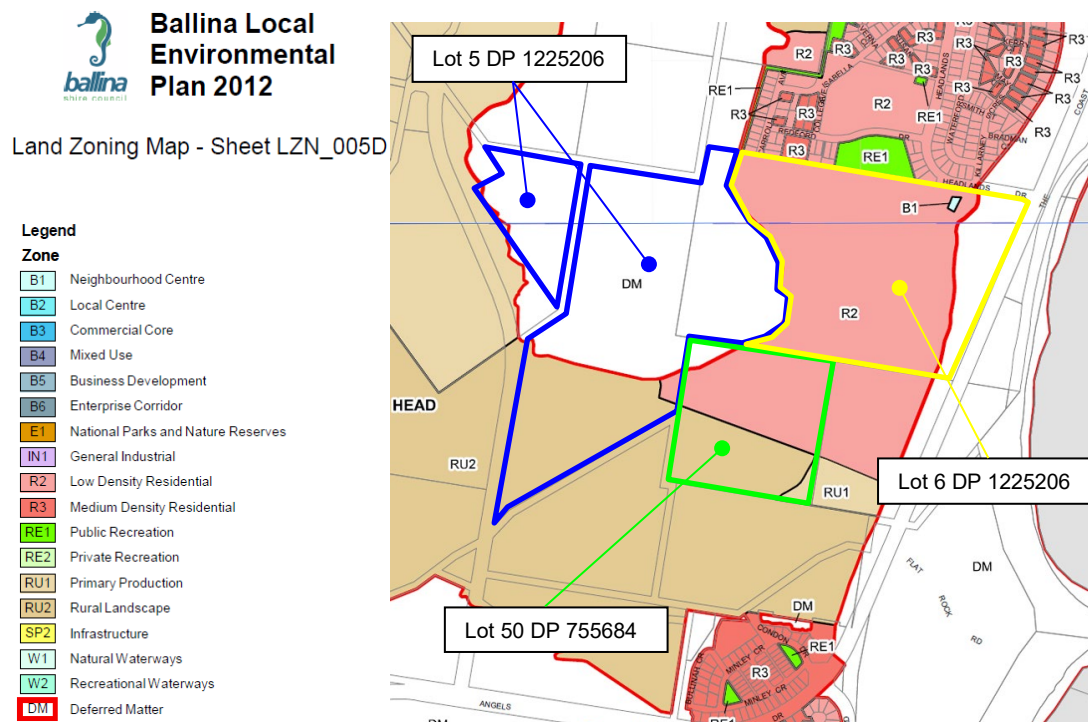


Figure 16: Extract of Land Zoning map from BLEP 2012

Zone Objectives

The objectives of the R2 Low Density Residential zone are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.*

- *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 proposed development complies with these objectives by providing a variety of residential allotments, located in close proximity to a future Neighbourhood Centre that will facilitate the provision of land uses that provide facilities or services to meet the day to day needs of residents. The residential allotments will facilitate the development of a low density residential environment that will minimise the impacts on the local environment.

The objectives of the B1 Neighbourhood Centre zone are as follows:

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
- *To maintain a distinct retail hierarchy as identified in Council's strategic planning framework.*
- *To ensure adequate provision of infrastructure to support neighbourhood shopping facilities.*
- *To ensure a safe and accessible built environment.*
- *To encourage development that recognises natural, cultural and built heritage.*
- *To encourage development that is compatible with the character of the neighbourhood.*

The proposed development complies with these objectives of the B1 Neighbourhood Centre zone, creating a large residue lot (Proposed Lot 162) for a future DA that could accommodate a variety of uses, including a community centre. (Subject to current PP).

Minimum Subdivision Lot Size (Clause 4.1)

The minimum lot size in the R2 Low Density Residential and B1 Neighbourhood Centre zone is 450m². The proposed subdivision complies with this requirement with lots varying between 451m² and 789m² (excluding super lots and residual lots).

Relevant Acquisition Authority (Clause 5.1)

The site is not identified on a Land Reservation Acquisition Map.

Heritage Conversion (Clause 5.10)

The site does not contain, and is not within the vicinity of, any heritage items or heritage conservation areas. However, the site is known to contain four (4) Aboriginal sites.

Clause 5.10 identifies that development consent is required for disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed.

The Archaeological Technical Report, prepared by Ecological Australia Pty Ltd, dated May 2017 (ELA Report), identified two (2) new Aboriginal sites, along with two (2) previously identified sites. Therefore, a total of four (4) Aboriginal sites within the development area were identified and are as follows:

- Skennars PAD 1 (AHIMS# 04-5-0210) PAD Low Significance
- Location 18 (AHIMS#04-5-0202) Midden High Significance
- SK1 (AHIMS# 04-5-0326) Stone artefact Low Significance
- SK2 (AHIMS# 04-5-0327) Stone artefact Low Significance

The ELA Report recommended the following:

1. No earthworks or soil disturbance in these areas (containing the sites) without an approved Aboriginal Heritage Impact Permit (AHIP) or defence under the *NPW Act*.
2. The location of heritage sites should be shown on the Construction Management Plan (CMP).
3. An area-wide AHIP application to be lodged with the NSW Office of Environment and Heritage (OEH) for Stage 1
4. Artefacts identified during the test excavation should be reburied next to an existing AHIMS site south of the study area in the dune complex in accordance with the wishes of the Jali LALC.
5. If human remains are found during future works, works should immediately cease and the NSW Police should be contacted.
6. Jali LALC should be kept informed and consulted regarding the development process.

The ELA Report concluded that the areas tested within the study area have been assessed as having low archaeological significance.

As identified in Section 6.2.2 of this report, the proposed impact on the Aboriginal site is Integrated Development pursuant to Section 91 of the *EP&A Act* as it triggers approval under Section 90 of the *NPW Act*. The proposal was referred to The Office of Environment and Heritage (OEH), who have issued General Terms of Approval (GTA) and require the applicant to obtain an AHIP prior to works commencing. (refer to Schedule 2 of draft conditions)

Arrangements for designated State public infrastructure (Clause 6.1)

The applicant has provided a letter from the DPE stating that satisfactory arrangements have been made to contribute to the provision of State public infrastructure.

Public utility infrastructure (Clause 6.2)

The applicant provided a Sewer & Water Servicing Assessment Report – Bulk and Internal Reticulation, prepared by Planit Consulting, dated May 2017 regarding the availability of public infrastructure to the development. Consent is sought for

augmentation of stormwater, sewer and water infrastructure. Council's Engineer has raised no objection to the applicants proposed infrastructure provision.

Development Control Plan (Clause 6.3)

Council adopted a site specific DCP for the site which now forms Section 5.7 of Chapter 3 of the BDCP. This DCP is addressed in Section 6.2.6.1 and in Attachment 1 to this report.

Acid Sulfate Soils (Clause 7.1)

The site is identified as being within Class 2 and 5 Acid Sulfate Soils under the Acid Sulfate Soils Planning Map (refer to Figure 17).

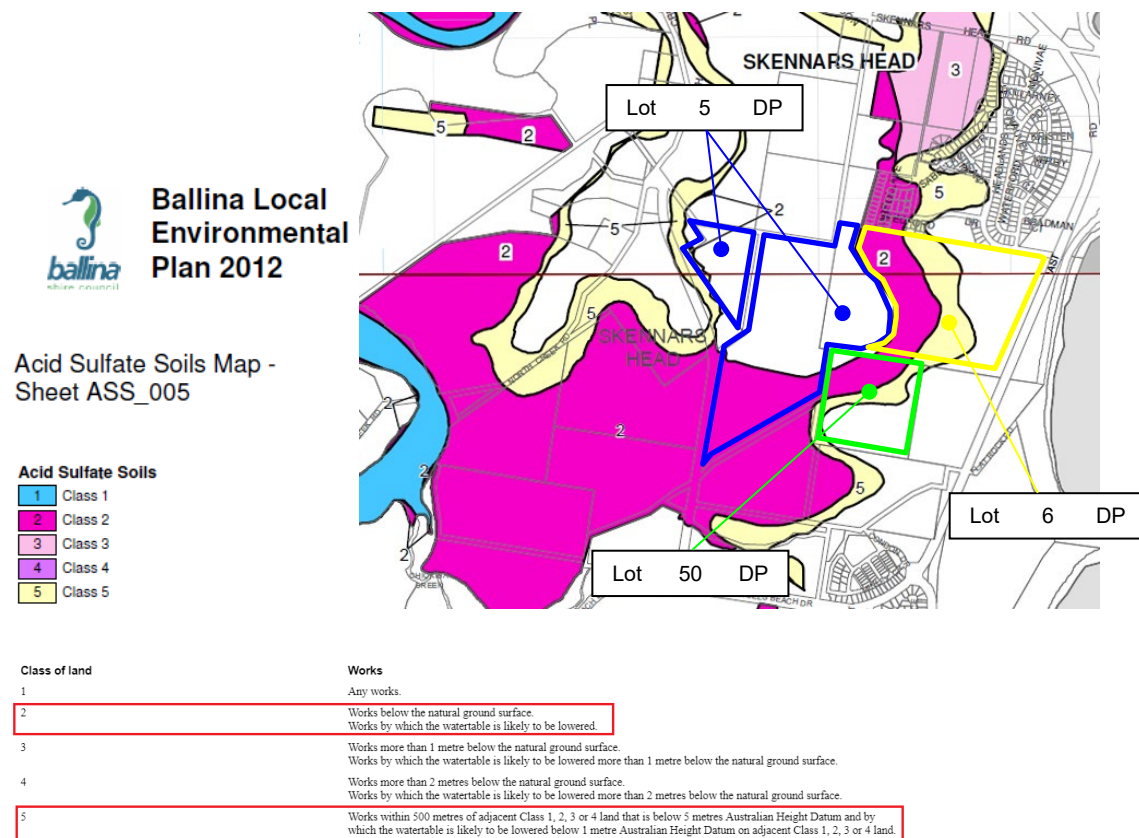


Figure 17: Extract of Acid Sulfate Soils map from BLEP 2012

The proposal includes earthworks below the natural ground surface within land identified as being Class 2 and works are proposed within 500m of land identified as being Class 2, and thus consent is required.

The applicant has provided an Acid Sulphate Soils Management Plan, prepared by Douglas Partners dated November 2017.

This Plan was considered to be sufficient in adequately managing and mitigating environmental risks associated with the disturbance of acid sulfate soils. The following condition is recommended:

All excavation and dewatering activities must comply with Acid Sulfate Soils Management Plan prepared by Douglas Partner, dated November 2017.

Earthworks (Clause 7.2)

Bulk earthworks are proposed to accommodate the proposed subdivision and infrastructure works, including internal roads. The earthworks are considered ancillary to the proposed subdivision.

Clause 7.2(3) requires the consent authority to consider a number of matters. These are addressed as follows:

3(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development

The development proposes to construct the bulk earthworks over two separate stages.

Stage 1 proposes to utilise all cut material as fill on-site, with the site grading up at 1% from the western boundary to the limit of works. As recommended in the Geotechnical report prepared by Douglas Partners Pty Ltd, the cut material is suitable for reuse as structural fill material on the site if required. The 1% grade allows for all the even distribution of fill material, while also ensuring the overland flow on the site remains as per its pre-developed conditions.

Stage 2 will see the remainder of the bulk earthworks completed, with a total of approximately 112,000 cubic metres of imported material required. It is this imported material which will have the same properties as the existing soil, ensuring infiltration will match the existing soil properties.

The proposed contouring earthworks reduce the catchments flowing to the west via the SEPP 14 Wetlands and increases the catchment to the east.

(b) the effect of the development on the likely future use or redevelopment of the land,

The proposed earthworks will facilitate the use of the land for the purposes of subdivision and ancillary drainage works.

(c) the quality of the fill or the soil to be excavated, or both,

Soil identified as being contaminated, as per the Stage 1 Contamination Investigation and Detailed Site Investigation (Stage 2), prepared by Douglas & Partners Pty Ltd, will be managed in accordance with the approved remedial action plan, or NSW EPA Waste Classification Guidelines, and retained on site or removed. Soil deemed safe for residential uses will be re-used and combined with imported fill that will have the same properties as the existing soil, ensuring infiltration will match the existing soil properties.

Conditions have also been recommended requiring all waste including fill/soil to be managed in accordance with the Protection of the Environment Operations Act 1997, Protection of the Environment Operations (Waste) Regulation 2014, EPA Waste Classification Guidelines or current Resource Recovery Order and Exemption.

(d) the effect of the development on the existing and likely amenity of adjoining properties,

The site is slightly lower than the properties directly adjacent to the north, within Headlands Drive. The proposed earthworks are not expected to result in adverse amenity impacts in the long term.

(e) the source of any fill material and the destination of any excavated material,

Virgin fill will be imported to the site as part of the bulk earthworks. Excavated soil unable to be treated and retained on site will be taken to the appropriate facility for processing as detailed in the Stage 1 Contamination Investigation and Detailed Site Investigation (Stage 2), prepared by Douglas & Partners Pty Ltd.

(f) the likelihood of disturbing relics,

There is a likelihood of disturbing Aboriginal objects within PAD 1. No earthworks will commence in PAD 1 until an AHIP is approved by OEH.

(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,

An Environmental Assessment report was prepared by the applicant's Ecologist and details that there will be no or minimal impact to SEPP 14 Wetland area, and the impacts on wetland buffer area have been minimised with the landscaping and hydrology proposed. Council's Environmental Scientist has reviewed the documentation and generally agrees with the applicant's consultant, subject to the imposition of conditions which seek to amend the WRMP and POM for the WLC.

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

The proposed earthworks are considered unlikely to cause any negative impacts.

Flood Planning (Clause 7.3)

The site is not identified on the Flood Planning Map. However, there are some minor filling works proposed on the western edge of the development designed to smooth the edge of the developable land adjacent to the SEPP 14 area. The proposed fill will bring the finished surface level above the 1 in 100 year flood event. Approximately 1,500m³ of fill is proposed to bring the finished surface level above 2.3m AHD in accordance with Council's Flood Planning DCP. Bulk earthwork plans

indicate finished surface levels of all lots exceed 4m AHD and therefore exceed minimum design floor level requirements.

Council's Development Engineer has raised no objections to the proposal with regard to flooding.

Essential Services (Clause 7.7)

The applicant has provided a Sewer & Water Servicing Assessment Report – Bulk and Internal Reticulation, prepared by Planit Consulting, dated May 2017. The report outlines that the development can be serviced with the required water and sewer services.

A report prepared by Knobel Consulting demonstrated that connections to gas, electricity and telecommunications including NBN are available to the development.

6.2.4.11 Ballina Local Environmental Plan 1987 (BLEP 1987)

The Ballina LEP 1987 applies to that area of the site identified on the BLEP 2012 maps as Deferred Matter (DM). This applies to the eastern part of the site being the coastal buffer.

Zones (Clause 8)

The area identified as DM in the site is zoned 7(d) – Environmental Protection (Scenic/Escarpment) Zone under the BLEP 1987.

Objectives (Clause 9)

- A. *The primary objectives of the 7(d) zone are:*
- (a) to protect and enhance those areas of particular scenic value to the Shire of Ballina, and*
 - (b) to minimise soil erosion from escarpment areas and prevent development in geologically hazardous areas.*
- B. *The secondary objective is to enable development as permitted by the primary and secondary objectives for Zone No 1 (b), except for development which could conflict with the primary objectives of this zone.*

The exception to these objectives is development of public works and services, outside the parameters specified in the primary and secondary objectives, but only in cases of demonstrated and overriding public need and subject to the visual impact being minimised as much as is reasonably practical.

The application proposes the following works within the 7(d) zoned land:

- Roads;
- Public park;
- Earthworks;
- Drainage works;
- Tree removal;
- Landscaping and embellishment works; and
- Pedestrian and cycleway paths including an underpass beneath the proposed road.

These works are all permissible with consent within the zone.

The proposed earthworks facilitate the effective utilisation of the land and the minor reshaping of the land to assist drainage and hydrology. The proposed works do not prevent the land from maintaining its current use as a coastal buffer and scenic escarpment. The proposal includes landscaping and embellishing works which will ensure that the land maintains its scenic value.

Subdivision in Zone 7(d) (Clause 11)

The minimum lot size for the 7(d) Zone is 40 hectares (cl.11(2)(b) of the Ballina LEP 1987).

The application proposes to subdivide the land zoned 7(d) from the adjacent R2 Low Density Residential zoned land. In doing so, allotments (Lot 347 & 348) measuring 4.6049ha and 5,390m² respectively, are created. All or parts of Lot 347 must be dedicated to Council as a drainage reserve. All of Lot 348 (Neighbourhood Park) is to be dedicated to Council as per the Development Control Plan.

Proposed Lot 348 is for the creation of a public reserve, being the NP, and can be created as exempt development, under clause of Clause 2.75 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

In accordance with clause 6, the applicant submitted a written objection pursuant to SEPP 1 requesting that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. The SEPP 1 objection only relates to Lot 347.

The grounds of the objection are summarised as follows:

- *The DM zoning, or previous 7(d) zoned land, was set aside to provide and retain a visual or scenic buffer from The Coast Road. The proposed subdivision achieves the retention of this coastal buffer of scenic value.*
- *The proposed subdivision ensures that the built form occurs predominantly outside of the 7(d) zoned land, and allows for the community uses, and environmental works to be enjoyed in the subdivided lot.*
- *The subdivided lot will enable the land to form a coastal park which residents and community can use, and link to the new intersection at The Coast Road and the Sharpes Beach area.*

-
- *The subdivided lot also provides for adequate space for a council neighbourhood park, as required by Section 94.*

With regard to clause 8, the NSW Department of Planning issued concurrence to vary the 40 hectare standard lot size to create Lot 347 for the following reasons:

- *The proposal is not inconsistent with the objectives of the 7(d) zone*
- *The proposal raises no issues of state or regional planning significance*
- *There is no public benefit in maintaining the development standard in this instance*

Assessment SEPP 1

The following assessment of the variation request has been carried out with respect to SEPP 1.

