COUNCIL ASSESSMENT REPORT
NORTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSNTH-207 – DA2022/721
PROPOSAL	Erection of a Seniors Housing Development in five stages including 148 independent living units (four x two bedroom and 144 x three-bedroom units), community facilities, manager's residence, earthworks (filling) and retaining walls, removal of vegetation, stormwater management and infrastructure works, landscaping and outdoor recreation areas. Vehicular access to the development is proposed via Burns Point Ferry Road with an emergency access via River Street
ADDRESS	Lot 1 DP 522558 6 Burns Point Ferry Road, WEST BALLINA Lot 1 DP 124173 550-578 River Street, WEST BALLINA
APPLICANT	RPS Group (Simon Pollock)
OWNER	GTH Resorts Pty Ltd Chris and Joanne Elliott
DA LODGEMENT DATE	23 January 2023
APPLICATION TYPE	Development Application (Integrated)
REGIONALLY SIGNIFICANT CRITERIA	Section 2.19(1) and Clause 2 of Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021* declares the proposal regionally significant development as: **General development over $30 million**
CIV	$67,670,000.11 (excluding GST)
CLAUSE 4.6 REQUESTS	Not applicable
RELEVANT STATUTORY CONSIDERATIONS	• *Environmental Planning and Assessment Act 1979* • *Environmental Planning and Regulation 2021* • *Coastal Management Act 2016* • *Biodiversity Conservation Act 2016* • *Biodiversity Conservation Regulation 2017* • *Biodiversity Assessment Method Order 2017* • *Fisheries Management Act 1994* • *Fisheries Management (General) Regulation 2019* • State Environmental Planning Policy (Resilience and Hazards) 2021

	• State Environmental Planning Policy (Primary Production) 2021 • State Environmental Planning Policy (Housing) 2021 • State Environmental Planning Policy (Industry and Employment) 2021 • Ballina Local Environmental Plan (BLEP) 2012 • Ballina Shire Development Control Plan (BLEP) 2012
TOTAL UNIQUE SUBMISSIONS	73 submissions received
KEY ISSUES RAISED IN SUBMISSIONS	• Flood risk, impact with specific reference to the March 2022 floods and additional filling creating an impact upon surrounding properties and road network • Environmental impact including impact and loss of wetland, destruction of mangroves, including direct and indirect impacts to Endangered Ecological Communities and Threatened Species within and adjoining the site • Impacts associated with the proposed earthworks including land contamination, soil stability and impacts to hydrology and catchment health • Aquatic habitat impacts including pollutants and fish kills • Aboriginal cultural heritage impacts • Increased traffic and congestion • Drainage and stormwater runoff, direction • Noise and dust pollution • Bulk and scale impacts • Overdevelopment of the site, site suitability and the public interest • Adequacy and accuracy of submitted documentation
DOCUMENTS SUBMITTED WITH THE DA	• Statement of Environmental Effects • Survey Plan • Architectural Plans • Civil Engineering Plans • Staging Plan • Tree location and Drip Line Survey Plan • Site Overall Lighting Plan • Electrical Reticulation Plan • NATHERS and BASIX Assessment • Estimated Cost of Development • Baseline Water Quality, Monitoring and Management Plan • Aquatic Ecology Technical Report • Acoustic Report • Arboricultural Impact Assessment Report • Biodiversity Development Assessment Report (BDAR)

	• Vegetation Management Plan • Bushfire Statement • Construction Management Plan (Preliminary) • Geotechnical Report • Interim Flood Report • Mosquito Impact Assessment • NCC 2019 – Section J Report • Site Waste Minimisation and Management Plan • Traffic Impact Assessment Report • Engineering Assessment Report • Groundwater Monitoring Assessment and Management Plan • Landscape Report • Remedial Action Plan • Stormwater Management Report
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	Not Applicable
RECOMMENDATION	Refused
DRAFT CONDITIONS TO APPLICANT	Not Applicable
SCHEDULED MEETING DATE	30 November 2023
PLAN VERSION	Various, refer to Attachment B
PREPARED BY	Hayley Tasdarian, Associate - SJB Planning
DATE OF REPORT	16 November 2023

List of Report Attachments

Attachment A: Draft Reasons for refusal
Attachment B: Architectural Plans
Attachment C: Civil Engineering Drawings
Attachment D: General Terms of Approval, DPE – Water
Attachment E: Request for additional information, DPI – Fisheries
Attachment F: Request for additional information (Biodiversity), BCD
Attachment G: Request for additional information (Flooding), BCD
Attachment H: Request for additional information, NSW RFS
Attachment I: Referral comments, TfNSW
Attachment J: Referral comments, Essential Energy
Attachment K: Referral comments, NSW Crown Lands
Attachment L: Referral comments, CASA
Attachment M: Public Submissions

1 TABLE OF CONTENTS

List of figures

List of tables

2 EXECUTIVE SUMMARY

The development application (DA 2022/721) seeks consent for vegetation removal, earthworks (including filling and pre-loading), staged construction and use as a seniors housing development comprising 148 independent living units (4 x two bedroom and 144 x three-bedroom units), club house, manager's residence, outdoor recreation areas and car parking with associated stormwater management, infrastructure, and landscape works, located at No. 550-578 River Street and No. 6 Burns Point Ferry Road, West Ballina ('the site'). Vehicular access to the development is proposed via Burns Point Ferry Road with an emergency access via River Street.

The site comprises two lots (Lot 1 DP 124173 and Lot 1 DP 522588) with two road frontages including River Street to the north and Burns Point Ferry Road to the east. The site is bounded by Emigrant Creek to the west and southwest, and the Richmond River to the southeast. Tributaries of Emigrant Creek also traverse the northern portion of the site. The site is flood prone and contains Coastal Wetlands comprising Endangered Ecological Communities (EEC's) and threatened species listed under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and the *Biodiversity Conservation Act 2016* (BC Act). For this reason, several areas within the site are of high biodiversity value. The site also contains areas identified as key fish habitat.

The northern portion of the site is zoned part R2 Low Density and part R3 Medium Density, and the southern portion of the site is zoned RU2 Rural Landscape under the Ballina Local Environmental Plan 2012 (BLEP 2012). The submitted documentation indicates that the proposed seniors housing development occupies the northern portion of the site zoned R2 Low Density and R3 Medium Density Residential. The proposed seniors housing development is permitted with consent in these zones pursuant to the Land Use Tables in BLEP 2012.

The application is referred to the Northern Regional Planning Panel (the Panel) as the development is 'regionally significant development', pursuant to Section 2.19(1) and Clause 2 of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP) as the development has a capital investment value (CIV) of more than $30 million.

The proposal is integrated development pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) as the proposed works require a:

- Controlled Activity Approval under Section 91 of the *Water Management Act 2000* (WM Act)*; and*
- Permit under Sections 201 and 205 of the *Fisheries Management Act 1997* (FM Act).

The application was assessed by NSW Department of Planning and Environment - Water (DPE – Water) and General Terms of Approval (GTAs) have been issued. Written response received by Department of Primary Industries – Fisheries (DPI – Fisheries) has identified that insufficient information has been provided to determine potential impacts on key fish habitat areas. These matters remain outstanding and GTAs pursuant to Section 201 and 205 of the FM Act have not been issued.

Assessment of the application demonstrates that there is insufficient information to properly assess and determine the existing conditions and physical constraints of the site, the development being sought and the associated impacts of this proposal. Specifically:

- the existing geotechnical, groundwater, soil and ecological conditions, and the potential aboriginal heritage and cultural values of the land have not been adequately demonstrated in the application;
- the application does not clearly identify the nature and extent of vegetation clearing, earthworks (including pre-loading) and stormwater management works being sought; and
- the application fails to demonstrate adequate assessment of the relevant statutory instruments applying to the site.

On the basis of the information lodged with the application, the likely biophysical, hydrological, ecological and heritage impacts of the development cannot be properly assessed.

Similarly, there is insufficient information regarding the built form. Assessment of the proposed maximum building height, setbacks and solar access as required by the relevant development standards in the State Environmental Planning Policy (Housing) 2021 (Housing SEPP), including consideration of potential bulk, scale and visual privacy impacts, could not be undertaken. The Housing SEPP is addressed in Section 5.2.1(a).

Several requests for additional information have been issued by Council. In response, the applicant has provided some amended documentation in relation to use of a helicopter pad which also forms part of the proposal. However, not all issues have been addressed and therefore remain unresolved. A summary of how the application has progressed since lodgement is provided in Section 4.2.

Referral comments received from NSW DPE – Biodiversity, Conservation and Science (BCD) in relation to biodiversity and flooding and NSW Rural Fire Service (RFS) regarding bushfire management have also identified insufficient information provided within the application. These matters remain outstanding. External agency responses are further detailed in Section 6.

Whilst a range of issues have been raised in the assessment of the proposal, the flood risk and emergency response management is considered a fundamental issue. The safe occupation of the development by Seniors in flood events exceeding the flood planning level is of particular concern due to the sensitivity of the proposed use. Due to the ecological sensitivity of the site, impacts to the biodiversity values of the land are also a key consideration in this assessment. The application in its current form does not provide adequate information to demonstrate that these issues can be appropriately managed and resolved.

Flood risk impacts are considered under clause 5.21 of BLEP 2012 and is discussed in Section 5.2.1(h). The development fails to demonstrate that the provisions of clause 5.21 can be satisfied.

Biodiversity impacts are considered under Part 6 and Part 7 of the BC Act and discussed in Section 5.2.1 (a) and 5.3.1(a). The development fails to demonstrate that the relevant matters in the BC Act can be satisfied.

The application was placed on public exhibition from 15 March 2023 to 14 April 2023, with seventy-three (73) submissions being received, the majority of which object to the proposal. These submissions raise issues relating to flood risk, emergency response management and adverse impacts on the biodiversity vales of the site. Concerns regarding traffic congestion and site access arrangements have also been raised. It is considered that these issues are of relevance to the assessment of the proposal development and would warrant refusal of the application. The submissions are further considered in Section 5.

On 24 July 2023 the applicant commenced Class 1 legal proceedings in the Land and Environment Court (LEC) appealing the 'deemed refusal' of the application pursuant to Section 8.7 of the EP&A Act. The application remains undetermined.

In conclusion, the assessment provided in this report demonstrates that the key issues relate to insufficient information, the likely ecological impacts, flood risk having regard to site suitability for the proposed land use, and the extent of modification to the landform to accommodate the proposed development.

The application also fails to satisfy the jurisdictional prerequisites to the granting of consent imposed by the relevant statutory instruments applying to the development, including:

- Section 4.47(2) the EP&A Act regarding the relevant approvals required for Integrated Development;
- Section 7.16(2) of the BC Act in relation to serious and irreversible impacts on the biodiversity values of the land;
- Section 2.7(4) of State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP) in relation to impacts to the Coastal Wetlands located within and adjoining the site;
- Section 2.28 of State Environmental Planning Policy (Primary Production) 2021 (Primary Production SEPP) regarding the assessment impacts to identified Priority Oyster Aquaculture Areas; and
- Clause 5.21 of BLEP 2012 in relation to flooding impacts and the management of risk to life in the event of a flood.

Further, the application does not contain sufficient information to enable a proper assessment of the development as required under Section 4.15 of the *Environmental Planning & Assessment Act 1979* (EP&A Act) including an assessment of the likely impacts of the proposal. It is considered that development consent could not be granted in these circumstances.

The non-compliance and inconsistencies with the relevant development standards and other statutory requirements applying to the development are discussed in detail in Section 4 and 5.

Accordingly, Development Application No. DA2022/721 is recommended for refusal subject to the reasons contained at Attachment A of this Report, pursuant to Section 4.16(1)(b) of the EP&A Act.

3 THE SITE AND LOCALITY

3.1 Site Description

The subject land is located at the corner of River Street and Burns Point Ferry Road in West Ballina and comprises the following two lots:

- Lot 1 DP 124173 (550-578 River Street) and
- Lot 1 DP 522558 (6 Burns Point Ferry Road).

The site has frontage to River Street to the north, Burns Point Ferry Road to the east, as well as a portion fronting Emigrant Creek Lane to the west and a total land area of approximately 56.7647 hectares.

The site is bounded by Emigrant Creek to the west and southwest, and the Richmond River to the southeast. Tributaries of Emigrant Creek also traverse the northern portion of the site. The site location is shown in Figure 1.

The subject land is currently vacant of any buildings works with the exception of two fill pads which were approved as 'trial fill pads' under DA 2019/233. The approximate location of the pads are identified in Figure 2.

An existing biobanking area of approximately 40.4 hectares is located at the southern end of the site (within Lot 1 DP 124173) which is subject to a Biobanking Agreement (No. 444) under the former *Threatened Species Conservation Act 1995.*

The agreement is taken to be a biodiversity stewardship agreement under the BC Act dated 19 January 2019 ('the Biobanking Site'). The location of the biobanking area within the site is shown in Figure 3.

The site is zoned part R2 Low Density Residential, part R3 Medium Density Residential and part RU2 Rural Landscape under the Ballina Local Environmental Plan 2012 (BLEP 2012). The BLEP 2012 Land Zoning Map is provided at Figure 4.

The R2 Low Density Residential and RU2 Rural Landscape zones occupy the northern and southern end of No. 550-578 River Street (Lot 1 DP 124173), respectively. The land use zones within this lot were subject to a Planning Proposal (BSCPP14/008) endorsed and gazetted in 2019. The R3 Medium Density Residential zone occupies the entire site area of No. 6 Burns Point Ferry Road (Lot 1 DP 522558).

The site is low lying and includes areas of EEC's and threatened species listed under the EPBC Act and the BC Act. These communities are located in areas of high biodiversity value as identified on the Biodiversity Values Map referred to Section 7.3 of the *Biodiversity Conservation Regulation 2017* (refer to Figure 20) and are also identified as 'Coastal Wetlands' and 'Proximity area for coastal wetlands' pursuant to the Resilience and Hazards SEPP.

Coastal wetlands are also mapped on the bank of Emigrant Creek immediately adjoining the site to the southwest. The mapping associated with the biodiversity and coastal environmental values as identified in the relevant statutory instruments is provided at Section 4.

Additionally, the site contains several species identified as key fish habitat listed under the FM Act which are also further discussed in Section 4.

The site is subject to flooding and class 2 Acid Sulfate Soils have been identified on site.

Review of the Aboriginal Heritage Information Management System (AHIMS) demonstrates that the site adjoins an identified site of Aboriginal cultural significance.

Figure 1: Aerial Map (Source: SIX Maps)

Figure 2: Location of trial fill pads approved under DA 2019/233 (Source: GoogleMaps)

Figure 3: Location of existing works and biobanking site

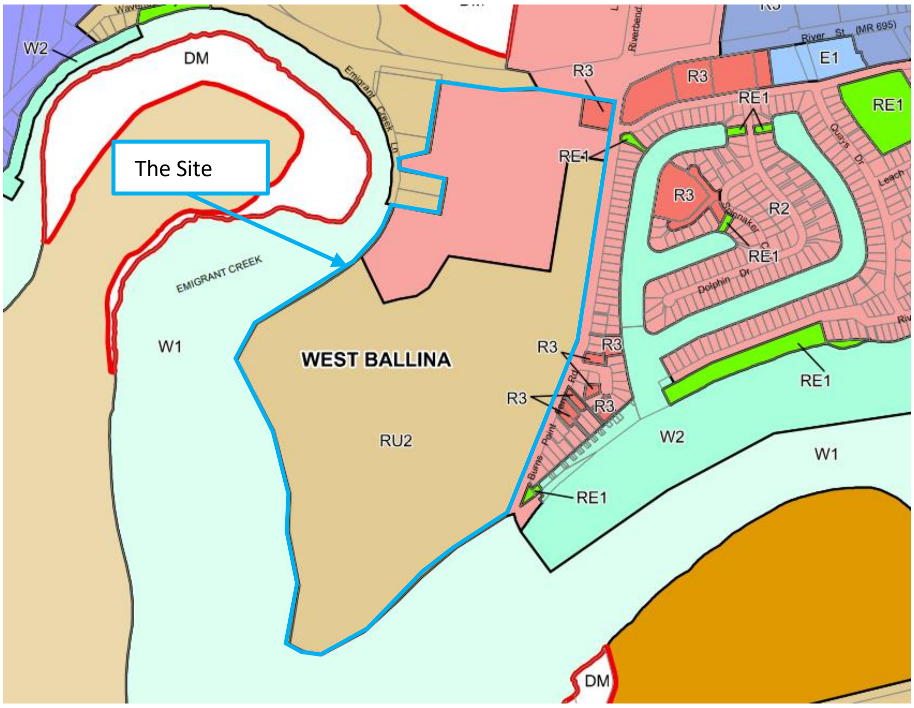

Figure 4: Land Zoning Map (Source: BLEP 2012)

3.2 The Locality

Immediately to the east of the subject land is residential development including single dwellings, dual occupancy, and multi-dwelling housing developments.

To the north of the site is a manufactured home estate known as Riverbend accessed via Riverbend Drive. Beyond this to the north is rural land.

The southern portion of the site is surrounded by Emigrant Creek and Richmond River.

To the west of the site is a caravan park and two rural residential properties, each containing single dwelling houses (Lot 5 and Lot 6 in DP 537419).

West Ballina Enterprise Corridor is located approximately 350 metres east of the subject site and the site is approximately 5 kilometres from the Ballina Central business District.

4 THE PROPOSAL AND BACKGROUND

4.1 The Proposal

The proposed development as described in the submitted application is summarised as follows:

- The proposal seeks consent for the erection of a seniors' housing development, including:
    - 148 independent living units (4 x two bedroom and 144 x three bedroom units);
    - community facilities (including the provision of a club house in the southeast corner of the site comprising a cinema, salon, games room, bowling lounge, indoor swimming pool, gym, library and helipad on the rooftop level);
    - manager's residence in the northeast corner of the site;
    - vegetation removal;
    - earthworks including filling, pre-loading (with 1 in 1 batters) and construction of retaining walls (noting that the exact batter details have not been confirmed due to inconsistent information being provided);
    - stormwater management and infrastructure works; and
    - landscaping and outdoor recreation areas.
- Construction of the development is proposed to be carried out in four stages as shown in Figure 6 below. Stage 1 is further split into two sub-stages (Stage 1A and Stage 1B).
- Vehicular access to the development is proposed via Burns Point Ferry Road in the northeast corner of the site with emergency access via River Street.
- The application proposes to increase the area of the existing Biobanking Site to

a total area of 46.84 hectares (from 40.4 hectares).

- The proposed fill depths will range from 2 to 5 metres across the site (noting that the exact depths have not been confirmed due to inconsistent information provided across several reports discussed in Section 4).

- The proposed earthworks will involve preloading and the importation of approximately 297,867 cubic metres of fill.

- The independent living units will be in the form of single detached dwellings with four different typical floor plans (Floor Plan A, B, C and D) (refer to Architectural Drawing Package in Attachment B).

- Stormwater management works include the construction of swales and bioretention basins and several points of stormwater discharge, with the majority of stormwater being discharged to Emigrant Creek and some to the Biobanking Site (noting that the exact locations and details of these discharge points have not been determined due to insufficient information being provided).

- An acoustic wall (with a maximum height of two metres) is proposed along the northern River Street frontage and western side boundary for the purpose of noise attenuation. The proposed acoustic wall will be erected above the proposed retaining walls to be constructed along the perimeter of the site (noting that the maximum height of the wall above existing ground level has not been identified).

- Signage is proposed at the proposed vehicular entry on Burns Point Ferry Road.

The key development data is provided in Table 1. Key plans have been provided in Figures 5 to 7 below.

Table 1: Key Development Data

Control	***Proposal***
Site area	56.7647 hectares
No. of dwellings	148 independent living units (comprising 4 x 2-bedroom and 144 x 3-bedroom units)
Height in storeys	All buildings proposed on site comprise a maximum of 2 storeys
Max Height (m)	The application does not provide sufficient detail to properly assess and determine the proposed building height (i.e., ground level (existing) and RL(s) for maximum ridge height of each dwelling is not specified on the submitted architectural plans)
Landscaped area	The application does not provide sufficient detail to properly assess and determine the proposed landscape areas for each dwelling. The submitted SEE indicates a total combined landscaped area of 44,453m^2 on site.

Private open space	The application does not provide sufficient detail to properly assess and determine the proposed private open space areas for each dwelling.
Deep soil zones	The application does not provide sufficient detail to properly assess and determine the proposed deep soil zones for each dwelling.
Car Parking spaces	347 car parking spaces, distributed as follows: • 2 x garage spaces for each dwelling (i.e. 296 car spaces); • 15 car clubhouse spaces; and • 51 visitor spaces (provided throughout the site)
Setbacks	**River Street (northern) frontage:** 10m **Burns Point Ferry Road (eastern) frontage:** 10m (to proposed Manager's Residence) **Western side boundary:** 6 metres (to adjoining rural residential properties) The setback distances identified above have been measured from the proposed rear lot boundaries within the site. The proposed earthworks and drainage infrastructure works will be carried out along the lot boundaries of the site.

Figure 5: Architectural Site Plan (Source: Applicant's Architectural Plans)

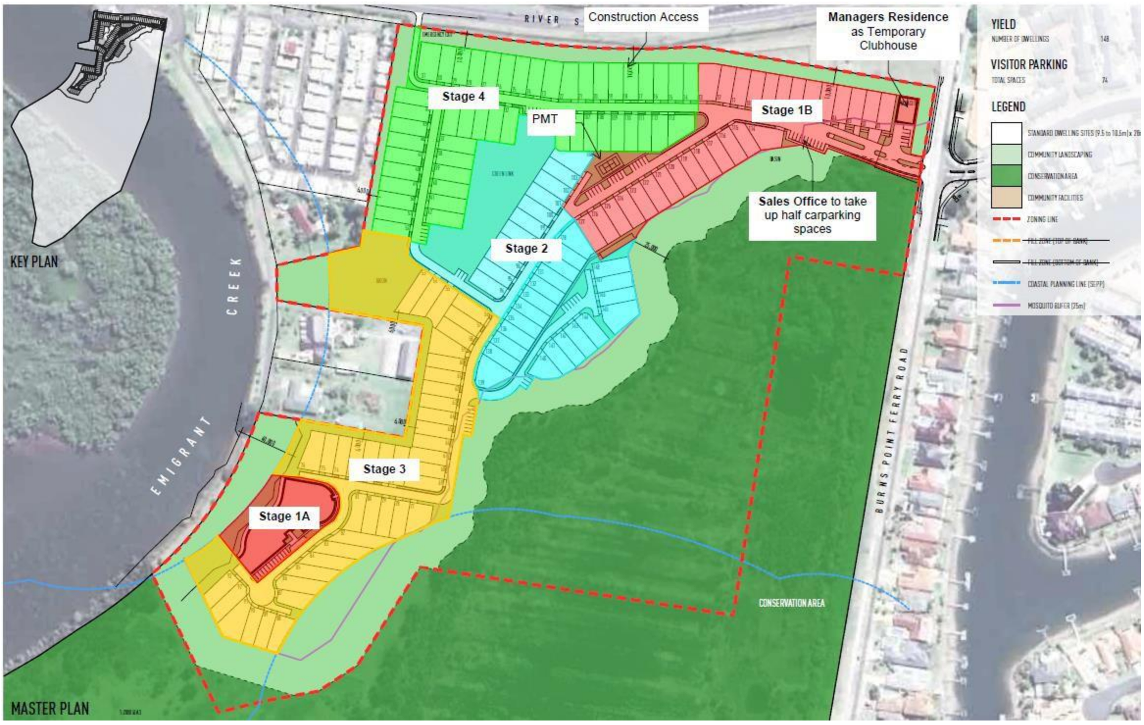

Figure 6: Staging Plans (Source: Applicant's Staging Plan)

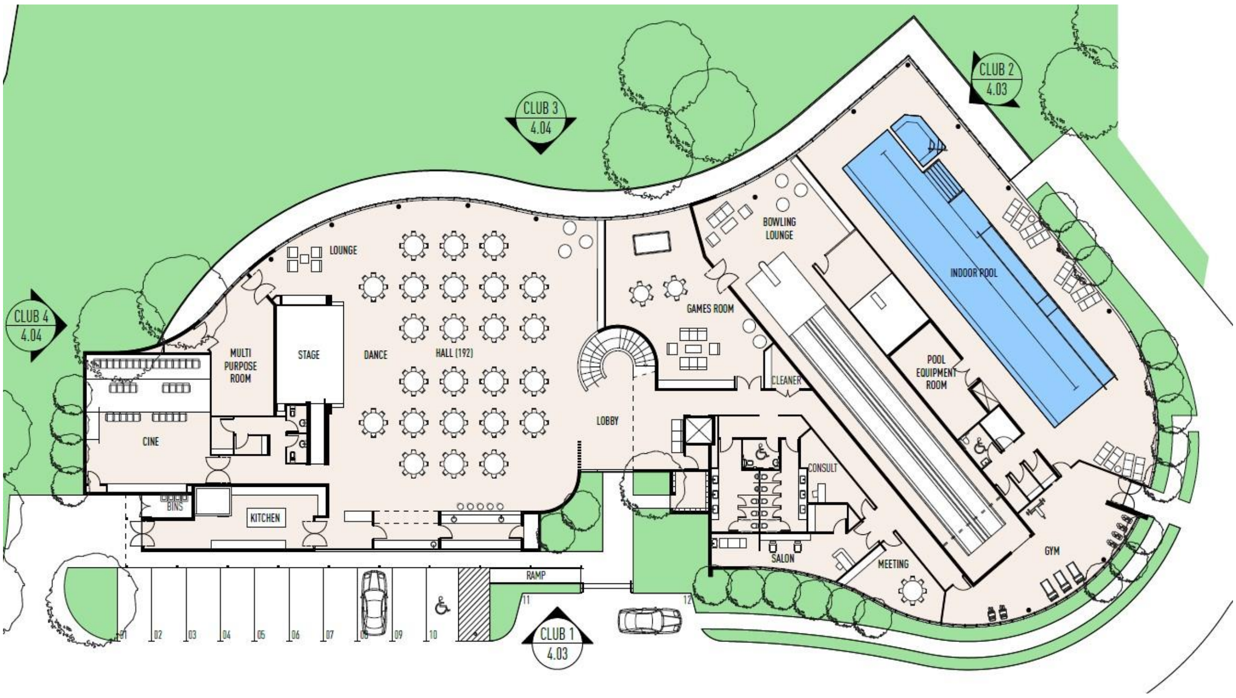

Figure 7: Clubhouse Ground Floor Plan (Source: Architectural Plans)

4.2 Background of the Application

The development application was lodged on 23 January 2023. A chronology of the development application since lodgement is outlined in **Table 2**.