Ballina LEP 1987 – SEPP 1	
Assessment of requested variation	
a) What is the development standard being varied? (provide details of clause in BLEP 1987, including objectives of the development standard, numeric value and percentage variation)	<p>Minimum lot size for land zoned 7(d).</p> <p>Clause 11((2)(b) of the Ballina Local Environmental Plan 1987</p> <p>The standard is for a minimum lot size of 40Ha.</p> <p>Proposed Lot 347 has an area of 4.6049ha, equating to a variation of 885%.</p> <p>Clause 11 does not stipulate the objectives of the standard.</p>
b) What is the underlying objective of this development standard?	<p>The underlying objective of this Clause is to ensure the scenic qualities of coastal land/environmentally sensitive land is protected and enhanced, and is not used for other purposes that would otherwise detract from visual quality of the land.</p>
<p>c) In accordance with clause 8 of SEPP 1:</p> <ul style="list-style-type: none"> • Does the non-compliance with the development standard raise any matters of significance for state or regional environmental planning? • Is there a public benefit in maintaining the planning controls adopted by the Ballina Local 	<ul style="list-style-type: none"> • No. Concurrence has been obtained from the Department of Planning and Environment. • No. Strict compliance with the standard cannot be achieved as the 7(d) portion of Lot 6 DP 1225206

Environmental Plan 1987?	(lot subject of this application) does not currently comply.
d) Will the cumulative effect of similar approvals undermine the objective of the development standard or the objectives of the zone?	<p>No. While the actual objectives of the development standard are not specified in the LEP, the first objective of the zone is to protect and enhance areas of scenic value to Ballina Shire Council.</p> <p>Therefore, approval of the variation would be consistent with the primary objective of the zone which is to protect and enhance the scenic value of the land zoned 7(d).</p> <p>This issue is discussed in detail under Section 6.2.9 of the report.</p>
<p>e) The judgment in <i>Wehbe v Pittwater Council</i> [2007] NSW LEC 827 established five different ways in which an objection may be considered well founded and that approval of the objection may be consistent with the aims of the policy.</p> <p>1) Are the objectives of the standard achieved notwithstanding noncompliance with the development standard?</p> <p>2) Is the underlying objective or purpose of the development standard not relevant to the development and therefore compliance is unnecessary?</p> <p>3) Will the underlying object of the purpose be defeated or thwarted if compliance was required and therefore is compliance unreasonable?</p> <p>4) Has the development standard been virtually abandoned or destroyed by Council's actions in granting consents departing from the development standard and therefore is compliance with the development standard unnecessary and unreasonable?</p>	<p>The development standard seeks to maintain a minimum allotment size of 40ha. The minimum lot size was applied to rural and environmentally sensitive land. When the site was rezoned for residential development, the eastern edge of the site adjacent The Coast Road retained the 7(d)-zoned land or Deferred Matter (DM). This portion of land was set aside to provide and retain a visual or scenic buffer from The Coast Road. Subdivision of the coastal buffer into two lots will not affect achieving this objective.</p> <p>Compliance is unreasonable in this instance for the reasons described under part D and directly above. The request to vary the minimum lot size in relation to proposed Lot 347 therefore satisfies the first of the five "Wehbe methods".</p>

5) Is compliance with the development standard unreasonable or inappropriate due to the existing use of the land and current environmental character of the subject property (should this property have been included in the current zone)?	
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Table 3: Assessment SEPP 1

Development adjoining arterial roads (Clause 15)

Clause 15 requires concurrence of the Commissioner for Main Roads, where development listed within Schedule 5 of BLEP 1987, is proposed on rural or environmental protection zoned land that is within 400m of an arterial road if any form of direct vehicular access is gained from an arterial road.

The development proposed as part of this application is not listed within schedule 5 and thus this clause does not apply.

Development in Zone 7(d) (Clause 23)

Clause 23 of the BLEP 1987 requires consent from Council where it is proposed to cut down, top, lop or otherwise destroy a tree (other than a tree planted for commercial or landscaping purposes), or clear, fill or otherwise alter the surface level of land on land within Zone No 1 (d), 7 (c), 7 (d), 7 (d1), 7 (f), 7 (i) or 7 (l).

At the request of Council the applicant now proposes to remove approximately 60 - 80% of the Norfolk Island Pines along the edge of The Coast Road property boundary. Council's Open Space and Resource Recovery Section supports the applicant's tree nominated tree removal plan. This issue is discussed in Section 6.2.9.

Regarding clause 23(b) clearing, filling or altering the land, it is proposed to modify the land to provide a Neighbourhood Park with facilities, as well as embellish the entire coastal buffer area with new species. In addition, the works to the coastal buffer are also necessary to accommodate stormwater infrastructure to support the development.

Council has raised no objection to these works being within the land zoned 7(d), however does not agree with the applicant's request for exemption from certain Section 94 contributions because of the proposed level of embellishment to the Neighbourhood Park and coastal buffer. See section 6.2.9.

Development in Zone 7(d) (Clause 25)

Clause 25 requires consent from Council before erecting a building on land within Zone No 7 (d), 7 (d1) or 7 (i).

The clause requires the consent authority to consider the following:

(a) *the height and location of the building, and*

(b) *the colour of materials, so as to ensure that the building blends with the surrounding landscape and other development and preserves or enhances the scenic quality of the land.*

The proposal includes the erection of the BBQ shelter/Picnic Shelter associated with the Neighbourhood Park embellishment. The structures are considered appropriate as they complement the proposed embellishment of the Neighbourhood Park and coastal buffer.

6.2.4.12 ***Other Relevant Acts for Consideration***

Threatened Species Conservation Act 1995

See discussion under Section 1.7 Significant effect on threatened species, populations or ecological communities, or their habitats *EP&A Act*.

Heritage Act 1977

The site does not contain any known items or places of local or state significance. A search of the state heritage inventory (SHI) identified East Ballina (Angels Beach) which is classified as an Aboriginal Place, located on the east side of The Coast Road to the immediate south east of the study area. This place is afforded protection as a gazetted Aboriginal Place under the *NPW Act*.

Water Act 1912

Any dewatering activity that is estimated to exceed 3ML/year must obtain a licence under Part 5 of the *Water Act 1912* prior to commencing the activity.

Groundwater could be intercepted in the excavation work and dewatering may be required. The preliminary Geotech report prepared by Douglas Partners, dated April 2017 did not encounter any groundwater during the borehole testing at depths of between 1.7m – 4m approximately. However, the Geotech report noted that groundwater depths and ground moisture conditions are affected by climatic conditions and soil permeability, and will therefore vary with time.

Water NSW, in their correspondence dated 13 April 2018, could not identify whether a licence is required for the proposed development application. Thus, a condition as part of the GTA has been included requiring the applicant to apply for licence prior to the extraction of any groundwater that may exceed 3 megalitres in total.

Coastal Protection Act 1979

The proposed development is located wholly within the 'coastal zone' as defined in the *Coastal Protection Act 1979 (CP Act)*.

The *CP Act* was recently replaced by the *Coastal Management Act 2016* on 3 April 2018. Under transitional provisions pursuant to schedule 3, *Coastal Management*

Act 2016, the former planning provisions continue to apply where there is a corresponding provision in the *Coastal Management Act 2016*.

Under Section 37B, the concurrence of the Minister is not required in relation to the carrying out in the coastal zone of any development that:

- (a) requires development consent under the *EP&A Act*, or
- (b) is exempt development under that *EP&A Act*, or
- (c) is carried out in accordance with a coastal zone management p

The proposed development requires development consent, thus concurrence of the Minister under Section 37B is not required,

Under Section 38, a public authority shall not, without the concurrence of the Minister grant any right or consent to a person to carry out any development in the coastal zone, if, in the opinion of the Minister, as advised from time to time by the Minister to the public authority, the development may, in any way:

- Be inconsistent with the principles of ecologically sustainable development, or
- Adversely affect the behaviour or be adversely affected by the behaviour of the sea or an arm of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse, or
- Adversely affect any beach or dune or the bed, bank, shoreline, foreshore, margin or flood plain of the sea or an arm of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse.

Section 38 does not apply in this case as concurrence is not required under section 37B.

Coastal Management Act 2016

The *Coastal Management Act 2016* (CMA Act) commenced 3 April 2018.

Part 2 of the Act sets out management objectives for the various coastal management areas in the Coastal zone. This is articulated through the Draft Coastal Management SEPP (discussed further under *Matters for Consideration*).

Part 3 sets out the requirement for Coastal Management Programs, the process and the matters to be considered. Ballina Shire Council does not have a Coastal Management Program, but in accordance with Clause 4 of Schedule 3 relies on the Coastal Zone Management Plan made under the former *Coastal Protection Act 1979*. This matter is discussed further under *Matters for Consideration* and assessment of the proposed subdivision.

Contaminated Land Management Act 1997

The *Contaminated Land Management Act 1997* (CLM Act) requires that landowners and persons who carry out contaminating activities must notify contamination of land in the circumstances specified in Section 60 of the *Contaminated Land Management Act 1997*.

At present, the site is not subject to a current notification to the NSW EPA.

Noxious Weeds Act 1993

The site contains noxious weeds listed under the *Noxious Weeds Act 1993*. Council's Environmental Scientist has recommended that a condition be imposed during construction and throughout the life of the development, that the spread of Noxious weeds is managed by the developer and future occupiers of the development.

6.2.5 Section 4.15(1)(a)(ii) the provisions of any proposed instrument

A Planning Proposal (PP) for the relocation and expansion of neighbourhood commercial facilities within the Skennars Head Expansion Area was submitted on 14 December 2017 for Gateway approval.

The PP seeks to achieve the following amendments to Ballina LEP 2012:

- Apply a neighbourhood commercial zoning (B1 Neighbourhood Centre zone) to an area of approximately 13,200m²;
- Apply a medium density zoning (R3 Medium Density Residential) to parts of the site with a total combined area of 29,250m²;
- Rezoning an area of land measuring 870m², currently zoned B1 Neighbourhood Centre, to a combination of R3 Medium Density zone and R2 Low Density zone;
- Apply a floor space ratio of 0.8:1 to the area subject to the neighbourhood commercial zoning (consistent with the existing FSR applicable to the current B1 Neighbourhood Centre zone on the land); and
- Include a site specific development control provision that would limit the total area of commercial floor space permissible on the site to floor space ratio of 0.4:1.

The proposed development is consistent with the PP. The PP has been discussed in detail under Section 4.2.

6.2.6 Section 4.15(1)(a)(iii) provisions of any development control plan

6.2.6.1 *Ballina Development Control Plan 2012 (DCP 2012)*

Chapter 2 – General and Environmental Considerations

This chapter of the DCP identifies Council's requirements relating to general and environmental planning elements that have a broad application to land within Ballina Shire.

Clause 3.4 - Potentially Contaminated Land

This issue has been addressed in Section 6.2.4.4 in relation to State Environmental Planning Policy No.55 – Remediation of Land.

Clause 3.5 – Land Slip/ Geotechnical Hazard

A Geotech report prepared by Douglas Partners, dated April 2017 (Geotech Report) was submitted with the application.

The Geotech Report provided preliminary comments on the following:

- Subsurface conditions, including groundwater (if encountered);
- Indicative site classification in accordance with AS 2870;
- Site preparation, earthworks, excavation conditions, compaction and potential re-use of existing soils and rock;
- Stable unprotected long and short term batter angles; and
- Suitability of high level and deep level foundations, including allowable bearing pressures, skin friction and estimated settlements.

The conclusions to each of the above investigations were limited, however the Geotech Report did not identify any issues that would prevent the development from proceeding as proposed.

Clause 3.6 – Mosquito Management

A Mosquito Impact Assessment was submitted with the DA. The report updated Studies from April 2004 and October 2006: (Part of Lot 265 DP 1212348) 505 North Creek Road, Skennars Head.

This issue is discussed in Section 6.2.9 of the report.

Clause 3.7 – Waste Management

Construction activities will generate waste and is required to be managed accordingly.

The following waste is likely to be generated in the construction phase:

- Contaminated soils which will be classified and disposed of to an authorised facility;
- Surplus clean fill, which can be, reused elsewhere (off site) or taken to an authorised facility;
- Plant related waste such as lubricating oils, hydraulic fluids, cleaning agents, etc.;
- General litter generated by workers;
- Redundant erosion and sediment controls;
- Impact amelioration; and
- A waste management plan will be prepared as part of the CEMP including a detailed list of the measures that would be implemented during construction to minimise and appropriately manage waste. It shall provide details of:
 - The volume and type of waste to be generated;
 - How the waste is to be stored/treated on-site, and
 - Residual waste disposal method.

This has been addressed by way of condition in the consent.

Clause 3.9 – Stormwater Management

Stormwater Management

Three stormwater management plans have been provided.

The Stephen N Webb & Associates report, Stormwater Management, Hydrologic and Hydraulic Assessment, dated March 2018, provides the western stormwater flow path assessment only.

The Knobel Consulting, Conceptual Stormwater Quality & Quantity Management Plan Eastern Catchment, dated 12 September 2018, details the proposed stormwater treatment devices, and flow control devices to the eastern discharge locations.

The Knobel Consulting, Conceptual Stormwater Quality and Quantity Management Plan Western Catchment, dated 10 October 2018, details the stormwater treatment devices and quantity infiltration devices to the western discharge locations and SEPP 14 Wetland. The plans are considered generally acceptable and have been independently reviewed, on Council's behalf, by Trevor Johnson of SLR Consulting.

Clause 3.10 – Sediment and Erosion Control

Appropriate sediment and erosion control measures will be installed and effectively maintained to control stormwater run-off, particularly during the construction phase to ensure that there are no environmental impacts onto the SEPP 14 Wetlands or Sharpes Beach. A condition of consent has been recommended to require the preparation and implementation of a Construction Management Plan during the construction phase of the development.

Clause 3.11 – Provision of Services

Potable and non-potable water supply, sewer and power is proposed to be provided to the site. The applicant provided a Sewer and Water Servicing Report, prepared by Planit, detailing the provision and delivery of water, sewer, roads, drainage, underground electricity and communication services.

This issue has been addressed in Section 6.2.4.10 of this report in relation to clause 6.2 of the BLEP 2012.

Clause 3.19 – Car Parking and Access

Access to the site and Headland Estate is proposed via the construction of a new access road and intersection on The Coast Road.

The proposed new intersection is in the location identified in the Skennars Head Expansion Area DCP and will also provide access to the Sharpes Beach car park. The proposed new intersection on The Coast Road is proposed to be controlled by

a “four-way” roundabout. Vehicular access will also be available from Carroll Avenue to the north. The proposed access will require the future closure of part of Headlands Drive.

On-site Car parking will be addressed in future development applications when individual dwellings and commercial buildings are proposed.

Chapter 3 – Urban Subdivision – Skennars Head Expansion Area

The DCP compliance table is provided in Attachment 3. Any Variations to the DCP controls are discussed in the table.

6.2.6.2 Section 94 Development Contributions Plan/s

The S94 Open Space and Community Facilities Contributions Plan 2016 and S94 Ballina Shire Roads Contributions plan are discussed in Section 6.2.9.

6.2.7 Section 4.15(1)(a)(iia) provisions of any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F

There is no planning agreement or draft planning agreement applying to this development or the site.

6.2.8 Section 4.15(1)(a)(iv) the regulations

No additional matters under Clause 92 of the regulations requires further consideration in respect of the proposed development.

6.2.9 Section 4.15(1)(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

New underpass adjacent new intersection of The Coast Road

Chapter 3 of the Ballina DCP requires an underpass to be provided to facilitate safe pedestrian access across the Coast Road from the site to Sharpes Beach. The DCP identifies the new underpass is to be constructed with the new intersection, opposite Sharpes Beach Carpark which will support the existing and main access point to the beach.

The proposal does not include the construction of an underpass beneath The Coast Road for a number of reasons. These are:

- The original DA submitted proposed a signalised intersection which would have included signalised pedestrian crossing, however, a signalised intersection was not supported by RMS or Council.
- The underpass location required by the DCP is at a very low point in topography, which creates drainage, ramping/design related and CPTED issues, which therefore made the underpass in this location inappropriate; and

- Two (2) alternative access methods are proposed via the construction of an underpass on the proposed new realigned Headlands Drive access road which will connect to the existing shared path and underpass to Sharpes Beach, located approximately 200m to the north of the site. Furthermore, as an alternate to the underpass beneath The Coast Road, pedestrian refuges are proposed on the northern and southern ends of the proposed new roundabout intersection to be built on The Coast Road.

A concept of an underpass beneath The Coast Road at the location sought by the DCP, was submitted in response to issues raised by Council. However, Council's Engineer raised a number of concerns with the concept underpass in that location, which are summarised below:

- Accessibility requirements dictated a number of switch backs resulting in 111m of ramped travel distance into an underground structure.
- The concept underpass did not allow pedestrians to view their exit point, passive surveillance was very limited and personal safety concerns would likely deter pedestrians from using the underpass, and graffiti may also become an issue.
- Cyclists may be required to dismount in order to use the underpass. However, if they don't dismount, pedestrian/cyclist conflict is more likely to occur.
- The concept underpass is approximately 5m below NGL and approximately 1m above sea level. Therefore, drainage from the underpass would be problematic. Drainage of an underpass via an Infiltration method at 1m AHD could not work, therefore an underpass in this location would require a stormwater pump out unit.
- The magnitude of the underpass is considered an unnecessary maintenance burden on Council. The scale of the infrastructure is also considered to be inconsistent with coastal buffer.

Based on the Engineering referral comments, it would appear that the location nominated in the DCP for an underpass beneath The Coast Road is not necessarily suitable due to depths, drainage and CPTED issues raised.

Council's Engineering comments highlighted that the desired line for pedestrians from the development to the beach is across the southern leg of the roundabout, utilising the pedestrian refuges on the roundabout. Alternatively, pedestrians and cyclists could use an underpass located on the realigned Headlands Drive connecting to the existing shared path and underpass to Sharpes Beach, approximately 200m to the north of the site. The entire length of that journey to reach the Sharpes Beach car park is approximately 400m.

Therefore, there are two options for pedestrians and cyclists to cross The Coast Road.

Pedestrians and cyclists are likely to opt for the shortest possible route to the beach which is across the southern end of the roundabout. This would result in pedestrians and cyclists relying on the pedestrian refuge to cross The Coast Road.