Table 2: Chronology of the DA

Date	Event
10 February 2023	A request for additional information (RFI) was issued by Council identifying a need for an amended Biodiversity Development Assessment Report (BDAR), complete with additional survey results which had occurred on site.
8 March 2023	Applicant responded to the first RFI with an amended BDAR and Vegetation Management Plan (VMP).
14 March 2023	A second RFI was issued requesting further information in relation to the helipad and raised concern that the application may constitute Designated Development under the *Environmental Planning and assessment Regulation 2021.*
15 March 2023	Commencement of public exhibition period.
15 March 2023	The following external referrals were completed: • NSW Crown Lands • Local Aboriginal Land Council • Two local Aboriginal families • NSW DPI - Fisheries • NSW DPE – Water

	• NSW DPE – Biodiversity, Conservation and Science (BCD) • NSW Rural Fire Services (RFS) • Transport for NSW (TfNSW) • Essential Energy • NSW Police • NSW State Emergency Services (SES) • Ballina Byron Gateway Airport • Civil Aviation Safety Authority (CASA)
11 April 2023	• A response was received from the applicant including an amended Interim Flood Report, architectural plans, Statement of Environmental Effects (SEE) and acoustic consultant letter relating to the proposed helipad. • Council issued a third request for additional information in relation to the flood modelling.
14 April 2023	Public exhibition period ended.
17 April 2023	The applicant indicated that they would not provide flood report at this time.
22 May 2023	A fourth RFI was issued by Council identifying insufficient information had been provided in relation to a range of matters including (but not limited to) works proposed in the area identified as Coastal Wetlands, flood impact assessment and emergency flood management, Aboriginal cultural heritage assessment, BDAR groundwater and stormwater management.
25 May 2023	Panel briefing
24 July 2023	The applicant commenced Class 1 legal proceedings in the Land and Environment Court (LEC) appealing the 'deemed refusal' of the application.

4.3 Site History

In recent years there have been a number of development applications and relevant planning proposals relating to the subject land as outlined in **Table 3** below:

Table 3: Development History

Reference / Site	Application/Proposal Description	Outcome	Date Determined
DA2014/377 (Lot 1 DP522588 – 6 Burns Point Ferry Road)	Erection and Strata Title Subdivision of a multi dwelling housing development comprising 2-storey dwelling units above basement car parking and associated works. Geotechnical testing associated with this development has occurred on site and Council has previously provided written advice to the applicant, confirming physical commencement of works on this basis.	Approved	18 December 2014
PP14/008 (Lot 1 DP124173 – 550-578 River Street)	To rezone Lot 1 DP124173 to part R2 Low density residential (occupying the northern portion) and part RU2 Rural landscape (occupying the southern portion), apply appropriate planning controls to the land and enable the development of “work” related land uses on part of the R2 zone.	Approved	Gazetted 28 June 2019
DA 2019/233 (Lot 1 DP124173 – 550-578 River Street)	To establish two trial fill pads and installation of settlement monitoring plates for the purpose of testing sub-surface settlement characteristics of the site. The pads were approved within the R2 zoned part of the land.	Approved	25 November 2019
DA 2020/192 (Lot 1 DP124173 – 550-578 River Street)	Establishment of a proposed 296 site Manufactured Home Estate with associated manager’s residence, club house, recreation facilities, roads, utility services, earthworks and other associated works. Refused by the Land and Environment Court (LEC) (*Planners North v Ballina Shire Council [2021] NSWLEC 120*). See further discussion at Section 4.3.1	Appeal dismissed (DA refused)	3 November 2021

	below.		
PP22/007 (Lot 1 DP124173 – 550-578 River Street)	Planning Proposal to: • introduce C2 Environmental Conservation and C3 Environmental Management zones into BLEP 2012; and • apply a C2 Environmental Conservation Zone to Lot 1 DP 124173, 550-578 River Street, West Ballina, apart from an area, located in the northeast corner of the property to protect biodiversity values of the site, and amend associated development provisions. See further discussion at Section 4.3.2 below.	Referred to DPE for finalisation	Unknown

4.3.1 Previous court case (Planners North v Ballina Shire Council [2021] NSWLEC 120)

DA 2020/192 was the subject of a NSW Land and Environment Court (LEC) Class 1 appeal. The Chief Judge (Preston CJ) presided over the hearing and found that the application had not demonstrated the avoidance of impacts and that development proposed would have serious and irreversible impacts on Ecologically Endangered Communities (EECs) within the R2 zoned part of the site, as referenced under Section 6.4 and 6.5 of the Biodiversity and Conservation Act 2016 (BC Act), respectively.

Further, Preston CJ was not satisfied under clause 11(1) of the former State Environmental Planning policy (Coastal Management) 2018 that the development would not significantly impact on the wetland located within the southern portion of the site. In November 2021, the appeal was dismissed, and the application was refused.

In his judgement, Preston CJ highlighted the importance of the provisions of the BC Act, which are expressed to prevail over Part 4 of the EP&A Act to the extent of any inconsistency.

Specifically, Preston CJ considered (at paragraphs 84-111) the operation of Part 7 of the BC Act, including:

- Section 7.16(2) as a precondition to grant development consent; and
- Section 7.7(2) and 7.13(2) under which consideration must be given to the likely impacts of the development on the biodiversity values as assessed in the Biodiversity Development assessment Report (BDAR), and otherwise further considered as required under Section 4.15 of the EP&A Act.

The judgment has formed the basis of Council's decision to rezone most of the site to C2 Environmental Conservation under Planning Proposal No. PP22/007 which is further addressed in Section 3.3.2 below.

4.3.2 Draft BLEP 2012 Amendment to rezone Lot 1 DP 124173 – Planning Proposal No. 22/007

Following the refusal of DA2020/192 by the LEC, Council resolved to prepare a draft Planning Proposal at its Ordinary Meeting held on 28 July 2022 to amend BLEP 2012 as follows:

- introduce the C2 Environmental Conservation and C3 Environmental Management zones into the instrument and;
- rezone Lot 1 DP 124173 (No. 550-578 River Street) from part R2 Low Density and part RU2 Rural Landscape to part R2 Low Density Residential and part C2 Environmental Conservation

The draft Planning Proposal was reported to Council on 27 October 2022, where Council resolved to request a Gateway Determination.

During the meeting, Council also considered the rezoning implications for Lot 1 DP 522588 (6 Burns Point Ferry Road) which is currently zoned R3 Medium Density Residential. However, it was acknowledged that physical commencement of works approved under DA 2014/377 for the purpose of a multi-dwelling housing development has been demonstrated (as identified in Table 4) and therefore the consent remains valid. Accordingly, it was resolved that no further action regarding Lot 1 DP 522588 was required.

Gateway Determination was issued by DPE on 15 December 2022, including a requirement to retain of a portion of the R2 Low Density residential zone consistent with the location of the trial fill pads approved under DA 2019/233. Condition 1 of the determination states:

"1. Retain the existing R2 Low Density Residential zone and minimum lot size for the area approved for trial fill pads under DA 2019/233, as the primary use of the land is not for environmental management or conservation, unless landowner agreement for the proposed change can be obtained"

Subsequently, the Planning Proposal was amended, as agreed by the landowner, to retain a portion of the existing R2 Low Density Residential zone equivalent to the area of trial fill pads at the northeast corner of the site (immediately adjoining the R3 Medium Density zoned land within Lot 1 DP 522558). The amended Planning Proposal was submitted to DPE, and an altered Gateway Determination was issued on 6 March 2023, including deletion and replacement of Condition No. 1 with the following:

"1. The planning proposal is to be amended prior to public exhibition to include a savings provision which identifies that a development application made on the land but not finally determined before the commencement of the LEP amendment must be finally determined as if the plan has not commenced."

The current and proposed zoning under the amended Planning Proposal PP22/007 is shown in Figure 8 and 9 below.

The amended Planning Proposal was publicly exhibited from 27 March to 12 May 2023. In response, Council received 44 submissions, including 42 submissions of support and 2 objecting to the proposal, one of which was submitted on behalf of the landowner.

The amended Planning Proposal was endorsed and recommended for submission to the DPE for finalisation by Council at its Ordinary Meeting on 27 July 2023.

At the time of writing this report, the Planning Proposal is under review by DPE. Council has been advised by DPE that the results of the review and determination of the Planning Proposal are imminent.

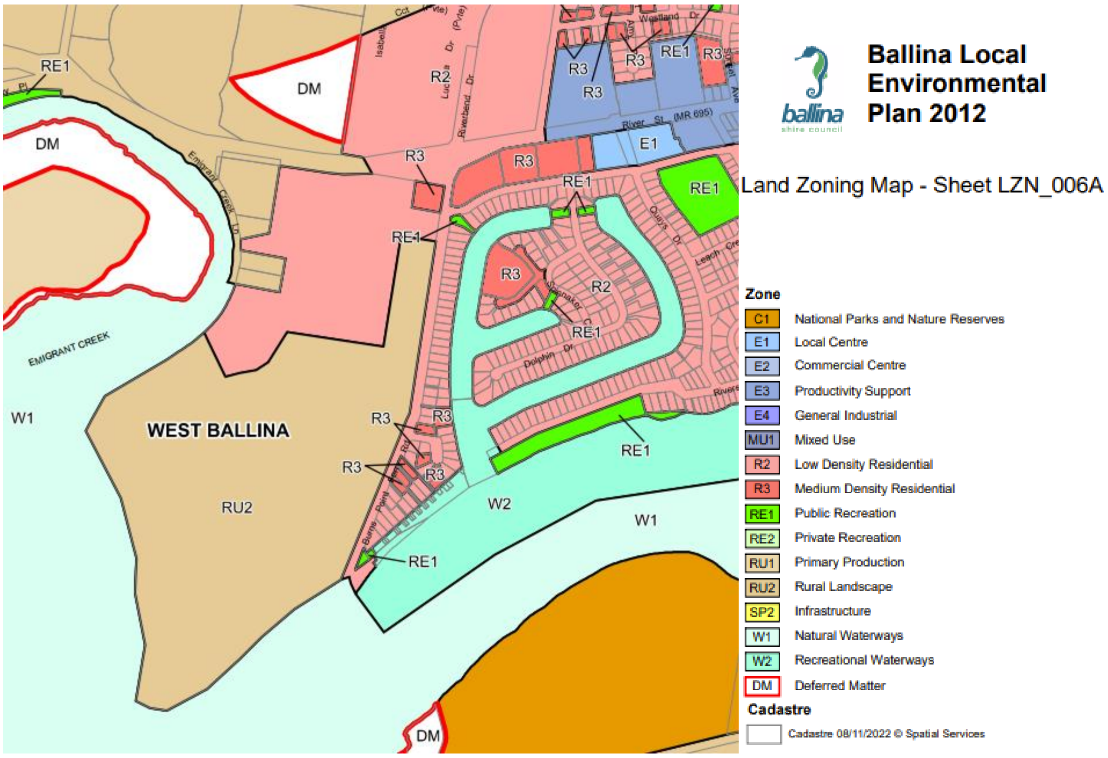

Figure 8: Current zoning of Lot 1 DP 124173 (Source: BLEP 2012)