Similar pedestrian refuges at roundabouts to the north and south of the development have been constructed with Concurrence from the RMS (The Coast Road is a classified road). The context of these roundabouts in relation to the development site is illustrated in Figures 18 and 19:



Figure 18: Angels Beach Drive Roundabout

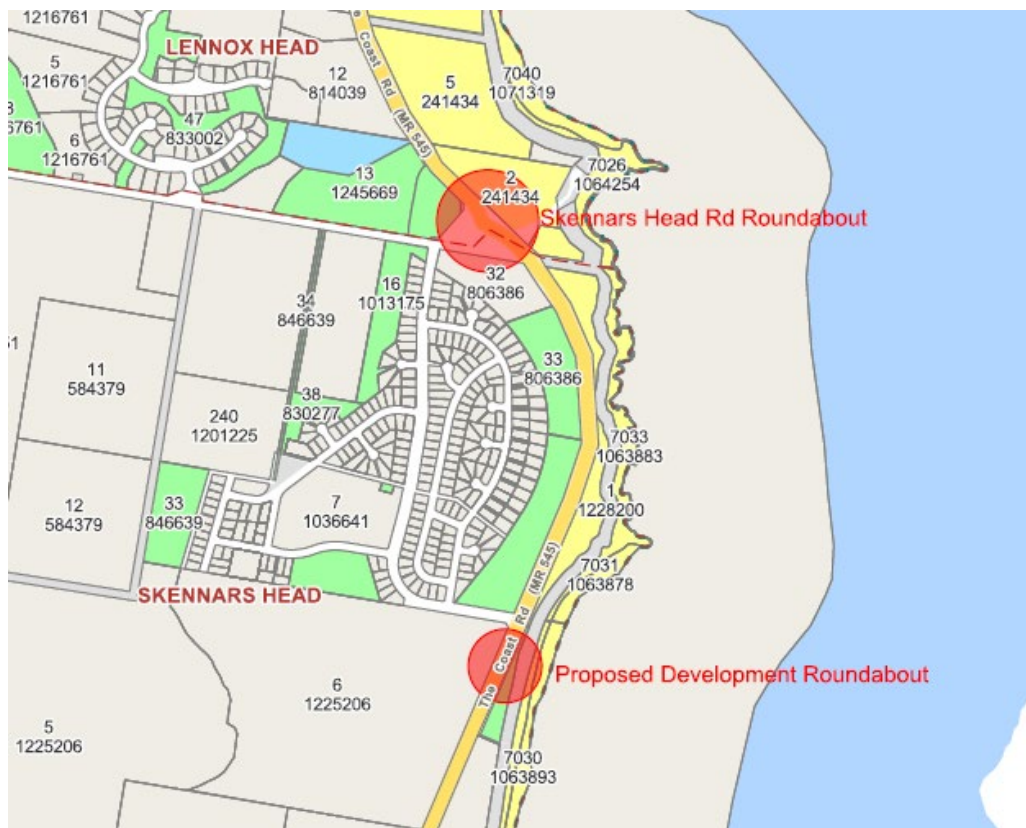


Figure 19: Skennars Head Road Roundabout

The Skennars Head Road roundabout was built by Council with concurrence from the RMS and funded by the RMS Safer Roads Program in 2017.

The design incorporates a pedestrian refuge (red circle) detailed below in the drawing and photos as follows.

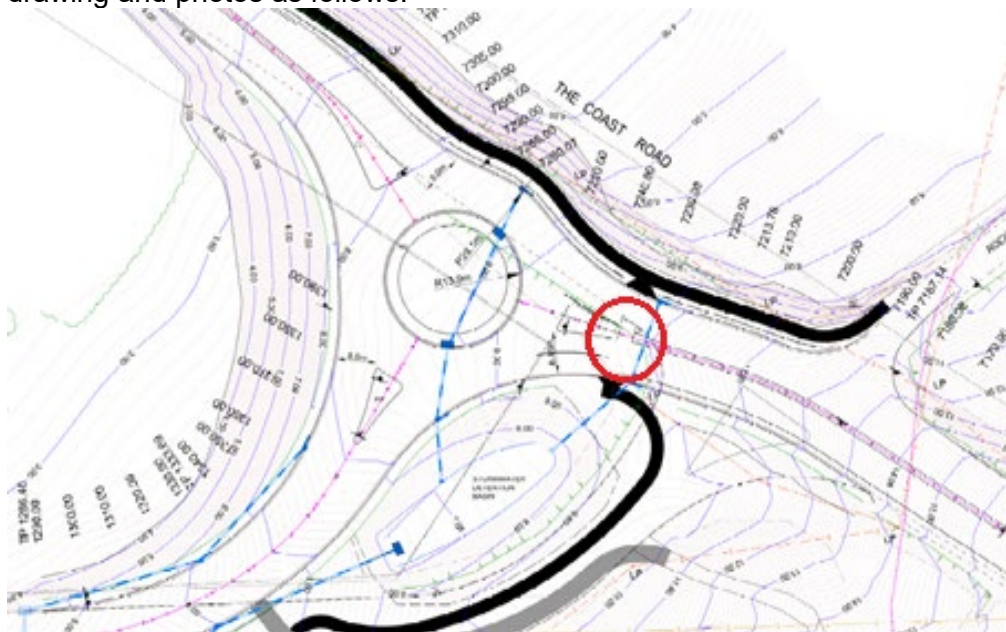


Figure 20: Engineering Drawing of Skennars Head Road Roundabout

The pedestrian network is depicted in black and is part of the shared path network connecting Ballina to Skennars Head and Lennox Head.

The completed project is illustrated in the Figures 21 and 22 below.



Figure 21: Pedestrian refuge associated with Skennars Head Road Roundabout



Figure 22: Pedestrian refuge associated with Skennars Head Road Roundabout

The roundabout and pedestrian facility is comparable to the roundabout design proposed at the development site in relation to roundabout size, approach lanes, speed environment and traffic volumes (also being on The Coast Road).

Angels Beach Drive Roundabout



Figure 23: Angels Beach Pedestrian Refuge (within the red circle)

This pedestrian refuge was constructed in conjunction with the adjacent roundabout and residential development; it is located on Angels Beach Drive which becomes The Coast Road on the northern side of the roundabout. Similarly, to the proposed development an underpass option was considered and in this case, formed part of the consent condition for the residential subdivision.

A S4.55 amendment was sought to remove the underpass and replace it with an at grade crossing. Council sought an independent peer review of the engineering justification for an at-grade pedestrian refuge. The peer review confirmed the underpass posed safety risks in relation to crime prevention and security and recommended an at grade crossing be installed in its place.

The Austroad Guide to Road Design Part 4b: Roundabouts, section 5.2.1 Safety Analysis of Roundabout for Pedestrians states:

“While there may be a perception in some sections of the community that roundabouts are problematic for pedestrians, there is no evidence to suggest that roundabouts are less safe for pedestrians than other forms of intersection treatments”.

Roundabouts on The Coast Road exist to the north and south of the development with similar designs and traffic environments, as proposed by the development, that incorporate pedestrian refuges. These roundabouts have Concurrence from the RMS and in the case of the southern roundabout, has undergone an independent peer review justifying the at grade crossing over an underpass. Therefore, given the proposed development will have at-grade separated option for pedestrians wishing to access Sharpes Beach, a pedestrian refuge on the southern access leg to the roundabout that is constructed in accordance with the relevant design guides, is suitable for pedestrians choosing to cross The Coast Road in this location.

Ecologically Endangered Communities (EEC's)

As identified in Section 6.1 in relation to the *EPBC Act* and Section 6.2.1 in relation to the *TSC Act*, the site is within the vicinity of six (6) EEC's. Consequently, an assessment of significance was undertaken by the applicants Ecologist 'Ecological Australia Pty Ltd', dated November 2017 (ELA Report) and subsequent Addendum dated July 2018, as part of the Ecological Assessment of the proposal.

The 'Study Area' referred to in the ELA Report includes the site and any additional areas which are likely to be affected by the proposal, either directly or indirectly extending as far as is necessary to take all potential impacts into account.

The Study Area is delineated to the east by The Coast Road and to the north by the existing urban areas, on the basis that there is unlikely to be significant indirect impacts beyond these boundaries.

The wetlands to the west of the site i.e. on Lot 5 are also included in the Study Area because they are at a lower elevation than the site and therefore are potentially indirectly impacted by changes in hydrology and other disturbances.

The ELA Report identified two (2) listed plant species, 13 listed fauna species and six (6) EECs listed in Schedule 1, 1A and 2 of the *TSC Act* were identified as known or likely to occur in the Study area associated with the DA site and were assessed.

The ELA Report concluded that no listed species or their associated preferred habitat or EECs would be directly impacted by the proposed development, including no loss of EEC Freshwater Wetlands. Further, that the proposed development is highly unlikely to significantly impact on the threatened species or ecological communities assessed.

The location of EEC's is shown in the diagram at Figure 24, prepared by ELA.

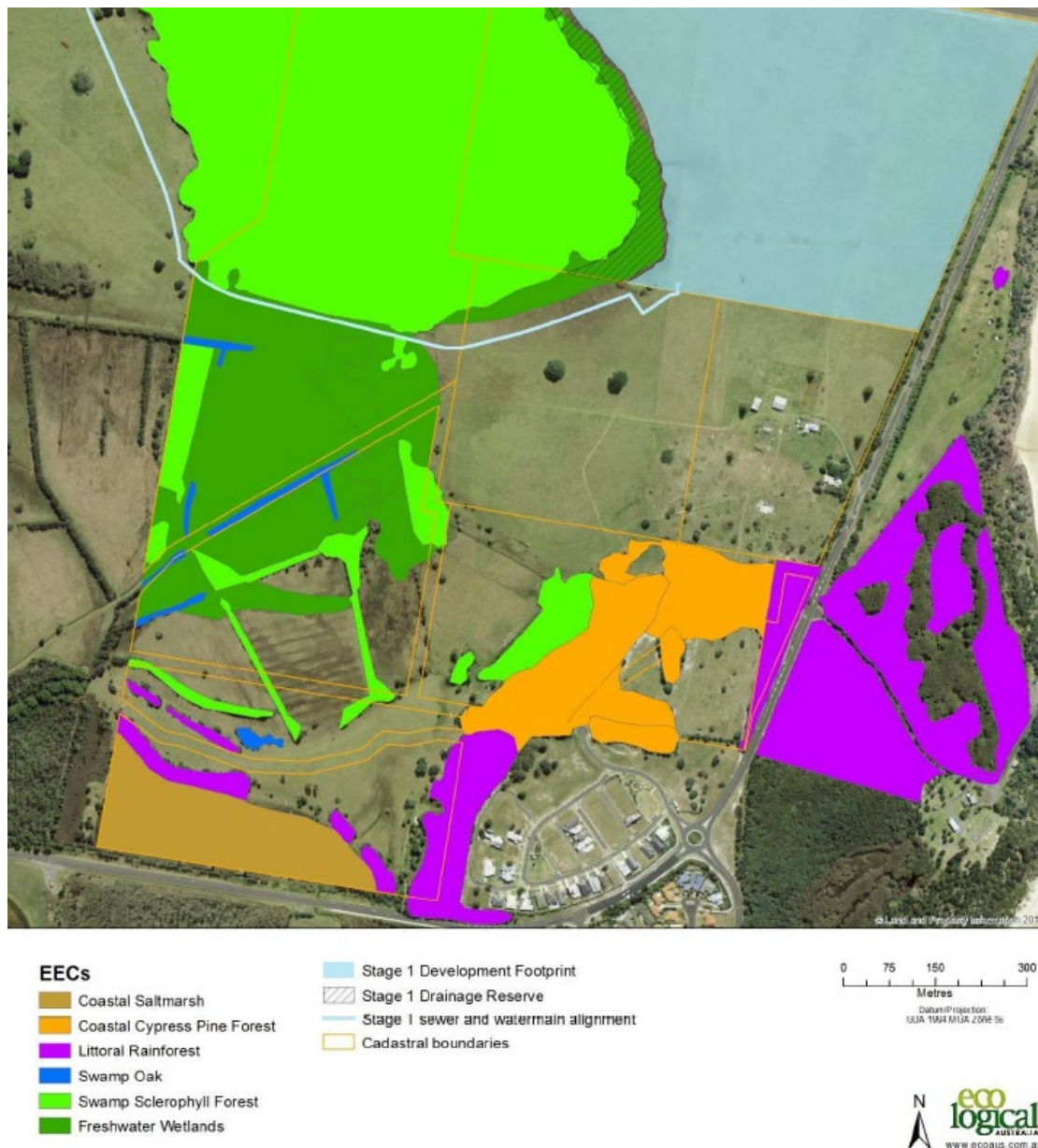


Figure 24: Map showing location of EEC's (Source: ELA)

The proposed DA includes subdivision works, coloured (light blue), that will abut the Freshwater Wetlands EEC (dark green). It is proposed, as part of this DA to replace the Freshwater Wetlands EEC (dark green) that abut subdivision works, coloured (light blue), with melaleuca forest, for reasons described under Section 6.2.9 Infrastructure works including sewer and water main alignment (light blue line) that are proposed as part of the DA, will traverse across Freshwater Wetlands EEC and intersects Swamp Sclerophyll Forest EEC (light green). Further, the applicant seeks to convey stormwater via existing farm culverts that are currently in various forms of functionality, and which traverse Freshwater Wetlands EEC (Dark Green), further south of the sewer and water main alignment.

The main area of impact from the proposed development relates to the interface of the development along the western boundary with the adjoining Freshwater Wetlands EEC (also covered by SEPP 14 Coastal Wetlands). The report prepared by ELA, as described above, is of the view that the proposed works are highly unlikely to significantly impact on the threatened species or ecological communities assessed provided other areas are protected

The question of whether the proposed development is having an unreasonable or unacceptable impact on the wetland to the west of the proposed development is a complex one, in that there are a number of overlapping issues to consider, including:

- Is the Proposed Wetland Rehabilitation and Monitoring Plan appropriate?
- Does the impact on the wetland require an offset to be provided?
- Does the development maintain the existing hydrology of the wetland?
- Is the proposed stormwater discharge from the wetland to North Creek appropriate, given existing water quality issues associated with the use of such culverts.

These overlapping issues are addressed below.

Wetland Rehabilitation and Monitoring Plan (WRMP)

Regarding the implementation of the amended WRMP, concerns are raised at the more technical aspects, including:

- The length of the restoration program;
- The location of monitoring stations;
- The trigger point levels contained within the WRMP are too high to prevent environmental decline of the wetland system;
- Adaptive measures to be implemented if the monitoring project confirms urban development is having an adverse impact on the SEPP 14 No.91 and/or downstream EEC habitats; and
- The long-term ownership of the restoration area.

Therefore, a deferred commencement condition is recommended requiring the WRMP to be amended to address the technical aspects (highlighted above) and Chapter 3, 5.7 Skennars Head, Section G Element – Environmental Protection Ballina DCP 2012

In addition, the Wetland Rehabilitation and Monitoring Plan (WRMP) that was submitted proposed to restore 2.87 hectares of Freshwater Wetland EEC (dark green hatched area) that is currently affected by grazing. The restoration area is located between SEPP 14 Wetland and the western edge of the residential subdivision, and is shown in Figure 25.



Figure 25: Map showing location of restoration area (Source: ELA)

Concern was raised by Council and the Office of Environment and Heritage (OEH) as to what vegetated structure (treed versus reedland and/or sedgeland) the restored area would ultimately transition too. Immediately to the north of the development site, similar habitats have transitioned into a dense reedland approaching 2 metres in height. While reedlands are a form of Freshwater Wetland EEC in other nearby SEPP 14 Wetlands, the proliferation of the reeds has prevented the conveyance of surface water and resulted in broad scale tree dieback. Consequently, in this situation this form of wetland community is not desirable.

In response to the concerns raised by Council and OEH, the applicant proposed to convert the existing Freshwater Wetland EEC into a forested wetland community (Melaleuca Forest). An amended WRMP was submitted and proposed the following:

- Rehabilitation of 3.2ha of land;
- Undertake planting works if natural regeneration does not occur within the first 2 years of the restoration program;
- Undertake feral cat, vegetation, surface and groundwater monitoring; and
- Implementing the actions of the WRMP for a period of five years.

The applicant's revised restoration strategy directly affects the Freshwater Wetland EEC and identified in their revised Section 5A assessment, the following:

- The restoration strategy will result in the loss of 2.8 ha of poor quality Freshwater Wetland EEC;
- The local occurrence of Freshwater Wetland EEC occupies an area of 19.6ha and the development will remove 14% of that local occurrence;
- Freshwater Wetland EEC to be removed was originally Swamp Sclerophyll Forest EEC, and

- The development is not significant enough impact to warrant the preparation of a SIS for the following reasons:
 - The rehabilitation works will result in a net benefit to biodiversity.
 - Native vegetation will not be cleared within the proposed rehabilitation area. The native species that currently exist will remain, whilst only exotic species will be removed. Offsets are therefore not required.

Council's Environmental Scientist disagrees with these conclusions of the ELA Report and is of the opinion that an Offset is required as discussed below.

Freshwater Wetland EEC Offset

The proposal detailed the extent of the Freshwater Wetland EEC located adjacent to the development site (western edge), however no surveys were undertaken to verify the extent of the Freshwater Wetland EEC located on Lot 5 DP 1225206 and Lot 1 DP449851. Instead, the proposal relied on the vegetation mapping undertaken by different ecological consultants during the rezoning of the land in 2007 and 2013. During a site inspection, Council identified that large areas of grazing pasture (approx. 8 ha) mapped by the proposal as Freshwater Wetland EEC were not entirely accurate. In fact, the local occurrence of Freshwater Wetland EEC occupies an area of approximately 12ha, far less than the applicant had mapped at 19ha.

The development proposes to remove 2.8ha of Freshwater Wetland EEC (24% of the local occurring Freshwater Wetland EEC) at the western edge of the subdivision works and replace them with a forested wetland community (Melaleuca Forest). Council and OEH agreed with this approach, as similar habitats immediately to the north of the site have transitioned into a dense reedland approaching 2 metres in height, and prevented the conveyance of surface water which resulted in broad scale tree dieback. Therefore, in this situation this form of wetland community is not desirable and the proposed forested wetland community (Melaleuca Forest) is appropriate.

Thus, Council's Environmental Scientist has identified that a Freshwater Wetland EEC Offset is required because 2.8ha of Freshwater Wetland EEC (24% of the local occurrence) is being removed. In addition, the Freshwater Wetland EEC to be impacted by the development is identified under Council's DCP as being located within the 50m buffer to a Natural Area and Habitat (Figure 26). In this regard, Chapter 2 Section 3.3.3 of Council's DCP states *"if habitat is proposed to be removed or impacted as part of a development, an offset for the loss of biodiversity may be considered by Council provided it can be demonstrated that the proposed offset will maintain or improve biodiversity outcomes and values"*. The DCP also indicates if a suitable offset site cannot be achieved at the development site and off site offset area may be considered by Council.



Figure 26: Extract from Council's Natural Area and Habitat Mapping (Source: Ballina Council)

Council Environmental Scientist identified that the loss of the Freshwater Wetland EEC is only deemed acceptable if the impacts to the Freshwater Wetland EEC are offset, through the revegetation and rehabilitation of a suitable Freshwater Wetland EEC within the vicinity of the site. The offset will help ensure the local occurrence of Freshwater Wetland EEC remains viable.

Where a development impacts on EEC habitat and where an SIS is not required, Council generally applies a minimum offset ratio of 5:1. However, given the applicant is proposing to restore (with a different vegetation community) the SEPP 14 interface a reduced offset ratio of 3:1 is considered acceptable in this situation.

Consequently, Council's Environmental Scientist has proposed a condition requiring the applicant to provide a Freshwater Wetland EEC offset area of 8.4ha (3 x 2.8ha) within 5 kilometres of the site. The offset requirement is in addition to the restoration works within Council's nominated wildlife corridor. The condition will require the preparation of a Freshwater Wetland Offset Plan (FWOP).

Therefore it is recommended the request for a Freshwater Wetland EEC offset area and subsequent Freshwater Wetland Offset Plan (FWOP), be imposed via way of a deferred commencement condition considering the level of uncertainty regarding the location of the EEC to be rehabilitated and the rehabilitation works required.

Summary of Environmental issues

While Council's Environmental Scientist generally agrees that the proposed development is unlikely to significantly impact on the threatened species or ecological communities assessed, ELA's Report relies on allotments outside the DA site but within their nominated study area to demonstrate that the environmental impacts of the development are acceptable. It is understood that the *TSC Act* permits the inclusion of local EEC's outside of the DA site in the assessment of impact, provided that the local EEC is connected to that EEC that will be impacted by the proposal.

The key environmental issues/actions that Council's Environmental Scientist requires to be undertaken as part of this DA includes:

- Securing and undertaking on ground restoration works associated with the establishment of a wildlife corridor system that is proportional to the size of their development;
- Management of the Freshwater Wetland EEC SEPP 14 interface;
- Ensuring the existing hydrology of SEPP 14 Wetland is maintained and that stormwater discharge from the development will not have an adverse impact on environmentally significant habitats; and
- Ensuring the downstream flow paths from the SHEA are maintained. The maintenance of existing flow paths is required to ensure the ongoing health of ecologically significant vegetation communities, improving estuary health by reconnecting the original flows through to Chickiba Creek.

The applicant maintains their position that a majority of the environmental actions described cannot be undertaken as part of this DA, for two main reasons. The first being, a nexus has not been established between the proposed works and environmental issues/actions required by Council. Secondly, they do not have owners consent to undertake the environmental actions and or address the environmental issues on land that does not form part of the DA.

The four key environmental issues/actions (described above) are explored in further detail, including the impact of the development, the applicant's response and Council's assessment.

Maintenance of the Existing Hydrology of SEPP 14 Wetland

The applicant submitted concept stormwater plans for the proposed development, detailing the pre-and post development flows into the SEPP 14 Wetland. The proposed stormwater drainage system distributes flows along the western fringe of the development by using spreaders to extend the width and lower the velocity of flows entering the fringe of the SEPP 14 and EEC Freshwater Wetland. The proposal details measures that will return groundwater infiltration rates back to within 10% of their predevelopment rates to the SEPP 14 wetland and EEC Freshwater Wetland. Council's Engineer and Environmental Scientist generally agrees, noting that from an ecological context, it is considered that a change in infiltration rates of less than 10% of the existing ground/surface water flows, is not

expected to have a significant impact on the ecology of the downstream wetland system. However, this requires infiltration devices to be installed on public and private land parcels throughout the development site and for these devices to be maintained and operational in perpetuity. Therefore, conditions of consent have been recommended by Council's Engineer and Environmental Scientist to ensure these devices can be readily accessed, maintained and monitored to ensure the system does not fall into disrepair.

Management SEPP 14 Interface

This issue relates to the WRMP which Council is seeking to be amended via way of condition. Secondly, it also relates to the Freshwater Wetland EEC offset area that Council's Environmental Scientist is requires to be to be provided.

These issues have been discussed previously within Section 6.2.9.

Natural Flow path and Stormwater discharge

The majority of the site of the proposed residential subdivision works drains westwards to the wetlands along the western boundary of the site. These wetlands then drain to the south and historically flowed into Chickiba Creek (refer to blue line in Figure 26). However, in the early 1970s, the land was cleared and a series of drainage channels diverted the natural flow path from Chickiba Creek (blue line) westwards along a constructed agricultural drain ultimately flowing into North Creek (yellow line). Spoil from the excavation works was stockpiled adjacent to the excavated drains creating a series of levee banks. A series of drainage culverts were installed into the levee banks to facilitate the constructed flows from SEPP 14 Wetland No 91 along the yellow path to North Creek. Figure 27 details the location of these culverts.

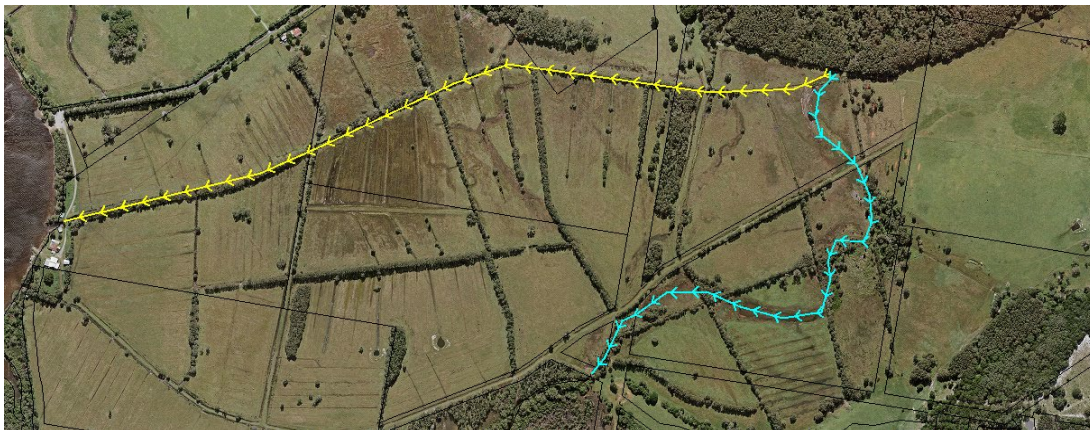


Figure 27: Aerial map displaying flows paths of Chickiba Creek (blue line) and North Creek (yellow line)

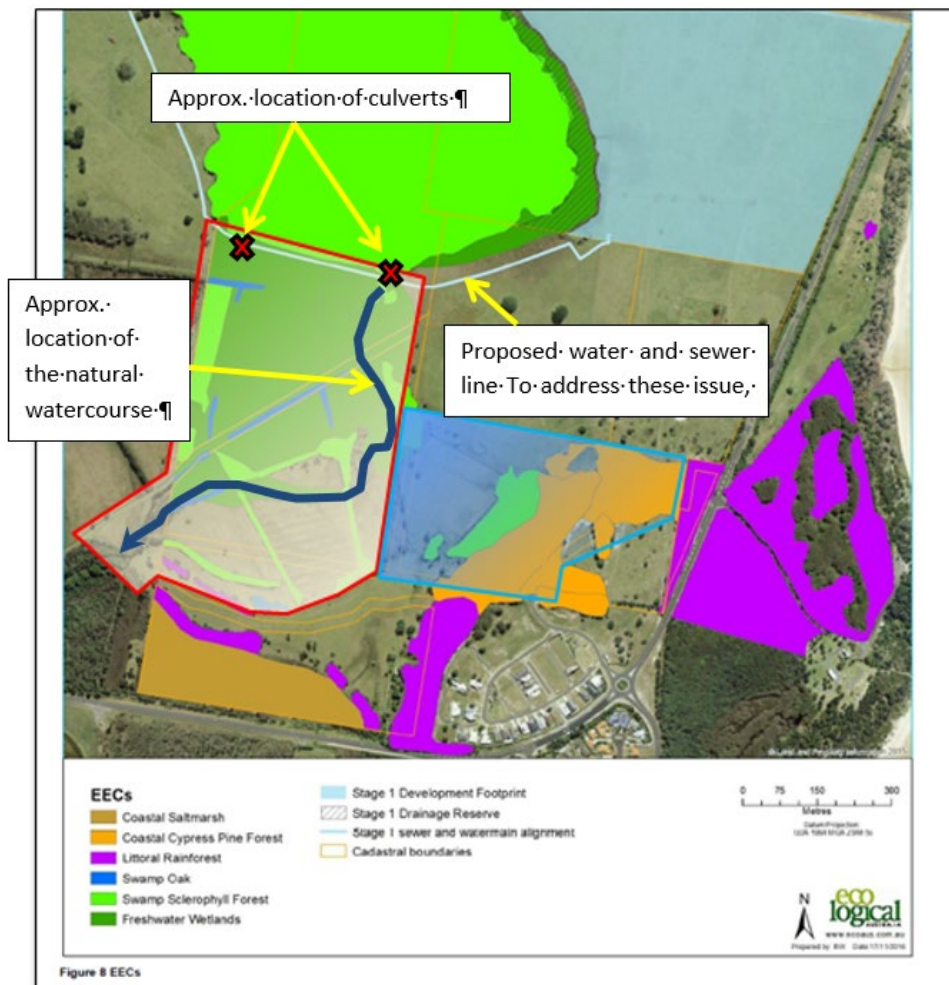


Figure 28: Map showing location of culverts (marked with a red X)

As identified earlier, the DA proposes to continue to convey stormwater (via the SEPP 14 Wetland) from the development to North Creek via the yellow path as shown in Figure 27.

The ELA report and hydrological assessment report prepared by Stephen N Webb & Associates state that the hydrology and water quality associated with the constructed drain to North Creek will be essentially unchanged compared to pre-development levels, concluding that there will be a negligible impact to the ecological values of the drain and other areas downstream.

Council's Environmental Scientist inspected the culverts and has raised the following issues:

- The culverts are in various forms of functionality. In particular, two (2) existing culverts (shown in Figure 28) located within an existing farm access track will require ongoing maintenance to ensure they do not fall into disrepair.
- Both culverts are located within land recommended to be included into Council's recommended wildlife corridor.

- The culverts are also located on land where the applicant proposes to install their water and sewer infrastructure, shown in Figure 27 by a light blue line.

Council's Environmental Scientist has recommended:

- That the applicant replace the existing culverts with new, as they are located within Council's desired location for a WLC and are located within allotments of land that are part of the DA site (the issue of the WLC is discussed further in the next section of this report).

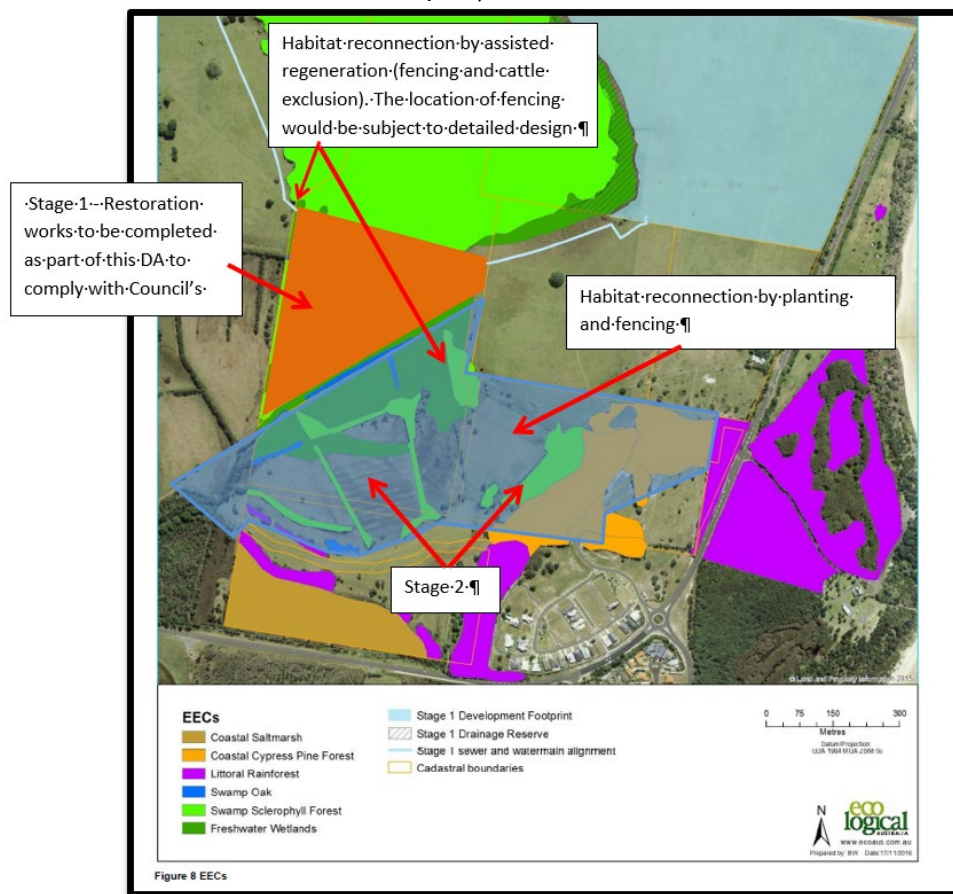


Figure 29: Council's Proposed Wildlife Corridors (WLC) shown in orange and blue

- The proposed easement associated with the water and sewer assets to be increased size to include an area 10 metres either side of the new culverts to ensure Council can monitor and maintain the culverts and existing flow rates.
- Council's Engineer and Environmental Scientist agree with the ELA Report that the water quantity and quality of water discharged into North Creek will remain largely unchanged by the proposed development. However, water currently discharged from the culvert into North Creek will contain acid sulphate rich or low pH levels waters. Given this is an existing problem and as the development will not increase the volume and/or the frequency of stormwater discharge as a result of their development, they should not be required to address the water quality issue. However, as they are relying on the existing flow path and culverts that are adjacent to the proposed sewer

and water infrastructure, a condition is recommended to be imposed to require the culverts to be upgraded as mentioned previously.

The request for the applicant to upgrade the culverts and create an easement for Council to access and maintain is reasonable and the recommended condition is considered appropriate.

Wildlife Corridor and Plan of Management

In 2002 the NSW National Parks and Wildlife Service (now OEH) undertook a landscape approach to mapping wildlife corridors across north-eastern NSW. The Key Habitats and Corridors (KHC) Project was a GIS based program that used the home range and habitat requirements of a number of priority fauna species to predict and map sub-regional and regional fauna corridors throughout north – eastern NSW.

To facilitate fauna movements on a landscape scale sub regional corridors had minimum width of 300m, while regional corridors had a minimum width of 500m. The KHC project concludes the mapped key habitats and corridors should be the focus for protection, enhancement and the restoration of native vegetation to facilitate landscape fauna movements.

The southern portion of the SHEA is located within a mapped regional wildlife corridor known as the “*North Ballina Coastal Corridor*” with SEPP 14 and the land to the south mapped as key habitat for the black bitten and black headed flying fox. However, KHC project recognised the mapped corridors may require further refinement to better align with locally significant habitats. The location of the mapped regional wildlife corridor and key habitats are depicted in Figure 30.

Council’s DCP has adopted the findings of the of the of the KHC project and mapped the general location of wildlife corridors. Chapter 2 Section 3.3.3 of Council’s DCP states that if a development is located within a mapped wildlife corridor the development must demonstrate a long term plan for the operation and retention of the wildlife life corridor.



Figure 30: Location of the mapped Regional Corridor and Key Habitat as mapped by NPWS (Source EA)

Chapter 3 of the DCP identifies that two (2) wildlife corridors (WLC) are to be provided within the Skennars Head Expansion Area. One WLC running north to south along the western boundary of Stage 2 and the second running east to west along the southern boundary of Stage 2, as illustrated in Figure 31.

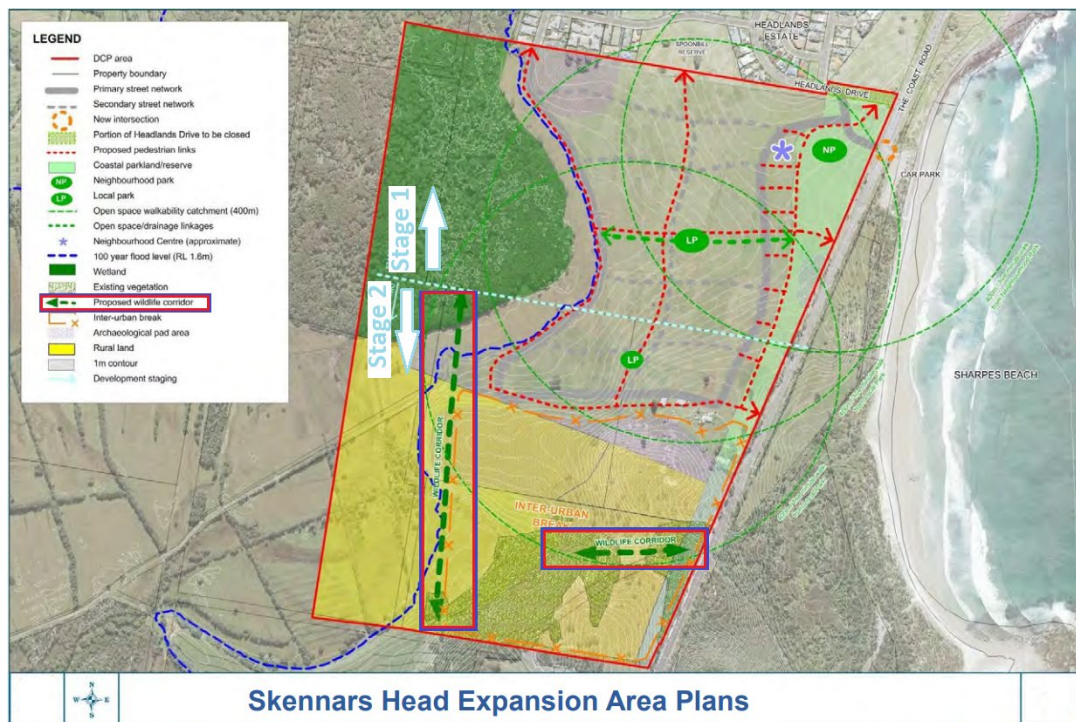


Figure 31: DCP Appendix E – Skennars Head Expansion Area Plan

Note: references to Stage 1 and Stage 2 in this discussion relates to Skennars Head Expansion Area Plan (Appendix E) within the DCP

The proposed works are predominantly within Stage 1, however the sewerage and reticulated water supply works proposed as part of the development occur within the north-western section of Stage 2.