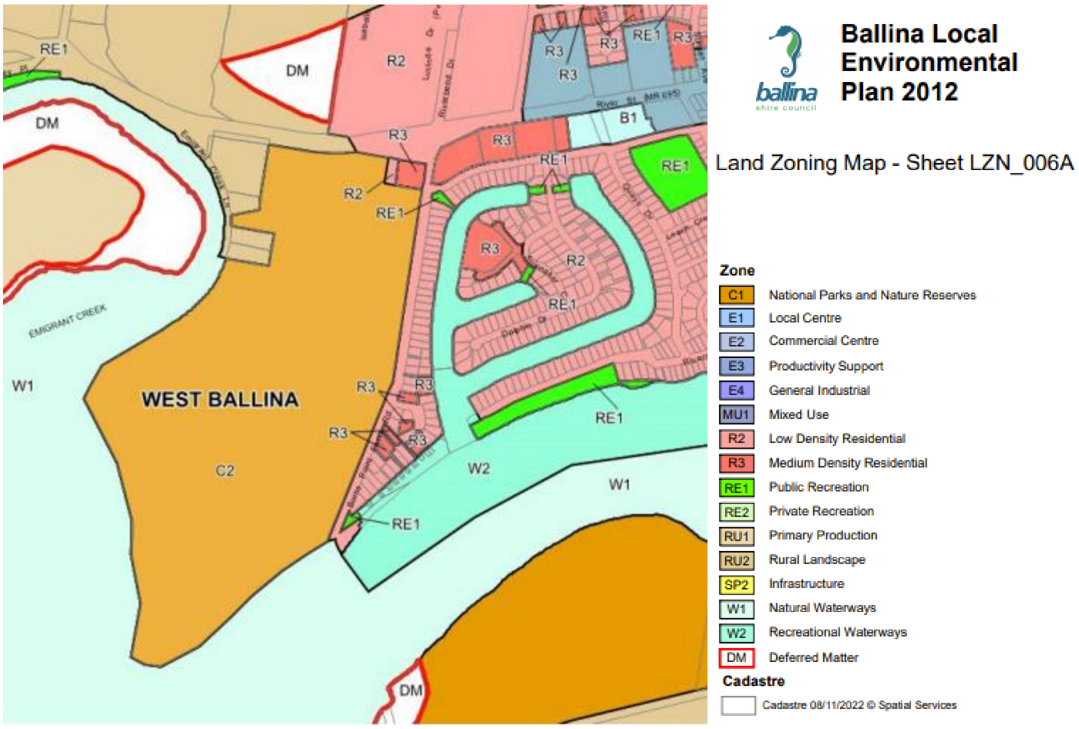

Figure 9: Proposed zoning of subject site (Source: Planning Proposal 22/007)

4.3.3 Historical slashing of the site

Slashing at varying frequency has been observed to occur on the site for several years and previous ecological studies documenting the site have mapped the slashed area as a form of native vegetation. The slashing has been observed to have reduced the height of native vegetation on the Site, in particular thickets of Common Reed which prior to being slashed had a height of up to three metres. The reduction in habitat complexity has likely reduced the biodiversity values of this area for fauna species that rely on vegetation cover.

The historical slashing and associated impacts are addressed in Section 5.2.6 and 5.3.1.

5 STATUTORY CONSIDERATIONS

5.1 Section 4.46 of the EP&A Act – Integrated Development

The development is defined as Integrated development pursuant to Section 4.46 of the EP&A Act as the proposed works requires development consent under the EP&A Act and other approvals as required under the relevant provisions of the *Water Management Act 2000* and the *Fisheries Management Act 1994.* These other approvals are further discussed below.

5.1.1 *Water Management Act 2000*

The *Water Management Act 2000* (WM Act) is intended to ensure that water resources are conserved and suitably managed for sustainable use. Part 3 of WM Act 2000 identifies approval requirements for water use, water management works approvals and activity approvals.

The development involves earthworks and drainage construction works within 40 metres of Emigrant Creek and the tributaries of the creek (i.e., waterfront land) and therefore requires a Controlled Activity Approval under Section 91 of the WM Act.

On 29 August 2023, the DPE – Water issued General Terms of Approvals (GTAs) relating to the proposed controlled activity which are provided at Attachment D.

5.1.2 *Fisheries Management Act 1994*

The development may involve dredging and reclamation works, as well as likely harm to marine vegetation within identified areas of key fish habitat and therefore requires a permit under Section 201 and 205 of the FM Act, respectively.

On 14 July 2023, the DPI – Fisheries issued a referral in response to the request for GTAs, identifying that insufficient information has been provided regarding the following:

- Identification of all key fish habitat within the proposed development footprint;
- Specification of the area of direct and potential impacts to marine vegetation;
- Development of an offset project developed in accordance with minimum offset area-to-to-impact ratio in the '*Policy and Guidelines for Fish Habitat Conservation and Management (2013 Update)'.*

The referral comments, including a request for additional information issued by DPI – Fisheries are provided at Attachment E.

Section 4.47(2) of the EP&A Act identifies that before granting consent to development that is integrated development, the consent authority must obtain the GTAs from each relevant approval body. It is also noted that Section 4.47(2) does not preclude refusal of such an application.

Section 4.47(2) of the EP&A Act states:

> *“(2) Before granting development consent to an application for consent to carry out the development, the consent authority must, in accordance with the regulations, obtain from each relevant approval body the general terms of any approval proposed to be granted by the approval body in relation to the development. Nothing in this section requires the consent authority to obtain the general terms of any such approval if the consent authority determines to refuse to grant development consent.”*

GTAs have not been issued by DPI – Fisheries and the additional information requested has not been provided. Therefore its considered that development consent could not be granted pursuant to Section 4.47(2) of the EP&A Act.

5.2 Section 4.15 of the EP&A Act – Evaluation

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the EP&A Act.

Section 4.15(1) of the EP&A Act states the following:

4.15 Evaluation *(cf previous s 79C)*

(1) ***Matters for consideration—general*** *In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application—*

(a) the provisions of—

(i) any environmental planning instrument, and

(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

(iii) any development control plan, and

(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),

(v) (Repealed)

that apply to the land to which the development application relates,

(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,

(c) the suitability of the site for the development,

(d) any submissions made in accordance with this Act or the regulations,

(e) the public interest.

These matters are further considered in Sections 4.2.1 to 4.2.9 below.

5.2.1 Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Housing) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Primary Production) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- State Environmental Planning Policy (Industry and Employment) 2021

The relevant matters and preconditions to the granting of development consent in relation to the proposal is provided in **Table 3.**

Table 3: Summary of Applicable Environmental Planning Instruments

EPI	Relevant matters	Comply (Y/N)
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 **(BASIX SEPP)**	**Section 3 – Aim of Policy** In accordance with Section 3 of the BASIX SEPP an application for development consent is required to be accompanied by a list of commitments identifying the manner in which the development will be carried out pursuant to the BASIX scheme (BASIX Certificate). A BASIX Certificate (No. 1362880M) accompanies the application and therefore the relevant provisions of the BASIX SEPP have been addressed.	Y
State Environmental Planning Policy (Planning Systems) 2021 **(Planning Systems SEPP)**	**Chapter 2: State and Regional Development** **Part 2.4 Regionally significant development** Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6 as the development has a CIV of more than $30 million. The development application is required to be determined by the Northern Regional Planning Panel.	Y
State Environmental Planning Policy (Housing) 2021 **(Housing SEPP)**	**Chapter 3: Diverse Housing** **Part 5 Housing for Seniors and people with a disability** The submitted documentation, including the Architectural Plans (at Attachment B), do not provide sufficient detail to enable an assessment against the following development	N

	standards in Chapter 3 of the Housing SEPP: • **Section 80(1)(b) and Schedule 3** – Part 5 of the Housing SEPP does not apply to the portion of the site mapped as Coastal Wetlands and Littoral Rainforests under the RH SEPP. The application does not identify the relevant assessment framework relied upon for the carrying out of the development located in this mapped area. • **Section 84 -** Development Standards – general • **Section 85 -** Development Standards for hostels and independent living units (and relevant consideration of the development standards set out in Schedule 4) • **Section 93 -** Location and access to facilities and services – independent living units • **Section 97 –** Design of infill self-care housing (and relevant consideration of the *'Seniors Living Policy: Urban Design guideline for Infill Development'* 2004) • **Section 98 –** Design of Seniors housing (and relevant consideration of Division 6 Design Principles) • **Section 108 –** Non-discretionary development standards for independent living units-the Act s 4.15	
SEPP (Resilience & Hazards) **(Resilience and Hazards SEPP)**	**Chapter 2: Coastal Management** **Part 2.2 Development controls for coastal managements areas** The application does not provide sufficient information for the consent authority to properly consider the requirements and to be satisfied of the matters set out in the following provisions in Chapter 2 of the Resilience and Hazards SEPP: • **Section 2.7(4)** – certain development in coastal wetlands or littoral rainforest • **Section 2.8(1)(a) and (b)** - Development on land in proximity to coastal wetlands or littoral rainforest • **Section 2.10(2)** - Development on land within the coastal environment area as the whole of the site is mapped as Coastal Environment Area • **Section 2.11(1)(a) and (b)** - Development on land within the coastal use area **Chapter 4: Remediation of Land** • **Section 4.6** – Contamination and remediation to be considered in determining development application The site has been subject to localised spot (rubbish) dumping and the application includes evidence of Detailed	N

	Site Investigations and provides a Remedial Action Plan which deals with site contamination. It is considered that the relevant provisions set out under Section 4.6 of the Resilience and Hazards SEPP have been addressed. Notwithstanding this, insufficient information is provided regarding the adequate treatment and remediation of acid sulfate soils and the impacts of these measures on the surrounding sensitive coastal environmental and biodiversity values of the land. The management of acid sulfate soils is further considered as part of the BLEP 2012 assessment provided in Section 5.2.1(h).	
State Environmental Planning Policy (Primary Production) 2021 **(Primary Production SEPP)**	**Chapter 2: Primary Production and rural development** **Part 2.5, Division 4 Consideration of effects of proposed development on oyster aquaculture** The application does not provide sufficient information for the consent authority to properly consider the requirements in the following provisions in Chapter 2 of the Primary Production SEPP: • **Section 2.27** – Consultation with Secretary of Department of Industry • **Section 2.28** – Development consent may be refused if development adversely affects oyster aquaculture • **Section 2.29** – NSW Oyster Industry Strategy to be considered	N
State Environmental Planning Policy (Transport and Infrastructure) 2021 **(Transport and Infrastructure SEPP)**	**Chapter 2: Infrastructure** **Part 2.3 Development Controls** **Division 5, Subdivision 1 Electricity transmission or distribution** • **Section 2.48** – Determination of development applications—other development The application was referred to Essential Energy pursuant to Section 2.48 and comments have been provided (refer to Attachment J). **Division 17 Roads and traffic Subdivision 1 Electricity transmission or distribution** • **Section 2.122(4)** – Traffic-generating development • **Schedule 3** – Traffic Generating development to be referred to TfNSW-Chapter 2	N

	The application was referred to TfNSW pursuant to Section 2.122(4)(b)(i) and comments have been issued (refer to Attachment I). In terms of traffic safety, the application does not provide sufficient information to demonstrate that safe and adequate site access arrangements have been made pursuant to Section 2.122(4)(b)(iii).	
State Environmental Planning Policy (Industry and Employment) 2021 **(Industry and Employment SEPP)**	**Chapter 3: Advertising and Signage** The application does not provide sufficient detail to enable an assessment against the following relevant Industry and Employment SEPP provisions: • **Section 3.6** – Granting of consent to signage • **Section 3.11** – Matters for consideration • **Schedule 5** – Assessment Criteria	N
Proposed Instruments	**Draft BLEP 2012 Amendment (Planning Proposal No. 22/007)** A draft BLEP 2012 amendment is proposed under Planning Proposal No. 22/007 which seeks to: • introduce the C2 Environmental Conservation and C3 Environmental Management zones into the instrument including amendment of associated clauses; and • rezone part of Lot 1 DP 124173 (No. 550-578 River Street) for conservation purposes, from part R2 Low Density and part RU2 Rural Landscape to part R2 Low Density Residential and part C2 Environmental Conservation. The BLEP 2012 amendment includes a proposed savings provision which identifies that a development application made on the land, but not finally determined before the commencement of the LEP amendment must be finally determined as if the plan has not commenced. **Draft State Environmental Planning Policy (Housing) 2021** An Explanation of Intended Effect (EIE) seeking feedback on proposed amendments to the Housing SEPP (State Environmental Planning Policy Amendment (Housing) 2023), including updates to the existing seniors housing provisions relating to accessibility and useability, was exhibited from Tuesday 22 November 2022 until Friday 13 January 2023 by the NSW DPE. Feedback the department received in response to the exhibition is currently reviewed	Refer to Section 4.2.2

	by DPE. Due to the insufficient information provided, it is considered that a proper assessment of the development against the updated provisions relating to seniors housing cannot be undertaken.	
Ballina Local Environmental Plan 2012 **(BLEP 2012)**	The application fails to demonstrate the relevant matters set out under following clauses in BLEP 2012: • **Clause 4.3** – Height of buildings • **Clause 4.3A** – Exceptions to height of buildings • **Clause 4.4** – Floor space ratio • **Clause 5.10** – Heritage Conservation • **Clause 5.21** – Flood Planning • **Clause 7.1** – Acid sulfate soils • **Clause 7.2** – Earthworks • **Clause 7.5** – Airspace operations • **Clause 7.7** – Essential Services	N
Ballina Development Control Plan 2012 **(BDCP 2012)**	The application does not provide sufficient detail to enable an assessment against the following relevant BDCP 2012 controls: **Chapter 2 – General and Environmental Considerations** • Section 3.1 Land Use Conflict • Section 3.2 Ridgelines and Scenic Areas • Section 3.3 Natural Areas and Habitat • Section 3.4 Potentially Contaminated Land • Section 3.6 Mosquito Management • Section 3.7 Waste Management • Section 3.9 Stormwater Management • Section 3.10 Sediment and Erosion Control • Section 3.12 Heritage • Section 3.15 Crime Prevent through Environmental Design (CPTED) • Section 3.21 Bushfire Management **Chapter 2A – Vegetation Management** **Chapter 2B – Floodplain Management** **Chapter 4 – Residential and Tourist Development**	N

	Chapter 8 – Other Uses • Section 3.4 – Signage	

Consideration of the relevant statutory policies is outlined below.

(a) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The BASIX SEPP applies to the proposal. The objectives of this Policy are to ensure that the performance of the development satisfies the requirements to achieve water and thermal comfort standards that will promote a more sustainable development.

The application is accompanied by BASIX Certificate No.1362880M prepared by Efficient Living dated 16 December 2022 committing to environmentally sustainable measures. The Certificate demonstrates the proposed development satisfies the relevant water, thermal and energy commitments as required by the BASIX SEPP. Accordingly, the relevant provisions of the BASIX SEPP have been addressed.

(b) State Environmental Planning Policy (Planning Systems) 2021

Chapter 2: State and Regional Development

The proposal is regionally significant development pursuant to Section 2.19 of the Planning Systems SEPP as it satisfies the criteria in Section 2 of Schedule 6 of the policy, as the as the development has a capital investment value of more than $30 million. Accordingly, the Northern Regional Planning Panel is the determining authority for the application.

(c) State Environmental Planning Policy (Housing) 2021

The Housing SEPP aims to increase the quality and quantity of diverse and affordable housing typologies in the state and the relevant clauses of the policy have been considered as follows:

Chapter 3 – Diverse housing

Application of Part 5 – Housing for Seniors and people with a disability

The Housing SEPP applies to the whole of the State pursuant to Section 7 of the policy.

The submitted documentation indicates that the construction of the proposed seniors housing development occupies the northern portion of the site zoned R2 Low Density and R3 Medium Density Residential. Section 79 of the Housing SEPP identifies the land use zones to which the seniors housing provisions in Part 5 of Chapter 3 of the policy applies and expressly includes the R2 Low Density and R3 Medium Density zone. Therefore Part 5 applies to the proposed development.

The site is mapped as ‘Coastal Wetlands’ and ‘Proximity Area for Coastal Wetlands’ on the Coastal Wetlands and Littoral Rainforests Area Map (referred to in Division 1, Part 2.2 of the Resilience and Hazards SEPP). An extract of this map is provided in Figure 10 below.

The proposal includes:

- vegetation management works within the mapped Coastal Wetlands area; and
- retaining walls, footings, engineering works all of which are associated with the proposed stormwater, pre-loading, mosquito buffer and landscape works in the mapped Proximity Area for Coastal Wetlands.

Section 80 of the Housing SEPP identifies land to which Part 5 does not apply and includes ‘environmentally sensitive land’ (referred to in Schedule 3).

Land identified as Coastal Wetlands and Littoral Rainforests Area within the meaning of the Resilience and Hazards SEPP is environmentally sensitive land pursuant to Schedule 3 of the Housing SEPP. This includes both the mapped Coastal Wetlands area and the mapped Proximity Area for Coastal Wetlands (as described in Section 2.4(2) of the Resilience and Hazards SEPP). Therefore, the Housing SEPP does not apply to this mapped portion of the site.

The assessment set out in the submitted Statement of Environmental Effects (SEE) does not identify the relevant assessment framework relied upon for the carrying out of the development located in this mapped area to which the Housing SEPP does not apply. To this extent, it is considered that the development lacks clarity as to the source of power relied upon to assess and determine the application.

Built form design and amenity

The Housing SEPP provides development standards, design requirements and design principles to ensure that an acceptable built form response and level of residential amenity is achieved for sites proposed to be developed for the purpose of seniors housing.

<u>**Section 84 -** Development Standards – general</u>

Section 84 of the Housing SEPP contains general development standards relating to seniors housing and states as follows:

“84 Development standards—general

(1) This section applies to development for the purposes of seniors housing involving the erection of a building.

(2) Development consent must not be granted for development to which this section applies unless—

(a) the site area of the development is at least 1,000m^2, and

(b) the frontage of the site area of the development is at least 20m measured at the building line, and

(c) for development on land in a residential zone where residential flat buildings are not permitted—

(i) the development will not result in a building with a height of more than 9.5m, excluding servicing equipment on the roof of the building, and

(ii) if the roof of the building contains servicing equipment resulting in the building having a height of more than 9.5m—the servicing equipment complies with subsection (3), and

(iii) if the development results in a building with more than 2 storeys—the additional storeys are set back within planes that project at an angle of 45 degrees inwards from all side and rear boundaries of the site.

(3) The servicing equipment must—

(a) be fully integrated into the design of the roof or contained and suitably screened from view from public places, and

(b) be limited to an area of no more than 20% of the surface area of the roof, and

(c) not result in the building having a height of more than 11.5m.

(4) Subsection (2)(a) and (b) do not apply to development the subject of a development application made by the following—

(a) the Aboriginal Housing Office or the Land and Housing Corporation,

(b) another social housing provider."

Comment: The architectural plans (Attachment B) and civil engineering drawings (Attachment C) do not include relevant RL levels to demonstrate existing ground and finished floor levels and details of proposed servicing equipment.

On this basis, the application does not provide sufficient detail to accurately assess the height of each building proposed as part of the development of the application and determine whether the compliance with section 84(2)(c) and 84(3) is achieved.

Section 85 - Development Standards for hostels and independent living units

The application proposes the construction of independent living units and therefore the development standards in Schedule 4 of the Housing SEPP must be considered as required by Section 85, which states as follows:

"85 Development standards for hostels and independent living units

(1) Development consent must not be granted for development for the purposes of a hostel or an independent living unit unless the hostel or independent living unit complies with the relevant standards specified in Schedule 4.

(2) An independent living unit, or part of an independent living unit, located above the ground floor in a multi-storey building need not comply with the requirements in Schedule 4, sections 2, 7–13 and 15–20 if the development application is made by, or by a person jointly with, a social housing provider."

The development standards in Schedule 4 are discussed below.

Schedule 4 - Standards concerning accessibility and usability for hostels and independent living units

Schedule 4 of the Housing SEPP contains developments standards set out under two parts, both of which apply to the proposed development, including:

- Part 1 - Standards applying to hostels and independent living units; and
- Part 2 – Additional standards for independent living units.

These standards relate to matters including development siting, security, letterboxes, accessibility, internal unit design and storage.

Comment: Assessment of the proposed independent living units cannot be undertaken as insufficient information is provided in the drawings included in the Architectural Drawings package (Attachment B). For example:

- The streetscape presentation of the development, and as viewed from the surrounding public domain cannot be assessed due to the limited elevations and sections submitted with the application. The submitted drawings do not provide a clear and accurate representation of the development at the interface with the surrounding streetscape, as well as the adjoining areas of high biodiversity value to the south.
- The Plotting Plan (Drawing No. 7.02) does not identify the exact location of each individual dwelling within each of the proposed lots.
- The Typical Floor Plans (Floor Plan 'A', 'B', 'C' and 'D' in Drawing No.'s 2.1-2.28) do not provide accurate dimensions.
- There are several inconsistencies between the submitted floor plans and site plans. For example, the typical floor plans associated with Housing Types A, B and C indicate a 10.5m-wide housing lot, while it appears a substantial number of 'lot's (over 50) on the Plotting Plan are 9.5m or less in width.
- Proposed housing lots 27, 91, 87, 81, 77, 69, 59, 91, 128, 113, 114, are considered unusual in shape and do not have capacity for the provision of the designated floor plan.
- Lot 91 does not involve a crossover and it is unclear how a garage will be provided on site.
- Shadow diagrams to adequately identify potential overshadowing impacts of each proposed dwelling have not been provided.
- For the reasons stated in the points above, the submitted documentation does not demonstrate the following for each individual dwelling:
    - orientation and siting;
    - setback distances to lot boundaries;
    - solar access;
    - visual privacy;
    - emergency access (fire egress);
    - location of accessible paths;
    - landscaped areas;
    - deep soil zones;
    - private open space area;
    - driveway and associated garage car parking location; and
    - storage capacity.

Accordingly, compliance with the relevant development standards set out in Schedule 4 of the Housing SEPP (as referred to in Section 85) cannot be determined.

<u>**Section 93 -** Location and access to facilities and services – independent living units</u>

The Housing SEPP contains site-related requirements for independent living units which are set out in Section 93 of the policy. Under these provisions the consent authority is required to consider whether future residents will have adequate access to facilities and services.

Section 93 of the Housing SEPP states as follows:

"93 Location and access to facilities and services—independent living units

(1) Development consent must not be granted for development for the purposes of an independent living unit unless the consent authority has considered whether residents will have adequate access to facilities and services—
(a) by a transport service that complies with subsection (2), or

(b) on-site.

(2) The transport service must—

(a) take the residents to a place that has adequate access to facilities and services, and

(b) for development on land within the Greater Sydney region—
(i) not be an on-demand booking service for the transport of passengers for a fare, and

(ii) be available both to and from the site at least once between 8am and 12pm each day and at least once between 12pm and 6pm each day, and

(c) for development on land that is not within the Greater Sydney region—be available both to and from the site during daylight hours at least once each weekday.

(3) For the purposes of subsections (1) and (2), access is adequate if—
(a) the facilities and services are, or the transport service is, located at a distance of not more than 400m from the site, and

(b) the distance is accessible by means of a suitable access pathway, and

(c) the gradient along the pathway complies with subsection (4)(c).

(4) In subsection (3)—
(a) a ***suitable access pathway*** *is a path of travel by means of a sealed footpath or other similar and safe means that is suitable for access by means of an electric wheelchair, motorised cart or the like, and*

(b) the distance is to be measured by reference to the length of the pathway, and

(c) the overall average gradient must be not more than 1:14 and the gradients along the pathway must be not more than—
(i) 1:12 for a maximum length of 15m at a time, or

(ii) 1:10 for a maximum length of 5m at a time, or

(iii) 1:8 for a maximum length of 1.5m at a time.

(5) In this section—
facilities and services *means—*
(a) shops and other retail and commercial services that residents may reasonably require, and

(b) community services and recreation facilities, and

(c) the practice of a general medical practitioner.

provide a booking service *has the same meaning as in the Point to Point Transport (Taxis and Hire Vehicles) Act 2016, section 7.*
Note—"

Comment: Whilst the submitted SEE identifies that an on-site transport service will be provided, no details regarding this service have been included. Additionally, the application does not provide sufficient information to assess the accessibility of surrounding transport facilities. Due to the insufficient information provided, compliance with the provisions of Section 93 of the Housing SEPP cannot be determined.

Section 97 – Design of infill self-care housing

Section 97 of the Housing SEPP identifies that consent authority must consider the *'Seniors Living Policy: Urban Design Guideline for Infill Development'*, March 2004 (the Seniors Infill

Policy) when determining an application for seniors housing.

The Seniors Living Policy sets out design guidelines for seniors housing development, with the objective of:

- improving neighbourhood/contextual fit within the locality;
- improving site planning and built form design;
- reducing impacts on the streetscape and neighboring properties; and
- improving internal site amenity.

In addition to the Seniors Infill Policy (referred to in Section 97), Section 98 of the Housing SEPP requires the consent authority to be satisfied that the design of the proposed development has adequately considered the Design Principles (set out in Division 6) before granting consent.

The Design Principles in Division 6 are discussed below.

Section 98 – Design of seniors housing

Section 98 of the Housing SEPP states:

"98 Design of seniors housing

> *A consent authority must not consent to development for the purposes of seniors housing unless the consent authority is satisfied that the design of the seniors housing demonstrates adequate consideration has been given to the principles set out in Division 6."*

Division 6 – Design Principles (Sections 99 – 105)

The Design Principles contained in Division 6 of the Housing SEPP are set out under seven sections in the policy and relate to:

- Neighbourhood amenity and streetscape (Section 99);
- Visual and acoustic privacy (Section 100);
- Solar access and design for climate (Section 101);
- Stormwater (Section 102);
- Crime prevention (Section 103);
- Accessibility (Section 104); and
- Waste management (Section 105).

Comment: For the reasons outlined earlier (in response to Section 84, 85, 93 and Schedule 4 of the Housing SEPP), it is considered that the application does not provide sufficient detail to enable a proper assessment of the proposal against the:

- Seniors Living Policy (as required by Section 97 of the Housing SEPP); and
- Design Principles set out in Division 6 (as required by Section 98 of the Housing SEPP).

Notwithstanding the insufficient detail provided, it is considered that the proposed development is inconsistent with the Design Principles in Division 6, Part 5 of the Housing SEPP for the following reasons:

- The intensity of development (including fill, retaining structures and stormwater infrastructure) at the interface with adjoining development and its elevation from existing ground levels results in unreasonable impacts in terms of bulk, scale and overlooking.