The DA does not propose to provide or secure a WLC across any part of the site or the adjoining Stage 2 land.

The flora and fauna correspondence from ELA dated 28 March 2018, identifies that the north-south WLC is not required as existing vegetation adequately facilitates wildlife movement. Notwithstanding this, a Plan of Management (POM) for a WLC running east to west was subsequently submitted (refer to Figure 32). The WLC proposed under the POM submitted is not in accordance with the east-west WLC identified in the DCP. It is considerably larger than indicated in the DCP.

It is also noted that whilst a POM has been lodged for an east-west WLC, there is no commitment or proposal to undertake such management works as part of this DA.

The location of the WLC proposed in the applicant's POM is shown in Figure 32.

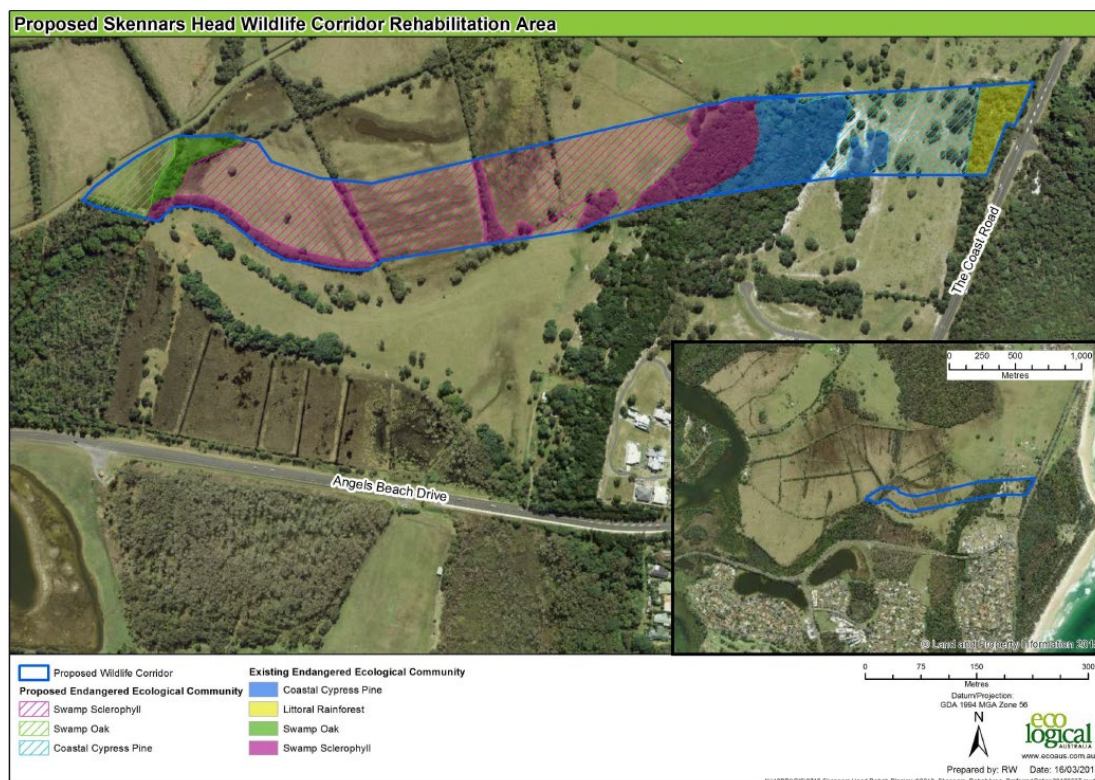


Figure 32: Location of Applicant's proposed WLC

Council's Environmental Scientist raised concerns with the proposed WLC, which are summarised as follows:

- The proposed POM appears to ignore the science and modelling that was used to underpin the NPWS Key Habitats and Corridors (KHC) Project conducted in 2002 (KHC);
- The proposed POM incorrectly identifies regional KHC corridor depicted in Figure 4 of the POM as a local corridor;
- The proposed POM incorrectly identifies the abovementioned KHC regional corridor as having a width of 200m, when the actual width of the corridor is in excess of 400m;
- The proposed POM identifies grey kangaroo's as a local species, however the species is not known from the locality;
- The proposed POM incorrectly concludes that it is widely accepted that local wildlife corridors have a width of 20-50m. Mapping undertaken by Lismore City Council recommends all local and subregional corridors to have a width of 300m;
- The proposed POM nominates fencing works that will require EEC's to be cleared, leading to further fragmentation of these communities;
- The proposed WLC has a maximum width of 100m and subject to ongoing edge affects; and
- The proposed POM and WLC avoids the majority of the EEC's and known threatened species habitats located on Lot 5 DP 1225206 and Lot 1 DP 449852.

The proposed DA does not include works in the location of the applicants WLC. Therefore, Council is unable to condition the applicant to undertake on ground management works identified in POM as part of the subject DA as the land to which the POM relates to does not form part of the DA.

Council's Environmental Scientist does not agree with the applicant's location of the WLC and POM, and prepared a more expansive WLC in two (2) quadrants, shown in orange and blue and detailed in Figure 33.

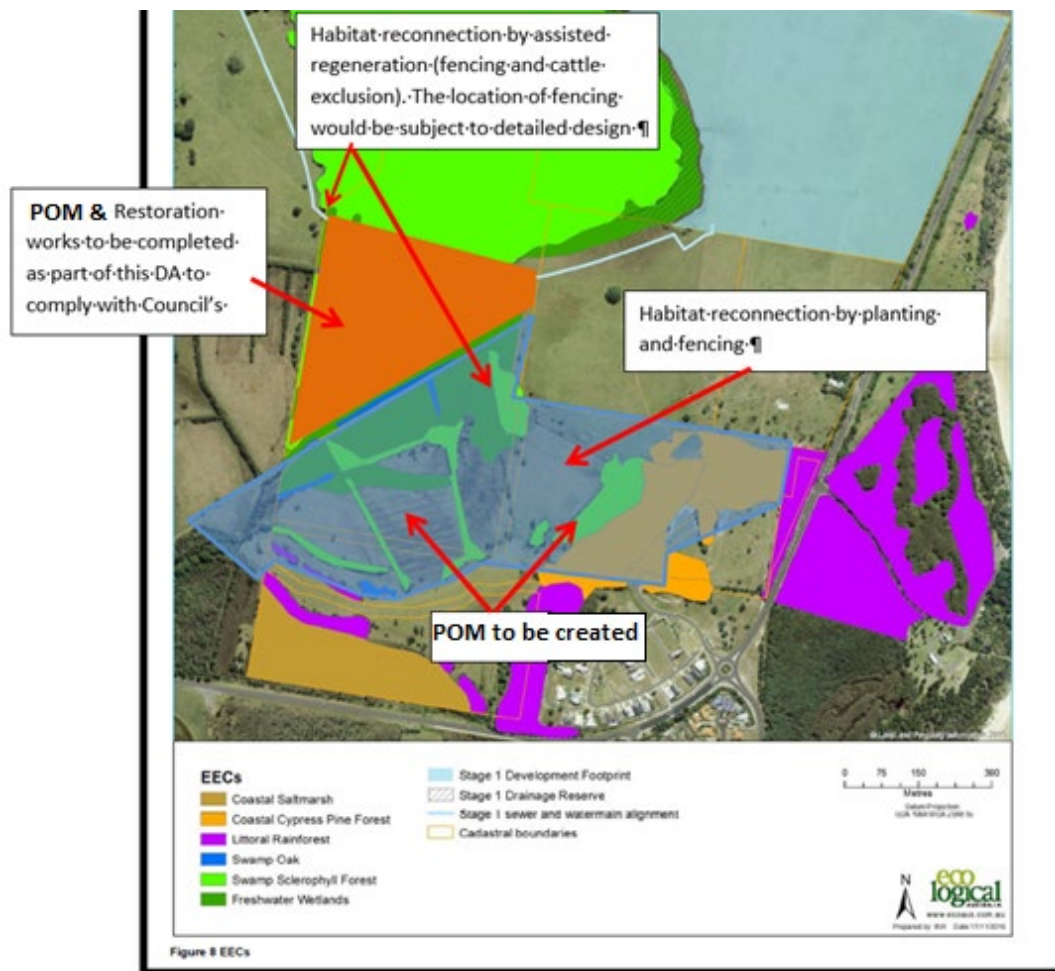


Figure 33: Council's Proposed Wildlife Corridors (WLC) shown in orange and blue and location of POM

The location and extent of Council's proposed WLC was developed based on the following criteria and findings.

- The location of high conservation valued EEC's and threatened species habitats, and ensuring they are included within the corridor system and not fragmented through the introduction of exclusion fencing;
- Ensuring the boundary of the wildlife corridor generally coincides with the existing access tracks and/or elevated land. Consequently, exclusion fencing will not be located on land subjected to inundation;

- Avoiding the need to erect exclusion fencing through EEC habitats that are regularly subjected to inundation;
- It generally complies the intent of KHC project;
- Reducing edge effects to core ratios of the existing vegetation communities; and
- Providing a corridor width that will accommodate core breeding habitats.

The orange quadrant is located over Lot 5 DP 1225206. It extends beyond the Skennars Head Expansion Area (SHEA) and is located entirely within northern section of Stage 2. The blue quadrant is located over Lot 3 DP 1184436 and is within the SHEA and entirely within southern portion of Stage 2.

Works as part of the subject DA are proposed within the northern edges of Lot 5 DP 755684 and Lot 50 DP 7555684 (Stage 2). These works include the rising sewer main and recycled water main. The north-south WLC desired in the DCP and part of the more expansive WLC sought by Council's Environmental Scientist (orange quadrant) are located within the abovementioned allotments. Therefore, we are of the opinion that a nexus is established and the applicant should provide a revised POM and commence on ground works as part of the DA.

Council's proposed WLC within the blue quadrant, while far more expansive than the applicants east to west WLC, does not extend into allotments where works are proposed as part of the subject DA. Thus, the requirement to undertake ground management works as part of the WLC (blue quadrant) could not be imposed as a condition of consent and would have to be addressed as part of a future DA.

Further, we are also of the opinion that the applicant be requested to prepare a POM for a WLC for the orange and blue quadrants (as highlighted by Council) as part of the DA. While it is noted the blue quadrant is located beyond where works are proposed as part of the DA, areas within the blue quadrant were relied upon in the Ecology Assessment prepared by ELA to demonstrate the proposed DA will not have any detrimental impacts to EEC's.

It is recommended the request for a revised WLC POM and commencement of works, be imposed via way of a deferred commencement condition, considering the extent of information and issues that the condition seeks to address. Further, the condition will require Council's Environmental Scientist to review and approve any revised WLC and POM.

Access to Proposed Lot 635 containing Freshwater Wetland EECs and drainage functions

Originally, the developer proposed to dedicate the restored EEC habitat to Council. However, given the land is not required for the management of stormwater, Council declined to undertake ownership of the subject land. Currently, the land to be rehabilitated is proposed to remain as a separate allotment (Proposed Lot 635) and in private ownership. While this lot has a dwelling entitlement, stormwater is being discharged via the level spreaders to the wetland and Council is requiring an easement over to accommodate the drainage function of the lot. As this lot, will be burdened by a restriction to drain water, and contains a restored wetlands area with no legal access available to the lot, it is proposed to require the lot to be

consolidated with either Lot 5 DP 1225206 or Lot 50 DP 755684 via way of condition.

Provision of Open Space

The BDCP requires the following in terms of the provision of open space within the Skennars Head Expansions Area:

- 1 x Local Park (LP) with a minimum useable area of 2,000m² and to service a walkability catchment of 400m;
- 1 x Neighbourhood Park (NP) within the coastal buffer, with a minimum useable area of 4,000m²;
- Coastal buffer to be embellished in a manner that reflects the coastal character i.e. turf and weed removal/management; and
- Coastal buffer to be dedicated to Council at no cost.

The DA proposes:

- 1 x Local Park (LP) with a useable area greater than 2,000m² with a walkability catchment of 400m (Proposed Lot 442);
- 1 x Neighbourhood Park (NP) within the coastal buffer, with a useable area greater than 4,000m² (Proposed Lot 348);
- Embellishment of the coastal buffer beyond what the DCP requires, however large areas of the buffer also accommodate stormwater infrastructure including large basins, open space and pathways;
- 1 x Western Local Park (WLP) (Proposed Lot 444)
- Variations to the Open Space and Community Facilities Contributions Plan 2016 as follows:
 - Exemption from contribution for local parks @ \$247.04/lot;
 - Exemption from contribution for district parks @ \$1,093.38/lot; and
 - Exemption from contribution for regional open space @ \$1,789.36/lot.

This would result in the reduction of the contribution from \$7,812.75/lot to \$4,682.97/lot based on the un-indexed contribution rates stated in the Section 94 Plan.

Exemptions from Open Space and Community Facilities Contributions Plan

Local Park (LP)

The development provides the equivalent of two (2) LP's, being 1 x LP within the centre of the development and 1 x NP within the coastal buffer, as per the requirements of the S94 Open Spaces Plan. Therefore, the proposed variation request for an exemption from a contribution towards local parks is considered appropriate and is reflected in the proposed conditions of consent.

Neighbourhood Park (NP)

As mentioned in the previous section, the development proposes two (2) parks; a local park and a neighbourhood park. The applicant has sought concessions from the Section 94 Contributions towards District Open Space on the basis that the Neighbourhood Park is required by the DCP and proposed under the DA.

As identified above, the Neighbourhood Park is considered still to be a Local Park under the S94 Plan.

Council does not support the variation to exempt the development from the payment of District Park (DP) contributions. The DP servicing the Skennars Head catchment is Pop Denison Park, Ballina. The S94 contributions generated by the redevelopment of the Skennars Head Expansion Area as part of this development are to contribute to the embellishment of Pop Denison Park (a District Park) as apportioned under the S94 Open Spaces plan.

Regional Open Space

The application proposes to embellish the coastal buffer beyond what the DCP requires, and that the coastal buffer be considered as regional open space as per the S94 Plan. This is not supported by Council as the proposed coastal buffer does not fit the description of regional level open space, regional level recreation or regional level community facilities within the S94 Plan. The proposed coastal buffer is not similar in description to other regional level facilities that are to be funded by the S94 Plan. Finally, the proposed coastal buffer contains a large amount of stormwater infrastructure, including stormwater basins as well as shared pathways, and is considered to primarily serve a drainage function. Therefore, the requested exemption from contributing towards regional open space is not supported.

Western Local Park (WLP)

Proposed Lot 444 (DR3) is located on the western edge of the proposed development and was referred to in the DA documentation as the Western Local Park (WLP). The WLP largely comprises a large drainage basin and stormwater related infrastructure. The WLP is not proposed to be embellished as a local park, is not located centrally as per required by the DCP for local parks and has not been adequately detailed. Thus, for these reasons the WLP has not been considered as open space under the DCP nor S94 plan. A condition has been imposed recommending the nomination of this lot as a park be removed.

Dedication of the coastal buffer

The DCP seeks the coastal buffer, being that part of the site zoned 7(d) – Environmental Protection along the eastern boundary to be dedicated at no cost to Council.

The DA proposes the dedication of the coastal buffer to Council in accordance with the DCP, but subject to concessions or in lieu of Section 94 Contributions towards regional open space. The coastal buffer is not identified as regional open space

under the Ballina Open Space and Community Facilities Contributions Plan 2016. On this basis, Council does not support to any such concessions, and therefore there are essentially two (2) options available:

1. The applicant accepts to dedicate the entire coastal buffer to Council (as a drainage reserve) at no cost as per the requirements of the DCP; or
2. The applicant dedicates those areas of the coastal buffer that contain stormwater infrastructure such as treatment and detention basins (including maintenance access), and public open space. The applicant creates easements and rights of way over, public pedestrian and cycleway pathways, stormwater flow paths and conveyance structures and any associated land required for the maintenance of such infrastructure.

Option 1 is Council's preference, however in the absence of S94 Plan or VPA that would apply to the entire coastal buffer, dedication of the entire coastal buffer is problematic unless proposed by the applicant.

The difficulty with Option 2 is that the infrastructure and open space occupy a substantial portion of the coastal buffer area. While this infrastructure is required to be dedicated to Council as per the S94 Plan, the remaining land outside this infrastructure and open space, is not required to be dedicated to Council. This results in Council owned land being fragmented amongst privately owned land, requiring complicated legal access arrangements to be created over the various allotments for maintenance and access to the Neighbourhood Park (NP) and coastal buffer. Further the lack of delineation between public and private land will make access to the coastal buffer and NP by the local community unclear and confusing.

Therefore, it is proposed to require the applicant to provide a plan that nominates the land that will be dedicated to Council and the land to remain in private ownership.

It is also proposed to require the applicant to provide a detailed access arrangements plan that addresses those areas of the coastal buffer that contain public infrastructure such as drainage facilities, public open space, public pedestrian and cycleway pathways and any associated land required for the maintenance of such infrastructure. This plan will need to include details of easement, rights of way and other legal instruments required to facilitate access.

It is proposed to impose the above-mentioned requirements by way of deferred commencement conditions. This issue is discussed further under the section below.