- The further elevation of the land (up to 5 metres) and the height of acoustic mitigation measures (up to 2m above the finished surface levels) along the perimeter of the site results in an inappropriate and uncharacteristic streetscape presentation to River Street as well as to surrounding properties.

- The proposal does not demonstrate adequate solar access, visual privacy, as well as sufficient landscaped areas for each dwelling.

In terms of stormwater management (as required by Section 102), assessment of the submitted Civil Drawings (Attachment C) undertaken by Council's Stormwater Engineer demonstrates that insufficient detail regarding the functionality of the system is provided. The stormwater design issues are detailed in Section 4.2.6(d).

Accordingly, it is considered that the application does not demonstrate that the site can be adequately drained, and that potential stormwater runoff and water quality impacts can be appropriately managed.

Section 108 – Non-discretionary development standards for independent living units-the Act s 4.15

Section 108 of the Housing SEPP provides non-discretionary development standards for independent living units which relate to building height, density and scale, deep soil zones, solar access, private open space, and car parking, and states as follows:

108 Non-discretionary development standards for independent living units—the Act, s 4.15

(1) The object of this section is to identify development standards for particular matters relating to development for the purposes of independent living units that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

(2) The following are non-discretionary development standards in relation to development for the purposes of independent living units—

(a) no building has a height of more than 9.5m, excluding servicing equipment on the roof of a building,

(b) servicing equipment on the roof of a building, which results in the building having a height of more than 9.5m—

(i) is fully integrated into the design of the roof or contained and suitably screened from view from public places, and

(ii) is limited to an area of no more than 20% of the surface area of the roof, and

(iii) does not result in the building having a height of more than 11.5m,

(c) the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less,

(d) for a development application made by a social housing provider—at least 35m^2 of landscaped area per dwelling,

(e) if paragraph (d) does not apply—at least 30% of the site area is landscaped,

(f) a deep soil zone on at least 15% of the site area, where each deep soil zone has minimum dimensions of 3m and, if practicable, at least 65% of the deep soil zone is located at the rear of the site,

(g) at least 70% of the dwellings receive at least 2 hours of direct solar access between 9am and 3pm at mid-winter in living rooms and private open spaces,

(h) for a dwelling in a single storey building or a dwelling located, wholly or in part, on the ground floor of a multi-storey building—

(i) at least 15m^2 of private open space per dwelling, and

(ii) at least 1 private open space with minimum dimensions of 3m accessible from a living area located on the ground floor,

Note—

The open space needs to be accessible only by a continuous accessible path of travel, within the meaning of AS 1428.1, if the dwelling itself is an accessible one—see Schedule 4, section 2.

(i) for a dwelling in a multi-storey building not located on the ground floor—a balcony accessible from a living area with minimum dimensions of 2m and—

(i) an area of at least 10m^2, or

(ii) for each dwelling containing 1 bedroom—an area of at least 6m^2,

(j) for a development application made by, or made by a person jointly with, a social housing provider—at least 1 parking space for every 5 dwellings,

(k) if paragraph (j) does not apply—at least 0.5 parking spaces for each bedroom.

Comment: For the reasons outlined earlier (in response to Section 84, 85, 93 and Schedule 4 of the Housing SEPP), it is considered that the application does not provide sufficient detail to enable a proper assessment of the proposal against the development standards in Section 108 of the Housing SEPP (with the exception of car parking which is addressed below).

Car Parking

The application is not made by, or a person jointly with, a social housing provider and therefore a total of 220 spaces are required for the development in accordance with the parking rate of at least 0.5 parking spaces per bedroom as specified in Section108(2)(k) of the Housing SEPP.

The development proposes a total 347 car parking spaces, distributed as follows:

- 2 x attached garage spaces for each dwelling (i.e. 296 spaces);
- 15 car clubhouse spaces; and
- 51 visitor spaces (provided throughout the site).

As such, the proposal satisfies the minimum number of car parking spaces as required under Section108(2)(k) of the Housing SEPP.

(d) State Environmental Planning Policy (Resilience and Hazards) 2021

The relevant clauses of the Resilience and Hazards SEPP have been considered as follows:

Chapter 2: Coastal Management

<u>**Section 2.7** – development on certain land within coastal wetlands and littoral rainforests area</u>

The site is mapped as containing ‘Coastal Wetlands’ on the Coastal Wetlands and Littoral Rainforests Area Map referred to in Section 2.7(1) of the Resilience and Hazards SEPP. An extract of the Coastal Wetlands and Littoral Rainforests Area map is provided Figure 10.

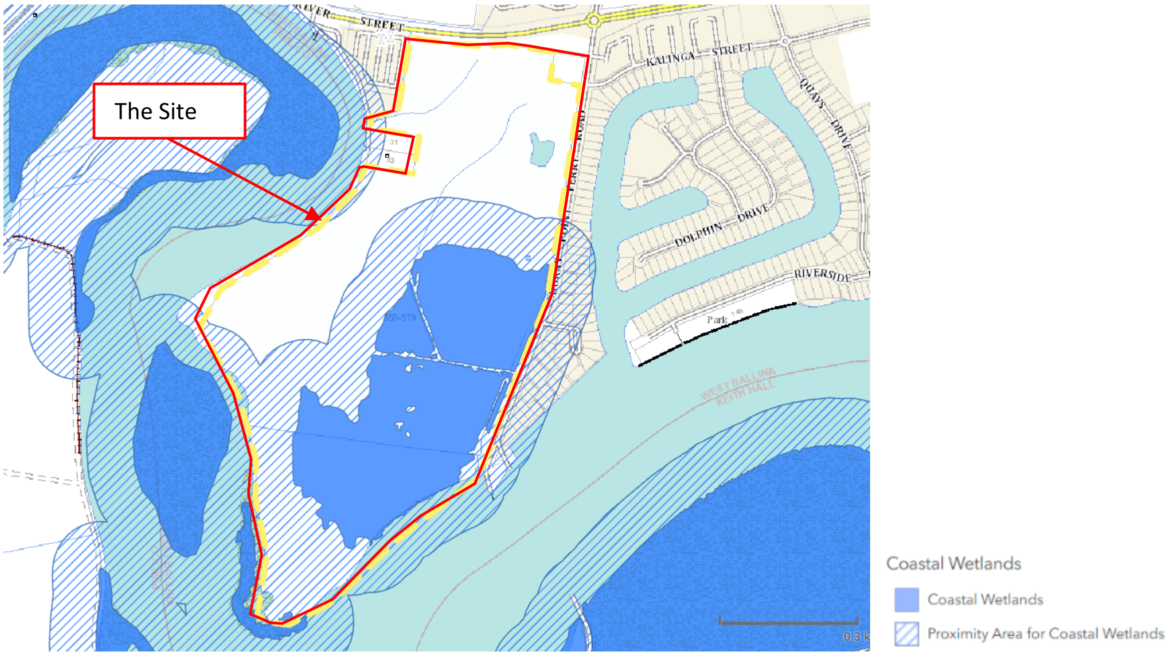

Figure 10: SEPP (Resilience and Hazards) 2021, Coastal Wetlands and Littoral Rainforests Area Map (Source: NSW ePlanning Spatial Viewer)

Section 2.7(1) of the Resilience and Hazards SEPP states:

“2.7 Development on certain land within coastal wetlands and littoral rainforests area

(1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent—

(a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,

(b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,

(c) the carrying out of any of the following—

(i) earthworks (including the depositing of material on land),

(ii) constructing a levee,

(iii) draining the land,

(iv) environmental protection works,

(d) any other development.”

Comment: Majority of the southern end of the site that is covered by Biobanking Agreement (No. 444) is mapped as ‘Coastal Wetlands’. The submitted SEE and Vegetation Management

Plan (VMP) indicate that no works (other than for the purpose of vegetation management and rehabilitation) are proposed within the Biobanking Site (including the Coastal Wetlands mapped portion of the site).

It is also noted that stormwater is proposed to be discharged onto this area as identified in the SEE and Civil Engineering Drawings (Attachment C). However, insufficient information regarding the proportion of stormwater to be discharged onto the Biobanking site has been provided which is further discussed in Section 4.2.6(d).

Section 2.7(4) of the Resilience and Hazards SEPP states:

> *"(4) A consent authority must not grant consent for development referred to in subsection (1) unless the consent authority is satisfied that sufficient measures have been, or will be, taken to protect, and where possible enhance, the biophysical, hydrological and ecological integrity of the coastal wetland or littoral rainforest."*

Comment: Whilst the submitted documentation including the SEE and VMP indicate that no physical works (other than for the purpose of vegetation management and rehabilitation) are proposed within the Biobanking Site (including the mapped 'Coastal Wetlands' area), it is unclear as to whether the development will have adverse impacts on the biodiversity values of the Coastal Wetlands. Reasons for this include:

- The indirect impacts to the Coastal Wetlands have been poorly quantified in the Biodiversity Development Assessment Report (BDAR). For example:
  - Shorebirds within the Biobanking Site may be impacted due to a reduced flight initiation distance (FID) (i.e., less than the distance from the edge of the development onto the Coastal Wetlands area within the Biobanking site);
  - Light spill impacts;
  - Changes to hydrology which may cause a shift in species diversity, thereby increasing habitat for invasive species and loss or disruption of ecological function.
- The coastal wetlands are currently protected under the existing Biobanking Agreement (No. 444) and the application causes potential conflict with several terms of the agreement. For example, the development will introduce increased human activity that adversely affect the biodiversity values of the site, including repeated disturbance of native animals which is inconsistent with Item 4 'Management of Human Disturbance of the agreement.
- The BDAR does not assess the potential adverse edge effects along the interface of the EEC identified within the protected Coastal Wetlands area, including impacts from access, domestic animals, domestic waste and weeds.
- The BDAR does not assess the impacts of the proposed filling on the groundwater dependent ecosystems within the Coastal Wetlands area.

Accordingly, it is considered that the application does not provide sufficient detail to satisfy the consent authority that sufficient measures will be taken to protect, and/or enhance the biophysical, hydrological and ecological integrity of the coastal wetlands. Therefore, the matters in Section 2.7(4) have not been demonstrated and development consent could not be granted in this circumstance.

Section 2.8 – Development on land in proximity to coastal wetlands or littoral rainforest

The site is mapped as containing areas identified as 'Proximity Area for Coastal Wetlands' on the Coastal Wetlands and Littoral Rainforests Area Map referred to in Section 2.8(1) of the

Resilience and Hazards SEPP. The area within site mapped as ‘Coastal Wetlands’ and ‘Proximity Area for Coastal Wetlands’ is also identified in Figure 10 above.

Section 2.8 of the Resilience and Hazards SEPP states:

“2.8 Development on land in proximity to coastal wetlands or littoral rainforest

(1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on—

(a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or

(b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

(2) This section does not apply to land that is identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map.”

Comment: The development proposes the construction of retaining walls, footings, engineering works, all of which are proposed to occur for stormwater, pre-loading, mosquito buffer and landscape works within the area mapped as ‘Proximity Area for Coastal Wetlands’ under the Resilience and Hazards SEPP.

For the reasons stated above in response to Section 2.7(4), insufficient detail is provided to accurately determine the potential impacts of these works on the biophysical, hydrological and ecological integrity of the adjacent coastal wetlands.

The need for buffers to retained wetlands as required by Section 2.8 also relate to the effect of human movement on wildlife, where human activity can disturb wildlife. Large buffer distances that cater for larger bodied species such as the Black-necked Stork (which is a threatened species identified on site), where FID is not fully understood on site, is required between areas where humans can freely travel and the retained wetlands.

Further, insufficient information is provided regarding potential impacts to surface and ground water flows. It is unclear from the submitted Groundwater Monitoring Assessment and Management Plan (prepared by Gilbert and Sutherland) if any surface stormwater will enter the Biobanking Site and coastal wetlands. However, the Aquatic Ecology Technical Report (prepared by FRC Environmental) identifies that the development will alter the existing water quantity and quality of flows of this area.

It is considered that the application does not provide sufficient detail to satisfy the consent authority of the matters in Section 2.8(1)(a) and (b) and therefore development consent could not be granted in these circumstances.

Insufficient information provided with the application in relation to potential surface and groundwater impacts is further detailed in Section 4.2.6(e).

Section 2.10 – Development on land within coastal environment area

The whole of the site is mapped as 'Coastal Environment Area' on the Coastal Environment Area Map as referred to in Section 2.4(4). An extract of the Coastal Environment Area Map is provided at Figure 11.

Figure 11: SEPP (Resilience and Hazards) 2021, Coastal Environment Map (Source: NSW ePlanning Spatial Viewer)

Section 2.10(1) and (2) of the Resilience and Hazards SEPP states:

"2.10 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—

(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,

(b) coastal environmental values and natural coastal processes,

(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,

(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,

(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

(f) Aboriginal cultural heritage, practices and places,

(g) the use of the surf zone.

(2) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied that—

(a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or*

(b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*

(c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.”*

Comment: For the reasons stated above in response to Section 2.7(4) and 2.8, insufficient detail is provided to accurately determine the potential impacts of the development on the biophysical, hydrological and ecological integrity of the adjacent coastal wetlands.

Further, insufficient detail is provided to properly assess and determine the potential impacts of the development on the cultural significance of identified potential Aboriginal sites and/or objects adjoining the site pursuant to Section 2.10(1)(f).

Accordingly, it is considered that the application does not provide sufficient detail for the consent authority to properly consider the matters in Section 2.10(1) and be satisfied of the matters in Section 2.10(2). It is considered that development consent could not be granted in these circumstances.

Section 2.11 – Development on land within coastal use area

Most of the site which sits outside the area mapped as ‘Coastal Wetlands’, is mapped as ‘Coastal Use Area’ on the Coastal Use Map referred to in Section 2.4(5) of the Resilience and Hazards SEPP. An extract of Coastal Use Area Map is provided at Figure 12.

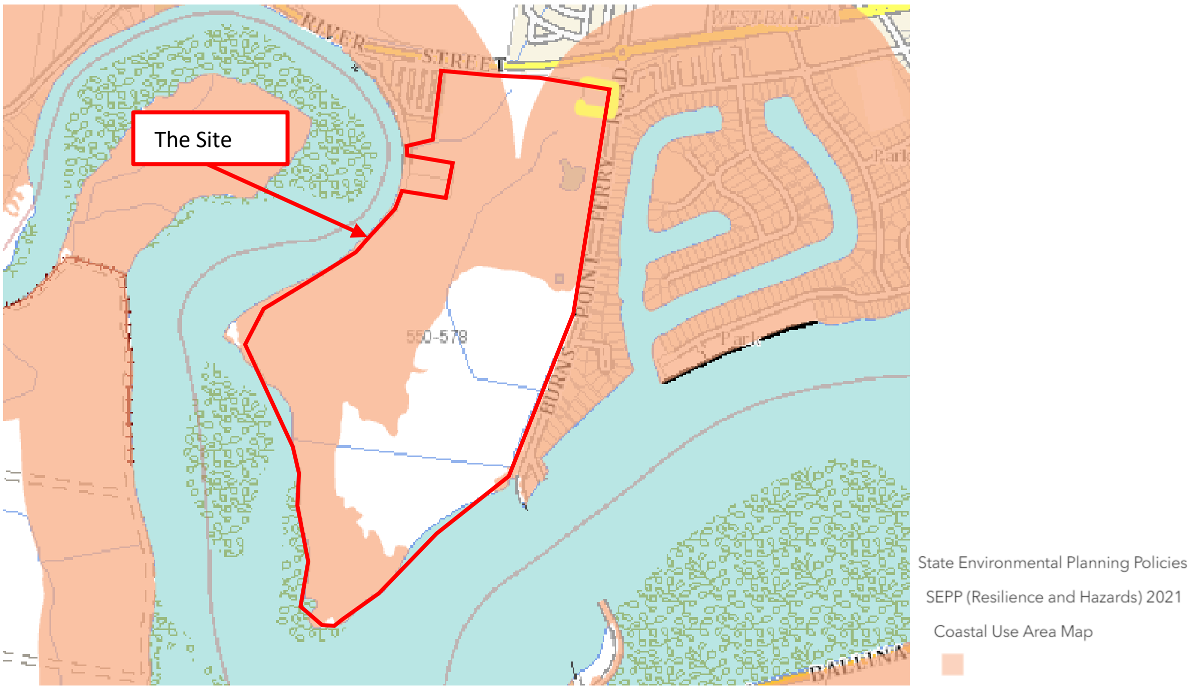

Figure 12: SEPP (Resilience and Hazards) 2021, Coastal Use Map (Source: NSW ePlanning Spatial Viewer)

Section 2.11(1) of the Resilience and Hazards SEPP states:

2.11 Development on land within the coastal use area

(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—

(a) has considered whether the proposed development is likely to cause an adverse impact on the following—

(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,

(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,

(iv) Aboriginal cultural heritage, practices and places,

(v) cultural and built environment heritage, and

(b) is satisfied that—

(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or

(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and

(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment: For the reasons stated above in response to Section 2.7(4), 2.8 and 2.10(2), it is considered that the application does not provide the consent authority with sufficient information to consider the matters in 2.11(1) and to be satisfied of the matters in 2.11(1)(b).

As detailed earlier in the Housing SEPP assessment, insufficient detail is provided in relation to the proposed built form design and therefore the consent authority could not properly take into account the matters in 2.11(1)(c). Accordingly, development could not be granted on this basis.

Chapter 4: Remediation of Land

Chapter 4 of the Resilience and Hazards SEPP 2021 applies to the whole of the State.

In accordance with Section 4.6 of the Resilience and Hazards SEPP 2021, the consent authority must not consent to the carrying out of any development unless it has taken into consideration whether the land is contaminated and if the land can be made suitable for the purpose for which the development is proposed to be carried out.

A Remedial Action Plan (RAP) prepared by ADG Consulting accompanies the application which provides evidence of three (3) separate site investigations being undertaken including a Detailed Site Investigation (DSI) carried out in 2019. As identified in the RAP, the findings of the DSI have informed the proposed remediation strategies. The findings of the RAP are summarised as follows:

- The contamination identified on site includes:

    - two areas in the northwest portion of the site which have been subject to spot dumping (of general waste/litter); and
    - elevated lead concentrations within the soil surrounding the waste.
- Two soil stockpiles were also transported on site in 2020, however it has been determined that the soil is virgin material and would satisfy the requirements of Virgin Excavated Material (VENM) and could therefore be reused on site.
- The remediation strategies include:
    - removal of litter/rubbish;
    - excavation/surface scrape of the impacted soils to a depth of 0.3 metres below existing surface levels followed by landfill disposal and;
    - sampling of the soil material in the stockpiles for appropriate waste classification prior to use.

Having regard to the above, it is considered that the site can be made suitable for the proposed development.

However, the development also requires the treatment and remediation of acid sulfate soils, and the extent and associated impacts of these works on the surrounding sensitive coastal environmental and biodiversity values of the land have not been properly identified.

The management of acid sulfate soils is further considered as part of the BLEP 2012 assessment provided at Section 5.2.1(h).

(e) State Environmental Planning Policy (Primary Production) 2021

The relevant clauses of the Primary Production SEPP have been considered as follows:

Chapter 2: Primary production and rural development

Part 2.5 of Chapter 2 of the Primary Production SEPP relates to sustainable aquaculture and requires consent authorities to take into consideration the effect of development on identified priority oyster aquaculture areas (POAA) and aquaculture development.

The site is in close proximity to an existing aquaculture development and associated POAA (as defined in Section 2.2 of the Primary Production SEPP), in the Richmond River Estuary as mapped on the DPI Spatial Data Portal. An extract of the DPI Spatial Data Portal mapping is provided in Figure 13.

The mapped POAA is within the defined boundaries of a current aquaculture lease area (as marked in red and identified as ‘OL 72/272’ on the map shown in Figure 13). This lease area is located in the Richmond River Nature Reserve which is protected under the National Parks and Wildlife Act 1974 (NPW Act) and is owned and managed by the NSW National Parks and Wild Service.

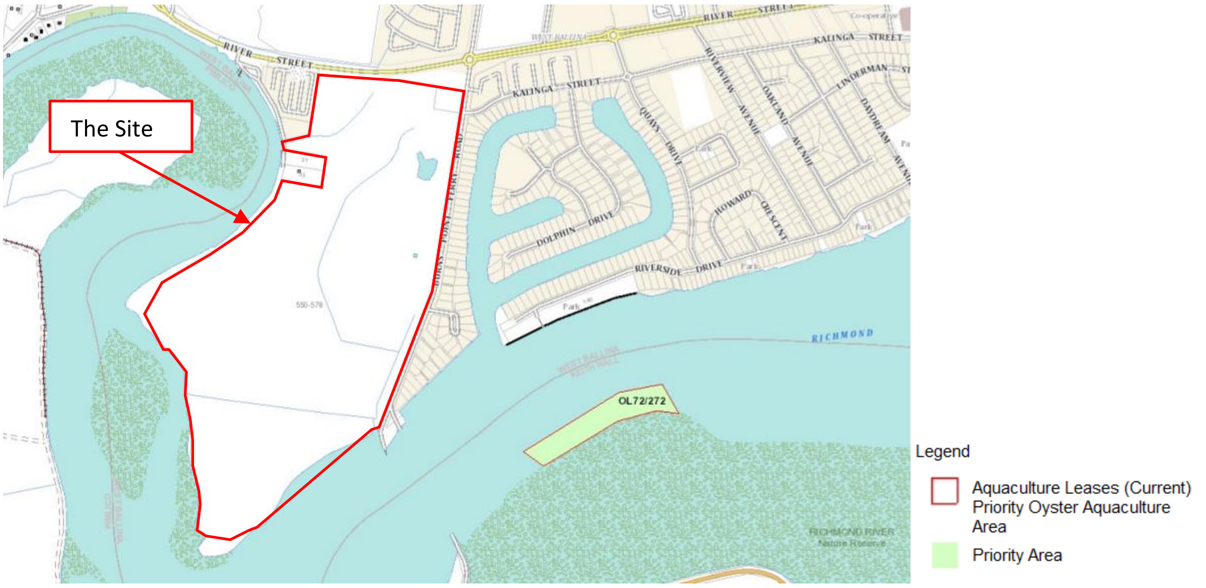

Figure 13: Current Aquaculture Leases (Source: NSW Department of Primary Industries)

Consideration of effects of proposed development on oyster aquaculture (Section 2.27, 2.28 and 2.29)

Due to the location of the site in proximity to a POAA, Sections 2.27, 2.28 and 2.29 of the Primary Production SEPP are of relevance to the application. These provisions state as follows:

"2.27 Consultation with Secretary of Department of Industry

(1) Before determining a development application for any development, a consent authority—

(a) must consider whether, because of its nature and location, the development may have an adverse effect on oyster aquaculture development or a priority oyster aquaculture area, and

(b) if it suspects that the development may have that effect, must give notice of the application to the Secretary of the Department of Industry.

(2) In determining a development application for any development, a consent authority must consider any comments received from the Secretary of the Department of Industry under subsection (1), including comments that identify—

(a) an adverse effect that the development may have on, or ways in which the development may impede or be incompatible with, oyster aquaculture development or priority oyster aquaculture area, and

(b) measures to avoid or minimise the adverse effect, impediment or incompatibility.

Note—

Development may be incompatible with or impede oyster aquaculture if, for example, the development will limit access to oyster leases or have an impact on water quality and, consequently, on the health of oysters and of consumers of those oysters.

(3) This section does not require a consent authority to consider comments received more than 21 days after notice was given as referred to in subsection (1)(b).

2.28 Development consent may be refused if development adversely affects oyster aquaculture

A consent authority may refuse to grant consent to development—

(a) if it is satisfied that the development will have an adverse effect on, or impede or be incompatible with—

(i) an oyster aquaculture development that is being carried out (whether or not within a priority oyster aquaculture area), or

(ii) oyster aquaculture development that may in the future be carried out within a priority oyster aquaculture area, or

(b) if it is not satisfied that appropriate measures will be taken to avoid or minimise the adverse effect, impediment or incompatibility.

2.29 NSW Oyster Industry Strategy to be considered

In exercising its functions under this Division, a consent authority and the Secretary of the Department of Industry must each take into consideration the NSW Oyster Industry Sustainable Aquaculture Strategy."

Comment: The application proposes to discharge stormwater into Emigrant Creek which connects with the Richmond River Estuary. This causes potential risk of degrading the water quality of the water body and potentially impacts the identified POOA proximate to the site.

Identification and assessment of these potential impacts to the POAA, including consideration of the '*NSW Oyster Industry Sustainable Aquaculture Strategy'* is not provided in the submitted documentation, specifically, the Aquatic Ecology Technical Report (AETR) prepared by FRC Environmental. As such, the application does not demonstrate that the development will not have an adverse effect on the water quality and, consequently, on the health of oysters and of consumers of those oysters associated of the adjacent POAA (and oyster lease area No. OL 72/272).

Accordingly, insufficient detail is provided for the consent authority to be satisfied of the matters set out in Section 2.27, 2.28 and 2.29 of the Primary Production SEPP and it is considered that development consent could not be granted on this basis.

(f) State Environmental Planning Policy (Transport and Infrastructure) 2021

The relevant clauses of the Transport and Infrastructure SEPP have been considered as follows:

Chapter 2: Infrastructure

Chapter 2 of the Transport and Infrastructure SEPP provides the legislative planning framework for transport and infrastructure related development and the provision of services across NSW.

Section 2.48 – Determination of development applications—other development

Section 2.48 of the Transport and Infrastructure SEPP relates to development requiring development consent that is located adjacent to existing electricity distribution networks and sets out matters to considered by a consent authority when determining an application.