Neighbourhood Park (NP)

It is understood that given Council is not prepared to provide a concession in S94 Contributions in lieu of dedication of the coastal buffer to Council, the applicant may intend to only dedicate those areas containing public infrastructure. This will result in a highly complicated and fragmented ownership pattern with complicated legal access requirements required across various allotments, for maintenance and access by Council and the local community. This is illustrated in the land dedication

diagram below (Figure 34), blue indicates the required land to be dedicated, pink indicates the required stormwater easements and yellow indicates the easement for public access.

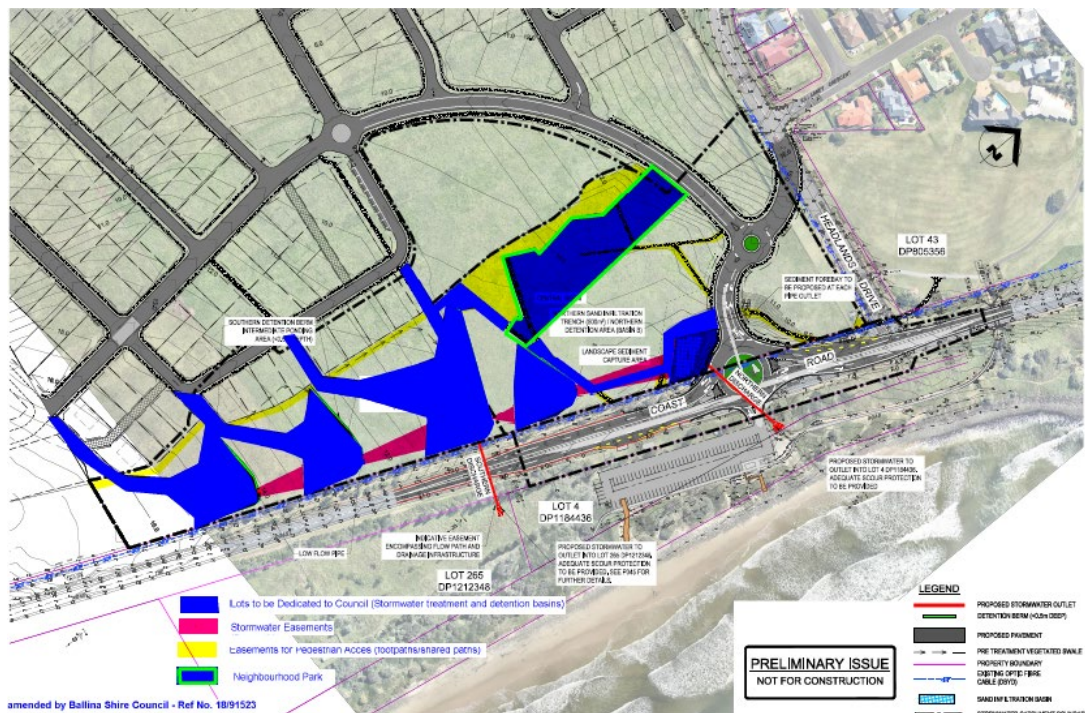


Figure 34: Proposed land dedication within the coastal buffer, including required easements and right of carriageways

Therefore, to address the disconnection of the NP from the coastal promenade (located between Lots 346 and 348), it is recommended that a right of way (ROW) be created over the entire portion of privately owned land to maximise permeability and access to the NP and coastal buffer.

It is recommended that the above mentioned special conditions are addressed via way of deferred commencement conditions.

Section 94 Contributions – Ballina Shire Roads Contribution Plan

The Skennars Head Expansion Area DCP requires a plan to upgrade the Headlands Drive/The Coast Road intersection to meet the needs of the development and existing road users by way of an appropriately configured roundabout. The upgrade plan is to provide for the following:

- Consolidated access to the expansion area and Sharpes Beach;
- Deviation of Headlands Drive as part of the consolidated access; and
- Closure of any redundant parts of Headlands Drive.

The proposal includes the roundabout and intersection treatment works specified within the DCP. The applicant is seeking that the cost of providing the relocated and upgraded intersection between Headlands Drive and The Coast Road be offset

against the total contribution applicable to their development, for the following reasons:

- This intersection will not only cater for traffic accessing the subject site but will also accommodate the traffic generated by the residential development to the north, vehicles travelling along The Coast Road and vehicles accessing the Sharpes Beach car park.
- The S94 Plan requires the applicant to contribute to works that have little nexus to the proposed development, while traffic generating development elsewhere in Ballina Shire is not required to contribute to these works even though they will benefit from them.

Council does not agree with the requested offset of the intersection in lieu of contributions under the Roads Plan for the following reasons:

- The developer requires access to their development site with a roundabout being the most effective option;
- From a traffic management perspective, the most suitable location for the roundabout is that proposed by the DCP and the applicant in the development application. Any other option would result in three (3) separate intersections in close proximity, that would further compromise traffic flows along The Coast Road;
- The Headlands Drive intersection with The Coast Road was assessed during the development of the Ballina Shire Roads Contribution Plan, Version 4.1 adopted 26 July 2018. The intersection was not considered critical in the functioning of the road network and was not included in the S94 plan. There are road projects included in the S94 which will considerably reduce future peak congestion on the existing Headlands Drive intersection such as the North Creek Road and Bridge works scheduled for the year 2019-2028; and
- Black spot funding provided by the Federal Government has enabled Council to construct a roundabout to the north of the intersection on Skennars Head Road. This new roundabout has aided peak congestion on the Headlands Drive/Coast Road intersection in the interim.

Therefore, Council does not support the variation to offset the intersection works against S94 Roads Contributions. The offset would redirect contributions generated by the development away from the established S94 Roads Plan. Accordingly, a condition is proposed to be imposed requiring full payment of contributions.

Section 64 Contributions (Water and Sewerage)

The S64 contributions plan requires a contribution to be paid (per allotment), for the provision of water, sewerage and rous water services to any new development. The DA proposes to upgrade the existing sewer infrastructure to accommodate future loading from the Sharpes Beach car park, the current loads generated from the existing Headlands Estate, as well as the proposed development (stage 1) and future stage 2. These works include constructing a sewerage pumping station (SPS) on Proposed Lot 163. The applicant considers that this infrastructure provision/upgrade, be considered as an additional benefit for works in kind, as per

the Ballina Shire Council Development Servicing Plan for Wastewater and Recycled Water Supply.

The applicant estimates that at least 20% of the costs of the new SPS is attributable to the required upgrade.

Council does not agree that the neighbouring developments sewer system are underserviced. Council has never requested allowances to be made within the proposals sewer or water systems to address alleged underservicing of adjacent developments nor the upgrade to the Sharpes Beach carpark. The applicant has been advised to design the sewer and water system to cater for the proposed development only. Furthermore, at the applicant's request, Council has agreed to provide the development with base level sewer flows from a neighbouring pump station to aid the initial stages of the development.

Therefore, as Council has not sought any additional water and sewerage works to service an unrelated development, Council does not agree with the additional concessions being sought. A condition of consent is proposed requiring all applicable contributions to be paid.

Retention of Norfolk Island Pines located within neighbouring properties

Concerns were initially raised by Council and the residents within Redford Drive, Skennars Head, that four Norfolk Island Pines located within the rear yard of No. 33 Redford Drive would be impacted by the proposed development.

The four (4) trees are located within very close proximity of the northern boundary of the proposed development, adjacent a proposed new road and Proposed Lot 207.

Figure 35 below details the location of the trees relative to the proposed development.



Figure 35: Location of neighbouring trees relative to the proposed development

The four (4) trees in question are nominated as D, E, F and G.

Earlier subdivision layouts detrimentally impacted on the ability to retain the previously mentioned trees, located on neighbouring properties.

The proposed subdivision layout detailed in Figure 35, was a result of Council's arborist review and recommendation to ensure the trees could be retained and continue to thrive. Council's arborist advised that while all four (4) trees could be retained based on the design of the subdivision (in Figure 35) and conditions of consent being imposed relating to TPZ's and excavation methods, Tree G is in severe decline and further investigation needed to occur to establish why. Tree G was never adequately investigated by the applicant's arborist and the impact that the development would have on tree G. Thus, the applicant has agreed to remove Tree G, separate to this application which Council's supports because of the safety risk Tree G poses. Regarding the remaining trees, a condition has been imposed requiring trees D, E and F to be retained and protected during the construction of the subdivision and associated works.

Removal and retention of Norfolk Island Pines along the edge of the Coast Road

Approximately 76 Norfolk Island Pines are located along the eastern boundary of the site adjacent to The Coast Road property boundary. The trees are located within the coastal buffer part of the site and the DCP identifies that the existing pines are to be consolidated with further planting. The DA proposes to thin these Norfolk Island Pines by removing between 60 - 80% of these trees as detailed on the plan provided in Figure 36a and 36b.

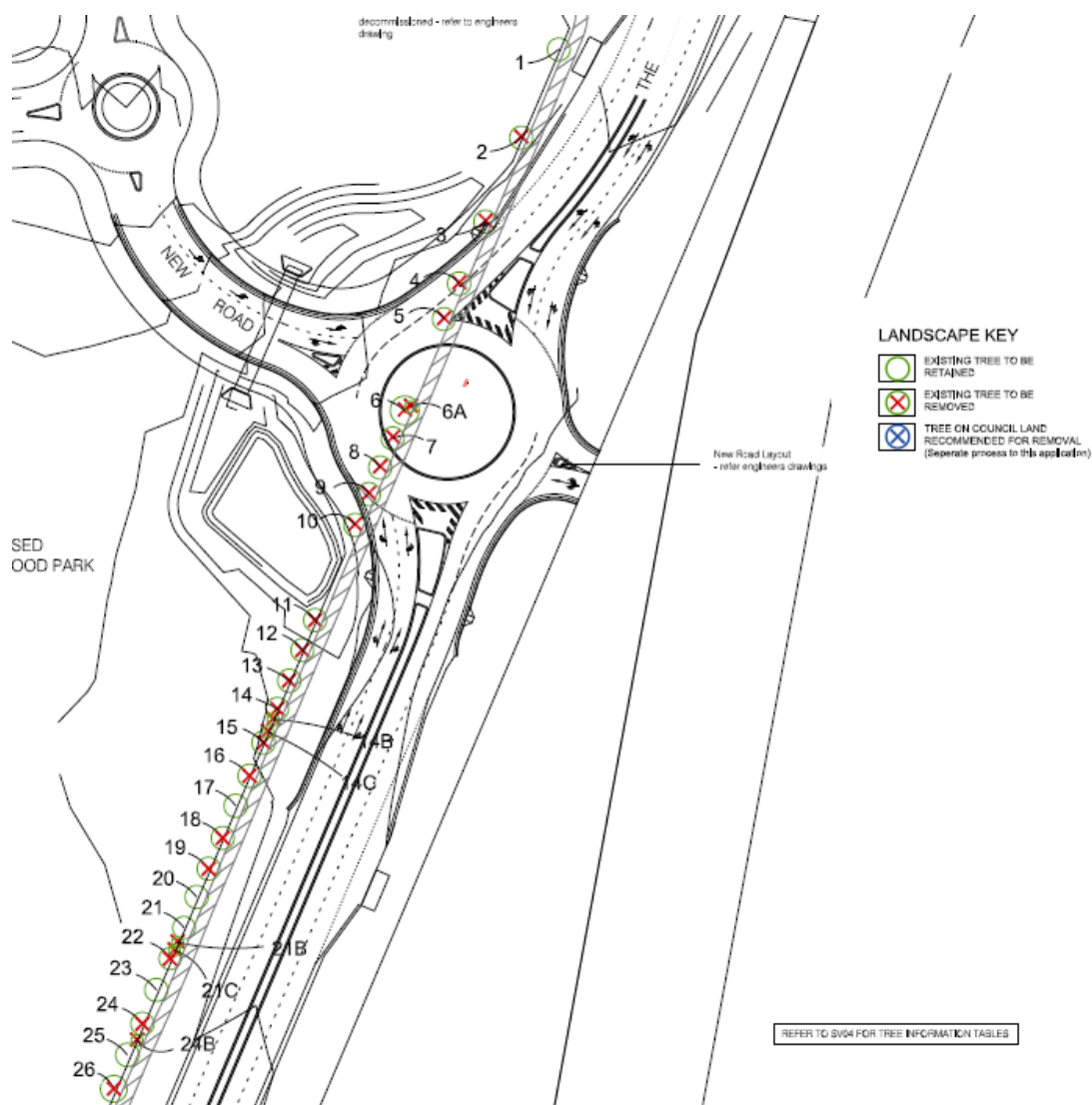


Figure 36a: Plan showing location of proposed trees to be removed/retained

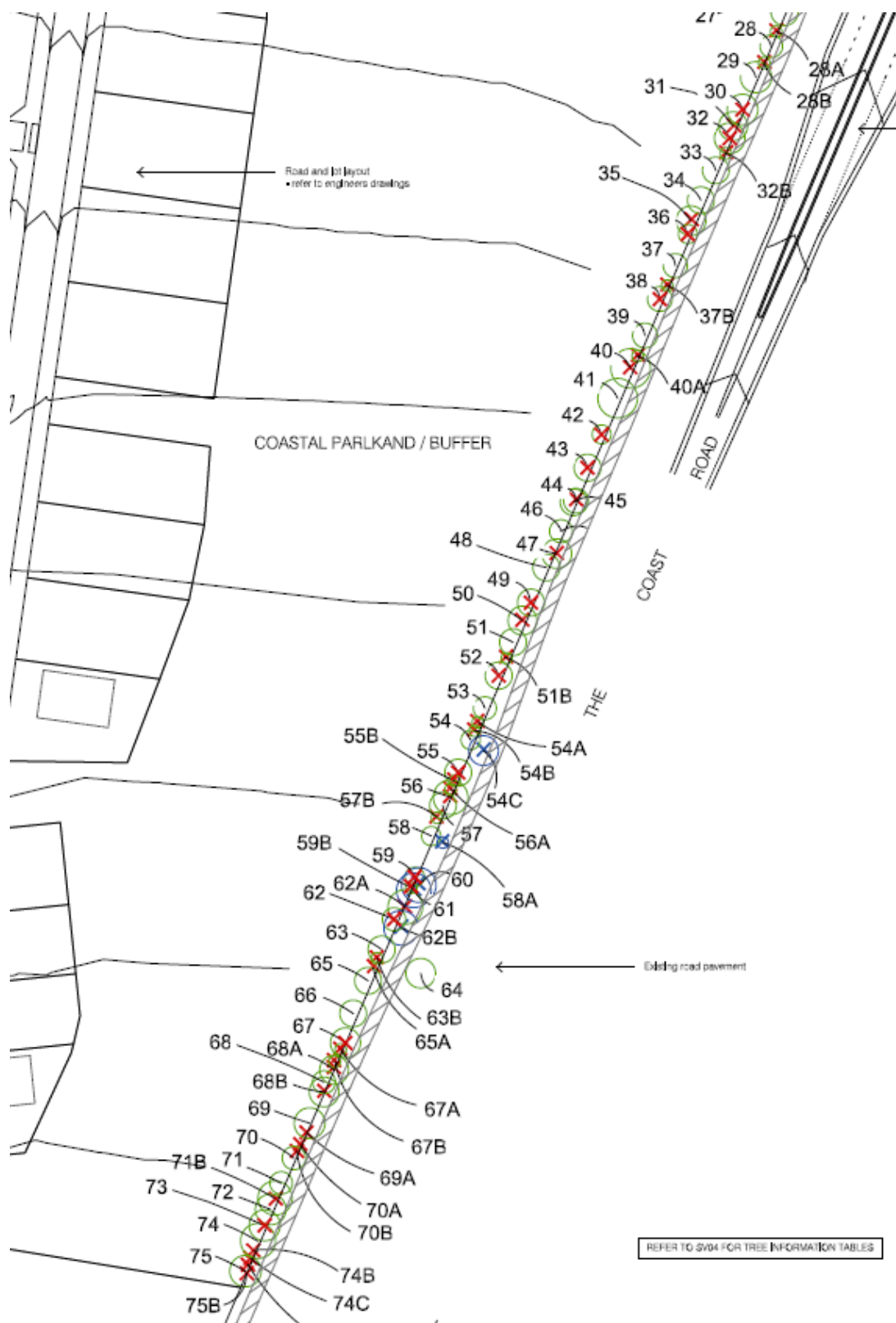


Figure 36b: Plan showing location of proposed trees to be removed/retained

The arborist report identifies that the tree removal aims to improve the current health of the larger trees and to maximise their future viability. Trees with co-dominant trunks are proposed for removal which is a sign of decline, as well as other smaller trees which are located too close to larger more dominant trees.

Council agrees with the trees nominated for removal on the plan prepared by Landsite, dated 8 November 2018, and a condition of consent is proposed to require compliance with the plan.

Local Park (LP) design and landscaping treatment

The LP design and landscaping treatment was based on a previous stormwater design. The new stormwater plan proposes additional batter and works around the infiltration basin (within the centre of the LP), while a large area of the LP will be used for sub-surface infiltration. Information demonstrating how water is going to get into the sub-surface infiltration has not been provided and will be requested to be provided via way of condition. In addition, an amended landscaping design for the LP will be required to reflect the new stormwater works, and will also be requested via way of condition.

Urban Design

(i) Context and Settings

The proposed subdivision is consistent with the Skennars Head Village Expansion Area and will service the growing number of residents within the locality.

(ii) Site Design and Internal Design

The proposed subdivision will create a pedestrian friendly residential development which reflects its coastal location.

This application relates to Stage 1 of the development and will not impact on the southern edges of the development as defined in the structure plan associated with the DCP. A buffer area will be maintained between the residential development and the wetlands on the western edge.

The coastal buffer area on the eastern boundary will provide an appropriate interface to The Coast Road, and the coastal area beyond.

The residential lots are orientated to the street and open space areas, specifically lots are orientated along the eastern front to the coastal buffer area (with laneway at the rear) and the local park.

The neighbourhood centre will not form part of this application but will be the subject of a future DA. It will be integrated with the Neighbourhood Park which will be located in the coastal buffer area overlooking Sharpes Beach.

(iii) Access, Transport and Traffic

See *Clause 3.19 BLEP 1987*, Section 6.2.6.1 for discussion.

Pedestrian and Cyclist Requirements

Footpaths are proposed on both sides of collector, local and access streets.

A 2.5m shared path network is also proposed linking the development to The Coast Road shared path and Sharpes Beach underpass via an underpass on the realigned Headlands Drive. A shared path network is also proposed on the western edge of the development linking the development to the adjoining residential area to the north and future stages of the proposed development to the south. There is a shared path connection through the centre of the development via the central local park to the coastal buffer area.

Internal Roads and Traffic

There is a subsequent roundabout to the main access roundabout from The Coast Road, on the realigned Headlands Drive.

The internal road network is generally a grid style network with standard road reserve widths in accordance with the road hierarchy and the Northern Rivers Guides. The initial proposal included a number of residential lots and super lots with lane only frontages that had a width of 7m wide. The developer agreed to provide road frontages to the majority of these lots and super lots. However, four (4) lots remain with lane only frontage with an 8m width (Lots 613, 624, 625 and 626) which was considered acceptable in the context of the entire development.

Bus Servicing

The proposed bus routes are detailed in the applicant's Traffic report. The routes are specifically intended to carry buses throughout the development and are considered adequate.

These routes are to be constructed with carriageways of 11.0m width, sufficient to facilitate bus stops at the edge of carriageway. The dashed rings shown in the report are drawn at approximately 200m radii, indicating that the majority of dwellings in the development will be situated at less than 200m from a potential bus route with the remainder being only marginally in excess of a 200m walk distance. These walk distances are significantly less than the 400m walk distance standard normally applied to a residential development.

(iv) Public Domain

The applicant has proposed to provide public domain landscaping and infrastructure provision for a local park (within the development), neighbourhood park (within the area zoned 7(d) BLEP 1987) and public reserve lots (coastal buffer). It is proposed to dedicate the 2,000m² local park, 4,000m² of the neighbourhood park, the public reserves and drainage reserve to Council.

Section 94 exemptions are sought as part of the proposed embellishment, however these are not supported.

The proposed parks and level of embellishment are supported by Council. The proposed rehabilitation and drainage works to the edge of the SEPP 14 Wetlands is generally supported, however amendments are required to the WRMP and WLC POM which are proposed to be addressed in two (2) ways, as discussed earlier in the report under Section 6.2.9.

(v) *Utilities*

The applicant has demonstrated connections to existing sewer and water infrastructure can be achieved. Further, a drinking and recycled water supply strategy has been provided by Planit Engineering, titled Sewer & Water Servicing Assessment Report – Bulk and Internal Reticulation, dated October 2017.

A report prepared by Knobel Consulting demonstrated that connections to gas, electricity and telecommunications including NBN are available to the development.

(vi) *Heritage*

The site does not contain any known items or places of local or state significance.

A total of four (4) Aboriginal sites within the development area were identified. This has been discussed in Section 6.2.2.

(vii) *Construction*

Access during construction will be via Headlands Drive only. No access for construction is permitted from the Coast Road.

A Construction Environmental Plan (CEMP) has been prepared, the provided CEMP does not adequately address all requirements to sufficiently manage any potential environmental impacts. Therefore, a condition has been recommended seeking to amend the CEMP as follows.

PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE

(1) *A Construction Environmental Management Plan (CEMP) must be submitted to and be approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. A copy of the CEMP must also be submitted to Council prior to the issue of a Construction Certificate. The CEMP must address, but not be limited to the following matters where relevant:*

- a) Hours of work*
 - *Contact details of site manager*
 - *Complaints management register*
 - *The location of existing services*
 - *Noise and vibration*
 - *Dust - Air quality management plan*

- *Materials storage and waste management including classification and disposal/reuse location of any fill material to leave the development site*
- *Soil & water management (including erosion and sediment control)*
- *An unexpected finds protocol to appropriately manage unexpected potential contamination issues encountered during works.*

(viii) Views

The applicant provided a Landscape Visual Impact Assessment Report identifying the existing character and visual amenity, and the impacts from various viewpoints of the proposed residential subdivision.

The site predominately comprises rural pasture and native vegetation. The majority of the site (excluding the EEC land and SEPP 14 Wetlands to the west and Coastal buffer to the east) will be developed into housing and therefore the character of this landscape will be considerably altered. The land is zoned for residential development and thus the landscape is expected to change.

However, the proposal has mitigated the visual impacts through the rehabilitation and continued maintenance of the SEPP 14 Wetlands to the east, establishment of a coastal buffer including embellishment to the east and proposed regrading of the land to minimise view loss of the coastal escapement and ocean from various viewpoints.

Thus, the proposal is considered acceptable in terms of overall view sharing and visual impact.

(ix) Biodiversity

See Section 6.2.9.

(x) Stormwater Management

Stormwater Management

Three (3) stormwater management plans have been provided.

The Stephen N Webb & Associates report, Stormwater Management, Hydrologic and Hydraulic Assessment, dated March 2018, provides the western stormwater flow path assessment only. This report does not make up any condition of consent.

The Knobel Consulting, Conceptual Stormwater Quality & Quantity Management Plan Eastern Catchment, dated 12 September 2018, details the proposed stormwater treatment devices, and flow control devices to the eastern discharge locations.

The Knobel Consulting, Conceptual Stormwater Quality and Quantity Management Plan Western Catchment, dated 10 October 2018, details the stormwater treatment devices and quantity infiltration devices to the western discharge locations and

SEPP 14 wetland. The plans are considered generally acceptable and have been independently reviewed, on Councils behalf, by Trevor Johnson of SLR Consulting. The reports can be summarised as follows.

Flow and volume management

The Webb report utilizes the Watershed Bounded Network modelling (WBNM) to demonstrate flow compliance from the western catchment. The stormwater management strategy is described as follows.

Land forming of the development lot reduces the catchments flowing to the west via the SEPP 14 Wetlands and increases the catchment to the east as illustrated below in Figure 37.

Figure 1: Stormwater Catchments

a) Existing Case



b) Developed Case



Figure 37 Pre and post development flow (Source Webb)

Flows to the West (Wetlands)

The wetlands catchment drains to the SEPP 14 Wetland. The wetland is drained to North Creek via a number of first order streams during small intensity frequent rain events and a large low lying flood path for larger events as illustrated below in Figure 38.



Figure 38 Wetlands catchment detailing first order streams

The wetland and first order streams are considered a legal point of discharge.

Councils Stormwater Management Standards for Development enables a developer to demonstrate that the downstream network has capacity to convey the major storm event without any adverse downstream impact and therefore not provide detention devices. The land forming of the development site described above reduces the wetlands catchment. The Webb report demonstrates, via modelling, that the post developed volumes entering the downstream network match the volumes in the pre-developed case despite increases in impervious areas.

Hydrographs of the pre and post development cases, indicate there will be increases in peak flows due to the development but of a similar duration to the pre developed case.

Flow modelling demonstrates that the first order streams draining the wetland to North Creek barely contain the pre developed one year ARI event with greater intensity events being conveyed by the greater overland flood conveyance path to North Creek. Council flood mapping and modelling provided in the Webb report demonstrate storm events greater than the one year ARI event and the five year ARI flood events behave similarly across the flood plain with greater intensity events i.e. the 20 year and 100 year ARI events dominated by riverine flooding. Stormwater flows from the development site do not increase peak flow widths in the

5 year event and greater whilst no increases in volume prevents the downstream property remaining wetter for longer. The development has adequately demonstrated that there is no adverse impact to the downstream properties prior to the discharge to North Creek and therefore do not require stormwater detention to mitigate peak flows from the development site.

Infiltration and groundwater flows to the wetland

The Knobel western catchment report proposes to mimic the existing groundwater flow conditions to the SEPP 14 Wetland. As discussed above stormwater volume was matched to pre developed levels by land forming the development site and redirecting some of the pre developed catchment to the east. Similarly, the intention is to mimic the existing groundwater flows to the wetlands as closely as possible via infiltration.

The modelling package XP-SWMM was used to assess the hydrological pre to post development flows and the infiltration devices required to achieve pre developed ground water flows. The more frequent Q3 month, Q1, Q2 and Q5 storm events are the pertinent events when maintaining predeveloped flows to the wetland.

MUSIC was used to model the pollutant reduction treatment devices required in the post developed unmitigated case compared with the post developed mitigated case which are as follows:

- iii. Development must achieve the following minimum reductions in pollutant loads (TP, TSS, TN and GP) in relation to untreated runoff from the proposed development (based on a comparison of the unmitigated development case versus the developed mitigated case).
 - 80% reduction in total suspended solids (TSS).



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- 60% reduction in total phosphorus (TP).
- 45% reduction in total nitrogen (TN).
- 90% reduction in gross pollutants (GP).

Figure 39 Excerpt from Ballina DCP

A variety of Infiltration devices are proposed throughout the western catchment for both quality and infiltration quantity including swales, bio-retention basins, infiltration basins, trenches and on lot subsurface infiltration areas. The total infiltration device treatment area required to mimic pre developed ground water flows to the wetland and provide stormwater treatment is 10,466 m².

Flows the east

Land forming increases the catchment size to the east, therefore there is an increase in both flow and volume to the legal points of discharges to the east. In this case the legal point of discharge is considered to be Council's stormwater swale on The Coast Road which has continuity to the Pacific Ocean via existing stormwater infrastructure (northern outlet) or natural flow paths with associated easements (southern outlet). Culvert sizing under The Coast Road and the need to maintain an acceptable discharge rate to Sharpes Beach has resulted in conventional detention basins with associated flow controls as the attenuation strategy.

The Knobel Consulting eastern catchment report indicates that appropriately sized berms/detention basins, in the proposed Coastal reserve, will adequately attenuate post developed flows to pre developed levels and is an acceptable stormwater management plan.

Similarly, to the western catchment MUSIC modelling demonstrates the proposed stormwater treatment devices in the eastern catchment meet Council's pollutant reduction targets to the northern and southern discharge locations

Scour protection to the northern and southern outlets is proposed to protect the natural flow path to the south and Sharpes Beach to the north

Land forming will be done during the first stage of the development therefore attenuation and flow control measure will also need to be in place during stage one of the development.

(xi) Soils

The proposed subdivision involves bulk earthworks to re-shape the topography of the land, accommodating new internal roads, residential allotments, associated infrastructure and stormwater management.

See Section 6.2.4.10 (Clause 7.1) regarding acid sulphate soils.

(xii) Air

Any dust generation during the bulk earthworks can be mitigated using water trucks and consistent watering of stockpiles. The CEMP submitted with the application addresses the requirements for the proposed Skennars Head Village Expansion Area. It also directly responds to requirements established in Section 5.7.4(G)(i) of the Ballina Development Control Plan 2012, which requires an Environmental Management Plan (EMP) to accompany any development application for subdivision.

Further, an air quality/dust management plan as part of the CEMP will be required to be provided and amend via way of condition of consent.

(xiii) *Mosquito Management*

The application was accompanied by Mosquito Impact Assessment (MIA) prepared by Mosquito Consulting Services Pty Ltd, dated 6 May 2017. The report supported the implementation of a mosquito buffer with a minimum width of 25m between mosquito harbourage vegetation (SEPP 14 wetlands) and residential allotments on the western aspect of the development site.

Chapter 3 of Council's DCP also refers to previous studies (April 2004 – October 2006) indicating that a cleared mosquito buffer of 25m would be effective in reducing the prevalence of mosquitoes in association with the development of the land.

The MIA also outlines the proposed stormwater detention basins will drain within three days to minimise the potential for mosquito breeding, which complies with Part 3.6 Chapter 2 of Council's DCP. It also outlines windows and doors of dwellings should be screened in accordance with Chapter 2 of Council's DCP. To ensure purchasers of land and dwellings are aware of this requirement the below condition has been recommended.

Prior to the issue of the Subdivision Certificate a Restriction-As-To-User, in accordance with Section 88b of the Conveyancing Act 1919, is to be placed on the title of all residential lots stating:

All windows, external doors and other openings of any proposed dwelling located on the lots burdened must incorporate effective insect screening. Where the dwelling includes large openings which are impractical to effectively screen the following applies:

- *For the room/s containing the opening – when the opening is closed there is light and ventilation available to the room that meets the provisions of the Building Code of Australia via other openings that are effectively screened;*
- *For all other rooms – all windows, external doors and other openings to habitable rooms are to incorporate effective insect screening.*

Where rainwater tanks are installed, both the inlet and outlet (overflow) must be effectively screened with durable material to prevent entry to the tank by mosquitoes.

Plans and specifications provided to Council included a cross section of the wetland interface on the western aspect including the extent of the mosquito buffer.

The plans show the mosquito buffer consisting of 18m road reserve with the remaining buffer made up of Council managed groundcover plantings, noting this is a cross section of one area and other sections could include a larger area below the batter included as part of the mosquito buffer. Concerns were raised with the maintenance of the portion of mosquito buffer below the batter. Council's Environmental Scientist has outlined concerns that any low shrubs or vegetation planted in the nominated mosquito buffer to the west of the batter will likely be outcompeted by trees and weed species not suitable in a mosquito buffer and the

possibility of the Melaleuca Forest moving into the mosquito buffer over time. Therefore, Council recommends a condition of consent requiring vegetation in the mosquito buffer to be of a type that is low maintenance, self-sustaining and does not include thick shady vegetation to avoid facilitating mosquito dispersal and harbourage for resting adult mosquitoes.

The condition will read as follows.

Prior to the issue of a Construction Certificate a suitably qualified entomologist must certify to Council that plantings proposed in the required 25m mosquito buffer will manage the mosquito risk and not encourage the movement of mosquitoes between mosquito harbourage and breeding sites and residential lots.

To ensure the mosquito buffer only contains vegetation suitable for a mosquito buffer the below condition was recommended.

The mosquito buffer must only comprise vegetation included in the approved landscaping plan for this area certified by the Entomologist (The vegetation must be of a suitable type to manage the mosquito risk and not encourage the movement of mosquitoes between mosquito harbourage/breeding sites and residential lots.) Any vegetation present that is not included in the approved landscaping plan for the mosquito buffer must be removed prior to the issue of a subdivision certificate.

(xiv) *Flora and Fauna*

The applicant has proposed to provide a WRMP and WLC POM, however they were deemed inadequate and will be addressed via way of deferred commencement conditions, as discussed earlier in the report under Section 6.2.9.

(xv) *Waste*

It is recommended that all construction waste generation be managed by way of conditions on the consent to ensure that it is disposed of suitably.

A Construction Environmental Plan (CEMP) has been prepared, the provided CEMP does not adequately address all requirements to sufficiently manage any potential environmental impacts. Therefore, a condition has been recommended seeking to amend the CEMP as follows.

PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE

- (1) *A Construction Environmental Management Plan (CEMP) must be submitted to and be approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. A copy of the CEMP must also be submitted to Council prior to the issue of a Construction Certificate. The CEMP must address, but not be limited to the following matters where relevant:*

(a) *Hours of work*

- *Contact details of site manager*

- *Complaints management register*
- *The location of existing services*
- *Noise and vibration*
- *Dust - Air quality management plan*
- *Materials storage and waste management including classification and disposal/reuse location of any fill material to leave the development site*
- *Soil & water management (including erosion and sediment control)*

An unexpected finds protocol to appropriately manage unexpected potential contamination issues encountered during works

Conditions have also been recommended requiring all waste including fill/soil to be managed in accordance with the Protection of the Environment Operations Act 1997, Protection of the Environment Operations (Waste) Regulation 2014, EPA Waste Classification Guidelines or current Resource Recovery Order and Exemption.

(xvi) Energy

The applicant has detailed that gas and electricity are available to the development.

(xvii) Bushfire

The site is nominated as 'Bushfire prone land'.

A Bushfire Hazard and Management Plan, prepared by Stantec, dated May 2017 was provided with the application pursuant to s100B of the *Rural Fires Act 1997 (RF Act)*.

The application was referred to the RFS who issued their GTA in April 2018.

Re-referral to RFS was required based on information received 14 June 2018, regarding the replacement of EEC Freshwater Wetlands with melaleuca forest. Subsequently, revised GTA were issued by RFS. (refer to schedule 2 in draft conditions)

Hazards

(xviii) Noise and Vibrations

The application was accompanied by an Acoustic Report prepared by CRGA Acoustics. The report assessed the road traffic noise from The Coast Road as well as increased traffic noise generated by the development on the existing local road network. The noise levels were not capable of achieving the acceptable noise level criteria outlined in the State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP) and DCP.

Further, Chapter 3 of Council's Development Control Plan does not allow acoustic fencing along The Coast Road frontage unless no viable option is available to mitigate unacceptable noise impacts. Requirements were then placed on impacted lots for dwelling design and location to achieve the noise criteria.

The Road traffic noise modelling for The Coast Road indicated exceedances of the noise criteria for dwellings on lots 601-603 and 619-630. To ensure the internal noise criteria is achieved and purchases are aware of the requirements a condition was recommended requiring a restriction on user, in accordance with Section 88b of the *Conveyancing Act 1919* as shown below

A Restriction-As-To-User, in accordance with Section 88b of the Conveyancing Act 1919, is to be placed on the title of Lots stating:

(a) dwelling designs of first floor or above levels located on Lots 601-603 and 619-630 must achieve the internal noise levels (LAeq) of 35 dBA for bedrooms during night periods (10 pm to 7 am) and 40 dBA for other habitable rooms at any time. Certification from a suitably qualified and experience person shall be provided to the Principal Certifying Authority prior to the release of the Construction Certificate or Complying Development Certificate for any dwelling.

(b) Dwelling designs of first floor or above levels located on Lots 601-603 and 619-630 must obtain certification from a suitably qualified and experience person confirming construction of the dwelling will achieve the required internal noise levels. Certification shall be provided to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

During construction, noise will be generated (by the equipment) during the bulk earthworks and construction of the roads.

The applicant has provided a Construction Environmental Management Plan (CEMP) detailing hours of construction/earthworks which include Monday to Friday 7am to 6pm and Saturday 8am to 1pm. The proposed hours of construction are consistent with Council's recommended hours of operation. An acoustic report to address noise during construction is not considered necessary considering the hours of construction will be addressed via an enforceable condition of consent. If noise or other nuisances occur during construction, the applicant has proposed to provide a complaints register. The modified CEMP as required by recommended condition identified in section viii above must address the following conditions.

The hours of operation for any noise generating construction activity (including the delivery of materials to and from the site) on the proposed development are to be limited to within the following times:

<i>Monday to Friday</i>	<i>7.00am to 6.00pm</i>
<i>Saturday</i>	<i>8.00am to 1.00pm</i>

No noise generating construction activities are to take place on Sundays or public holidays.

All work, including demolition, excavation and building work must comply with Australian Standard AS 2436:1981 Guide to Noise Control on Construction, Maintenance and Demolition Sites and NSW Interim Construction Noise Guidelines (DECC 2009).

Vehicles servicing the development (including deliveries and waste collection) shall not park and or wait in the surrounding residential areas prior to 7.00am or after 6.00pm Monday to Fridays and prior to 8.00am or after 1.00pm Saturdays.

(xix) Technological Hazards

No technological hazard issues raised.

Social and Economic Impacts

(xx) Social Impacts in the Locality

The proposal is anticipated to have positive social impacts for the locality, creating a sense of place, increasing pedestrian connections to local parks, coastal wetlands, Sharpes Beach and the public car park, as well as adjacent residential communities.

It is noted that there has been substantial public interest and objection to the proposal, predominately relating to the proposed intersection and the preference for a roundabout over a signalised intersection and tree, density of the subdivision and retention of the Norfolk Island Pines along The Coast Road and within neighbouring properties. These submissions have been considered and the issues raised within these objections have been addressed within the report.

The proposal is likely to have some impacts on the neighbouring residential properties being within close proximity to the future dwellings and the noise created during bulk earthworks and road construction. The noise impacts anticipated to be generated as a result of the proposal have been addressed.

(xxi) Economic Impact in the Locality

The proposal is considered to create employment to the local area, during construction but particularly ongoing once the development is complete. The proposal is not likely to create and threats to the viability or continued operation of any facilities.

The impacts to the existing centres are not anticipated to be major or create any significant negative effect. Further, many objectors raised concerns regarding the need for an additional retail centre which is proposed within super lot 346 and will be subject to a separate development application.

Thus, the proposed subdivision is expected to have a positive impact during construction and thereafter.

Cumulative Impacts

(xxii) Cumulative Impacts

The proposal, as conditioned, is not anticipated to have any cumulative impacts on the surrounding region.

6.3 Section 4.15(1)(c) – The suitability of the site for the development

The proposal is not anticipated to have any significant impacts on the surrounding receiving environments, subject to compliance with the recommended conditions of consent.

The proposed residential subdivision is considered to be of a suitable density, configuration and character, (as anticipated when the land was rezoned) and generally complies with the Ballina Local Environmental Plan and Development Control Plan.

6.4 Section 4.15(1)(d) Any submission made in accordance with this Act or the Regulations?

The application was placed on public exhibition between the 7 June 2017 to 17 July 2017 and again on the 22 November 2017 to 22 December 2017, in accordance with the requirements of Chapter 1 of the Ballina Development Control Plan (BDGP) 2012. Council received 113 submissions (89 Individual letters/emails and 24 proforma letters), during the notification periods, and the relevant issues raised have been summarised and addressed below.

Submission issues raised	Response
1. The proposed Traffic lights at the intersection of The Coast Road, Headlands Drive and Sharpes Beach car park should be replaced with a roundabout as per the DCP and an underpass proposed adjacent to permit improved and safe pedestrian access to the beach	A roundabout is now proposed at the intersection of The Coast Road, Headlands Drive (realigned) and Sharpes Beach car park. See Section 6.2.9 of report regarding the underpass.
2. The density and mix of the proposed residential allotments is inappropriate, many are too smaller compared to the neighbouring residential to the north. a. Will the future lots be subject to design restrictions and result in cookie cutter designs throughout the development? b. Lots oriented north to south should be minimised and east west facing oriented	The application relates to stage 1 only and proposes a density of approx. 8 dwellings per hectare. The proposed allotments along the north edge of the development are larger in size and generally greater than 600m ² which is similar to the Headland Drive development directly to the north, noting that this development was approved more than 20 years ago and the minimum lot size permitted was much larger. The design of the dwellings for the future residential allotments will be subject to the controls and objectives contained within <i>Chapter 4 – Residential and Tourist, Ballina Shire DCP 2012 Or Codes SEPP</i> . The proposed development generally incorporates a road network that runs in a to east west direction, with perimeter roads running north to south as sought by the DCP. Thus, the number of allotments that have a north/south orientation are maximised. The proposed road

<p>allotments maximised to ensure adequate solar access is achieved</p> <p>c. Density of proposed DA vs amended DA has increased but the community facilities and open space has remained the same? –</p> <p>d. The proposed density and narrow allotment widths will lead to noise pollution between future dwellings</p>	<p>and allotment orientation is consistent with the DCP and is considered to promote maximum solar access to the allotments.</p> <p>The density of the amended DA has increased by 11 residential allotments since it was lodged in May 2017. The open space provided as part of the development is consistent with the DCP which requires a local park measuring at least 2,000m² and a neighbourhood park (NP) measuring at least 4,000m². However, the NP and coastal buffer will need to be redesigned as discussed in section 6.2.9.</p> <p>As mentioned previously, the design of the future dwellings will be subject to the controls and objectives contained within chapter 4 of the DCP. The construction of the dwellings will be subject to compliance with The National Construction Code (NCC) of Australia which includes minimum standards for acoustic insulation of walls, windows and doors.</p> <p>The installation of external heating/cooling units, such as air conditioning units are subject to maximum decibels ratings during operation.</p>
<p>3. The super lot nominated to comprise the future neighbourhood centre lacks sufficient detail as to what will be proposed and what community facilities will be provided?</p> <p>a. The commercial component of the development should be incorporated within stage 1 (the subject DA) and a time frame be imposed on the development (such as the upon completion of X number of dwellings the applicant must commence construction of the commercial component</p>	<p>The composition of the proposed super lot (SL4) in terms number and type of land uses as well as scale is subject to a future development application and finalisation of the Planning Proposal.</p>
<p>4. The new estate should include a 'fenced dog park'</p>	<p>A fenced dog park could be considered within the development, however a large 'off leash' dog park is located directly to the north on the corner of Skennars Head Road and Headlands Drive.</p>
<p>5. Thinning of the Norfolk Island Pines within the coastal buffer along The Coast Road is not supported</p> <p>a. Alternatively, views have been expressed that the trees should be removed and are not endemic to the</p>	<p>This issue is discussed in Section 6.2.9.</p>

coastline	
<p>6. The coastal buffer between the proposed development and The Coast Road should be densely vegetated to screen the proposed development</p> <p>a. The coastal buffer should include useable open space/community space and include facilities such as BBQ, seating and play equipment</p> <p>b. Maintenance of the coastal buffer?</p>	<p>The applicant has proposed to embellish the neighbourhood park (NP) and coastal buffer as per Council's DCP. The NP will include bike/pedestrian paths, picnic shelters, decking, seating and BBQ areas. Landscaping treatment is proposed throughout, including structured planting along pathways, seating areas and the topography of the development.</p> <p>Maintenance of the NP and coastal buffer will be the responsibility of Council, however there are access and maintenance issues as discussed in Section 6.2.9</p>
<p>7. North Creek arterial road extension via a new bridge should occur as it will provide a link through to the Ballina Byron Airport and beyond, reducing the traffic on The Coast Road</p>	<p>These works are outside the scope of the proposed development and are not a requirement of the DCP.</p>
<p>8. Council should ensure the proposed super lots and the current planning proposal (PP), which seeks to rezone the super allotments to a higher density residential, be accommodated as part of the infrastructure works proposed as part of the current DA</p> <p>a. The proposed density of the stage 1, following the rezoning sought in the PP needs to be considered</p>	<p>The applicant has provided a Sewer & Water Servicing Assessment Report – Bulk and Internal Reticulation, prepared by Planit Consulting, dated May 2017. The report outlines that the development can be serviced with the services shown below in (a) and (c). The applicant has provided further reports that demonstrates the development can be connected electricity (b), be provided with stormwater drainage (d) telecommunication services and suitable vehicle access (e).</p>
<p>9. SEPP 14 Wetland buffer and maintenance schedule needs to be a minimum of 5 years</p>	<p>Council's Environmental Scientist has proposed the Wetland Rehabilitation Monitoring Plan (WRMP) be amended via condition to include a minimum maintenance period of 10 years.</p>
<p>10. An increased number and extent of green pathways and corridors should be incorporated into the proposed development</p>	<p>The development includes two lineal reserves linking the western perimeter road to the local park and neighbourhood park/coastal buffer. The reserves are adjacent to two super lots, proposed to be rezoned R3 medium density residential. The location of higher density development adjacent parkland will help to facilitate pedestrian permeability and casual surveillance of these green spaces.</p>
<p>11. Are stormwater outlets required on the beachfront?</p>	<p>No. Land forming has increased the catchment size to the east and therefore there is an increase in both flow and volume to the legal point of discharge. In this case the legal point of discharge is considered to be Council's stormwater swale on The Coast Road which has continuity to the Pacific Ocean. Culvert sizing under The Coast Road and the need to maintain an acceptable discharge rate to Sharpes Beach has resulted in</p>

	conventional detention basins with associated flow controls as the attenuation strategy.
12. The proposed DA is a ribbon development and not an urban village as required in the LEP	The proposed residential subdivision is generally consistent with the desired future character outlined within the DCP.
13. Noise during construction has been adequately addressed. Dust during earthworks and water truck frequency does not appear adequate. This needs to be address via CEMP as required by recommended condition.	Refer to amended CEMP condition and hours of construction.
14. A buffer between the existing headland estate to the north (accessed from Headland Drive) and the larger lot sizes within that estate should be addressed in the proposed DA via large lots being provided along the northern edge of the development Smaller lots should be located to the south, as part of stage 2 of the Skennars Head Expansion Area	The proposed allotments along the north edge of the proposed development are larger in size and generally 600sqm+ which are similar to the Headland Drive development directly to the north, noting that this development was approved more than 20 years ago and the minimum lot size permitted was much larger. Further, the DCP does not require larger lots along the northern boundary, in fact, it requires larger lots along the southern and western boundary. No works are proposed within stage 2 as part of this development application, excluding sewerage and water reticulation works within the north-western section of stage 1 to facilitate the proposed subdivision. This issue will therefore be addressed in the future DA.
15. Visual quality of the development – visual impacts of the proposal, particularly from the north looking south across the site Vegetation of the coastal buffer is paramount to the visual assessment	The proposal includes regrading and earthworks to accommodate the roads and local streets. The proposed allotments are consistent with the adjoining land within Headlands Drive and the Headlands Estate. The proposal also includes the regrading and embellishment of the land between The Coast Road and subdivision, nominated as the 'neighbourhood park and coastal buffer, including the retention of the Norfolk Island Pines along the edge of The Coast Road (within the property boundary). Further, the applicant has proposed to dedicate the neighbourhood park and coastal buffer to Council, ensuring the scenic and visual quality of the embellished coastal buffer can be enjoyed by the local community as well as the users of the Sharpes Beach car park which is to be connected to the new development via the roundabout that will connect the existing Headlands Estate development, the proposed development and existing public car park.
16. 11 Headland Drive, Skennars Head a. Potential excess rainfall	The proposed development involves excavation and construction of retaining wall along the majority of the

collecting at the southern portion of the site needs to be addressed	boundary of No. 11 Headland Drive. The development site will not be filled above the neighbouring property. Post development - stormwater system will be constructed to service the proposed northern road conveying stormwater to the approved stormwater network.
b. Details of the retaining wall alongside the rear boundary (northern boundary of proposed site) to be provided and potential boundary fence on top	Retaining Wall details have been provided on the site plan and section prepared by Knobel Consulting, demonstrating the extent, maximum height of the wall for a distance of 1.5m (approx). The Top of Wall (TOW) matches the Existing Ground Level (EGL) within the neighbouring property and adjacent neighbouring sites within Headland Drive. Provision of a boundary fence between the existing properties within Headland Drive and the proposed allotments will be subject to negotiations between property owners and the provisions contained within the <i>Dividing Fences Act</i> .
c. Will Sharpes Beach Car Park be redeveloped with an amenities building provided?	No works are proposed to the Sharpes Beach car park as part of the subject development application.
d. View loss concerns	The proposed regrading and bulk earthworks along the northern boundary will result in levels that are very similar to the existing ground levels. In fact, the proposed ground levels along the boundary of 11 Headlands Drive are lower and falling away from the edge of the rear boundary of the property. The future residential lots along the northern edge (adjacent 11 Headlands Drive) will have finished ground levels of between RL 13 - RL 15.5. The finished ground levels of 11 Headland Drive at the edge of the ground floor patio are approximately RL 17 while the dwelling has a ground floor FFL of RL 17.2. While some view loss may occur once individual dwellings are proposed, adequate view corridors will be maintained and the future dwellings are limited to a maximum height of 8.5m.
e. Headlight glare from opposing road between proposed lot 102 and 103	The proposed levels of the internal roads are below that of the dwelling and any fence rear boundary fence will mitigate headlight glare. However, it is not unreasonable to expect some headlight glare from passing cars in any typical residential street.
f. Privacy	As mentioned previously, the difference in levels will mitigate overlooking between the future allotments and the neighbouring property. Further, a road is proposed between 11 Headlands Drive and the future residential allotments, creating at least 14m of visual separation. Furthermore, with boundary setbacks, more than 26m of separation will be established between the rear building line of 11 Headlands Drive and the front building line of the future residential allotments.

<p>g. Exact location of proposed lot boundaries needs to be clarified</p> <p>h. Damage to pool and house during earthworks needs to be addressed</p> <p>i. Confirmation whether the Fig tree within Spoonbill Reserve is to be removed and is it necessary</p>	<p>The boundaries are clearly shown on the proposed subdivisions plans.</p> <p>The requirement for the preparation of a pre-construction dilapidation report is recommended to be imposed as a condition of consent. This report will detail the current structural condition of all adjoining buildings, infrastructure and roads. Following completion of the development a further report will be prepared and provided to Council. Any damage to adjoining structures will be required to be repaired by the applicant.</p> <p>A Moreton Bay Fig tree is proposed for removal adjacent the reserve; however, this tree is located within the boundaries of the site.</p>
17. Residents within Redford Drive have raised concerns regarding the retention of the Norfolk Island Pines within the rear of the properties	Conditions have been imposed requiring the protection and retention of the Norfolk Island Pines referred to as D, E and F during construction.
18. The provision of Laneways is unacceptable. Only standard width roads should be provided throughout the development	The proposed laneways widths of 8m comply with the DCP.
19. Compliance with regards to wetland management is paramount. The applicant should be required to maintain the wetland for 10 years and provide funds thereafter to ensure Council has the ability to continue the maintenance.	The developer has committed to rehabilitate and maintain the wetland for a period of 5 years as part of the Wetland Rehabilitation Management Plan, however it is proposed to increase this to a total of 10 years via way of condition.

Table 4: Response to issues

6.5 Section 4.15(1)(e) The public interest

Public Interest

The proposal is generally considered to be within the public interest, providing increased housing, a new intersection that will facilitate improved vehicle access to the Sharpes Beach Car Public Park as well as embellishment of a coastal buffer that will include a neighbourhood park and landscaped public reserves. These works will cater for the increase in population within Skennars Head Expansion Area and existing residential estates. However, the uncertainty surrounding the dedication, use and maintenance of the coastal buffer and the subsequent disconnection of the neighbourhood park (within the coastal buffer), on top of the issues discussed in section 6.2.9 questions whether the proposal in its current form is in the public interest. Thus, the issues are proposed to be addressed via way of

deferred commencement conditions, that detail the additional information or amendments required to the application.

Social Impact

The residential subdivision will positively contribute to the expansion of the local community within Skennars Head and create a sense of place, increasing pedestrian connections to local parks, coastal wetlands, Sharpes Beach and the public car park, as well as adjacent residential communities. As mentioned above, the social benefit of the proposal is reduced by the uncertainty surrounding access and use of the coastal buffer and open spaces within, as well as embellishment and maintenance of the coastal buffer in its entirety.

Economic Impact

As mentioned under Section 4.15(b)(i) the proposal is considered to create employment opportunities for the local area, during construction but particularly ongoing once the development is complete. The proposal is not likely to create and threats to the viability or continued operation of any facilities.

The impacts to the existing centres are not anticipated to be major or create any significant negative effect. Further, many objectors raised concerns that the future retail centre proposed within super lot 346 would not be delivered sooner enough, to alleviate the pressure on other local centres.

Thus, the proposed subdivision is expected to have a positive economic impact during construction and thereafter.

7.0 Conclusion

The proposed development has been assessed in accordance with the relevant environmental planning instruments and development control plan pertaining to the land. The proposed subdivision, ancillary drainage and sewerage works are permissible with consent under Ballina LEP 2012 and Ballina LEP 1987.

The matters raised in the public submissions have been considering in the assessment of the application and, where possible, have been addressed by way of condition. The remaining concerns do not reasonably warrant refusal of the application.

As discussed in detail within Section 6.2.9 of this report and within the executive summary, the assessment raises a variety of complex issues, many of which are interrelated and dependent on one another to be resolved. Therefore, it is proposed to address a number of these critical issues by way of a deferred commencement conditions.

The proposed subdivision will provide increased housing, a new intersection that will facilitate improved vehicle access to the Sharpes Beach Car Public Park, local park within the centre of the development, embellishment of a coastal buffer that will include a neighbourhood park and landscaped public reserves. It is considered to

achieve the orderly and economic development of the site, will have acceptable environmental impacts (subject to compliance with all recommended conditions, including the deferred commencement conditions), and is considered to be in the public interest.

8.0 Recommendation

- (a) That the Joint Regional Planning Panel, with the concurrence of the Secretary of the Department of Planning & Environment, support the applicant's SEPP 1 objection to varying the minimum lot size development standard of Clause 11(2)(b) of the Ballina Local Environmental Plan 1987 to permit the creation of allotment 347.
- (b) That Development Application 2017/447 for the first stage of the residential subdivision over Lot 6 in DP 1225206, involving the creation of 229 residential lots, 6 super lots, 1 lot associated with drainage functions, 1 lot for a sewer pumping station, 5 public reserves lots, and 1 residual lot, and other associated works/easements on Lot 4 DP1184436, Lot 7 DP1225206, Lot 50 DP755684 and Lot 5 DP1225206 be determined by way of deferred commencement consent, subject to the attached conditions.