Section 2.48 states as follows:

> *"(2) Before determining a development application (or an application for modification of a consent) for development to which this section applies, the consent authority must—*
>
> *(a) give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and*
>
> *(b) take into consideration any response to the notice that is received within 21 days after the notice is given."*

Comment: The application was referred to Essential Energy pursuant to Section 2.48 and comments have been provided (refer to Attachment J). No objections have been raised regarding the proposal, subject to recommendations.

Section 2.122 – Traffic generating development

Section 2.122 relates to 'traffic generating development' as identified in Schedule 3 of the policy and sets out matters to be considered by a consent authority when determining an application.

Section 2.122 states as follows:

> *(4) Before determining a development application for development to which this section applies, the consent authority must—*
>
> *(a) give written notice of the application to TfNSW within 7 days after the application is made, and*
>
> *(b) take into consideration—*
>
> *(i) any submission that RMS provides in response to that notice within 21 days after the notice was given (unless, before the 21 days have passed, TfNSW advises that it will not be making a submission), and*
>
> *(ii) the accessibility of the site concerned, including—*
>
> *(A) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and*
>
> *(B) the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and*
>
> *(iii) any potential traffic safety, road congestion or parking implications of the development.*

Comment: Vehicular access is proposed via Burns Point Ferry Road. Secondary access is also proposed via River Street and is to be used for emergency purposes only.

The application was referred to TfNSW pursuant to Section 2.122(4)(b)(i) and comments have been issued (refer to Attachment I). No objections have been raised regarding the proposal, subject to conditions.

In terms of traffic safety, assessment of the application has revealed that insufficient information has been provided to demonstrate that safe and adequate site access arrangements have been made. For example:

- Evidence of a proposed pedestrian refuge, associated median, kerb ramps, road markings and signage, including compliance with Austroads Guidelines has not been provided in the submitted Preliminary External Roadworks Plans (Plans 1 to 4).
- Measures to ensure that queuing onto Burns Point Ferry Road in accordance with the Northern Rivers Local Government Drawings R-05C and R-06D including provision of sufficient vehicle storage and u-turn facility are not demonstrated on the submitted Preliminary External Roadworks Plans.
- The plans do not demonstrate that the general configuration of the proposed vehicular entrance and associated works within the road reserve has been designed to avoid inundation during high tides.
- The application does not demonstrate that all widened traffic lanes will provided with a reinforced concrete pavement to match existing traffic lanes in Burns Point Ferry Road.
- Detailed design drawings have not been provided for the proposed secondary access via River Street.
- Compliance with the relevant Australian Standards has not been demonstrated for the proposed internal road layout.

Accordingly, the application does not demonstrate that the matters in Section 2.122(4)(b)(iii) have been addressed.

(g) State Environmental Planning Policy (Industry and Employment) 2021

The relevant clauses of the Industry and Employment SEPP have been considered as follows:

Chapter 3: Advertising and signage

Chapter 3 of the Industry and Employment SEPP regulates development for the purpose of advertising and signage to ensure that it is compatible with the desired amenity and visual character of the surrounding locality within which it is located.

The relevant matters that must be considered by the consent authority are set out in Section 3.11 of the policy which states as follows:

3.11 Matters for consideration

(1) A consent authority (other than in a case to which subsection (2) applies) must not grant consent to an application to display an advertisement to which this Chapter applies unless the advertisement or the advertising structure, as the case requires—

(a) is consistent with the objectives of this Chapter as set out in section 3.1(1)(a), and

(b) has been assessed by the consent authority in accordance with the assessment criteria in Schedule 5 and the consent authority is satisfied that the proposal is acceptable in terms of its impacts, and

(c) satisfies any other relevant requirements of this Chapter.

Comment: An assessment of Schedule 5 of the Industry and Employment SEPP has not been provided in the submitted SEE. Further, the submitted Architectural Plans (Attachment B) do not provide sufficient information to determine if compliance with the relevant assessment criteria in Schedule 5 of the policy has been achieved.

Accordingly, the application does not adequately demonstrate the matters set out in 3.11 development consent could not be granted on this basis.

(h) Ballina Local Environmental Plan 2012

The relevant Local Environmental Plan applying to the site is the Ballina Local Environmental Plan 2012 (BLEP 2012) and the relevant clauses of this plan have been considered as follows:

Part 2 - Zoning and Permissibility

The BLEP 2012 Zoning Map referred into Clause 2.2 of the plan demonstrates that the three (3) following zones (partly) apply to the site:

- R2 Low Density Residential;
- R3 Medium Density Residential; and
- RU2 Rural Landscape.

An extract of the BLEP 2012 Land Zoning Map is provided in Figure 4 in Section 3.1 above.

The application proposes earthworks and the construction and use of the site for the purpose of a seniors housing development comprising independent living units with an ancillary club house and other community facilities, including associated site drainage and landscape works.

Seniors housing is defined in the Dictionary to the BLEP 2012 as follows:

> ***"seniors housing*** *means a building or place that is—*
> *(a) a residential care facility, or*
>
> *(b) a hostel within the meaning of State Environmental Planning Policy (Housing) 2021, Chapter 3, Part 5, or*
>
> *(c) a group of independent living units, or*
>
> *(d) a combination of any of the buildings or places referred to in paragraphs (a)–(c),*
>
> *and that is, or is intended to be, used permanently for—*
> *(e) seniors or people who have a disability, or*
>
> *(f) people who live in the same household with seniors or people who have a disability, or*
>
> *(g) staff employed to assist in the administration of the building or place or in the provision of services to persons living in the building or place,*
>
> *but does not include a hospital."*

The submitted documentation indicates that the proposed seniors housing development occupies the northern portion of the site zoned R2 Low Density Residential and R3 Medium Density Residential.

The Land Use Table in BLEP 2012 states that 'Seniors housing' development is permitted with consent in the R2 Low Density Residential and R3 Medium Density Residential zones.

Clause 2.3 – Zone objectives and Land Use table

Clause 2.3(2) of the BLEP states as follows:

> *"(2) The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone."*

The objectives set out in the BLEP 2012 Land Use Table for the R2 Low Density Residential and R3 Medium Density Residential zones are provided as follows:

"Zone R2 Low Density Residential
1 Objectives of zone

- *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."*

"Zone R3 Medium Density Residential
1 Objectives of zone

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

It is considered that the application is consistent with the objectives of the R2 Low Density Residential and R3 Medium Density Residential zone in that the proposal intends to provide a seniors housing development including ancillary community facilities to meet the day to day needs of the community.

Accordingly, it is considered that the matters to which the consent authority must have regard as required by clause 2.3 of the BLEP 2012 have been addressed.

Clause 4.3 – Heights of buildings

The Height of Buildings Map referred to in clause 4.3(2) of BLEP 2012 identifies that a maximum building height of 8.5 metres applies to the site.

An extract of the BLEP 2012 Height of buildings Map is provided in Figure 14.

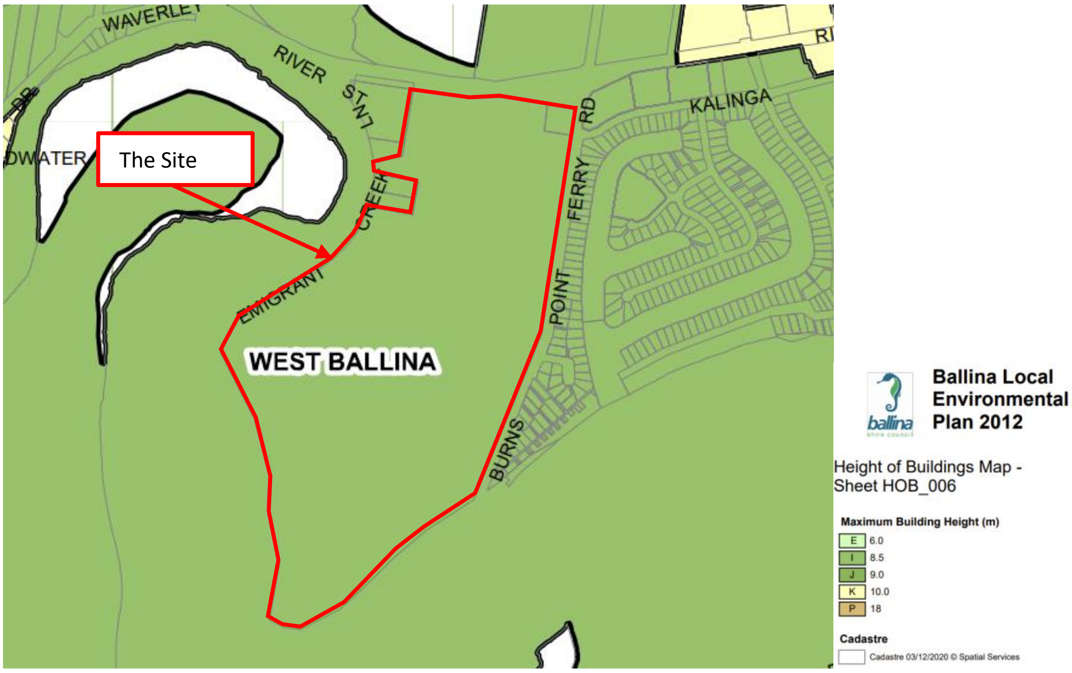

Figure 14: Height of Buildings (Source: BLEP 2012)

Comment: The Architectural Plans (Attachment B) do not include relevant RL levels to demonstrate existing ground and finished floor levels to enable an accurate assessment of the height of each building proposed as part of the development. Therefore, compliance with the BLEP 2012 building height development standard in clause 4.3 cannot be determined.

<u>**Clause 4.3A** – Exceptions to height of buildings</u>

The site is identified as 'Minimum Level Australian Height Datum (AHD)' on the BLEP 2012 on the Building Height Allowance Map referred to in clause 4.3A(2). A building height allowance of 2.7 metres AHD applies to the land. Accordingly, the maximum height of all buildings proposed on site are to be measured from RL 2.7 metres AHD. An extract of the BLEP 2012 Building Height Allowance Map is provided in Figure 15.

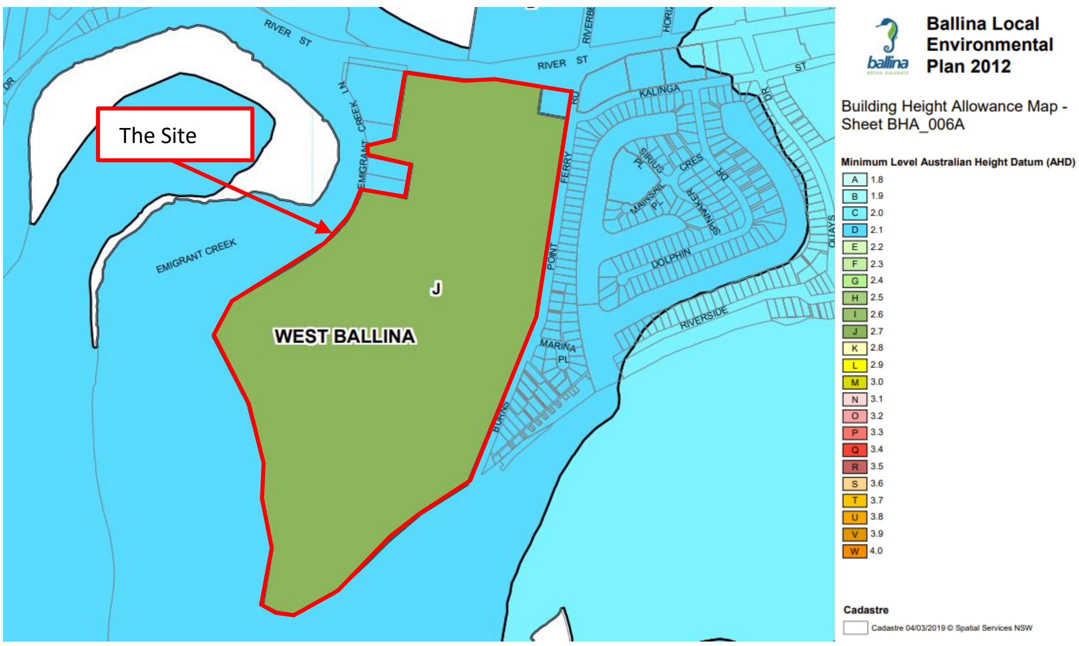

Figure 15: Height Allowance Map (BLEP 2012)

Comment: As identified above, the submitted plans do not indicate relevant RLs of the proposed development and insufficient information has been provided to properly assess and determine the existing ground and finished floor levels as well as the proposed maximum building height of the development. Therefore, compliance with the BLEP 2012 building height development standard in clause 4.3A cannot be determined.

<u>**Clause 4.4** – floor space ratio (FSR)</u>

The FSR Map referred to in clause 4.4(2) of BLEP 2012 identifies that a maximum FSR of 0.7:1 applies to a portion of the northern end of the site zoned R2 Low Density Residential. An extract of the BLEP 2012 FSR Map is provided in Figure 16.

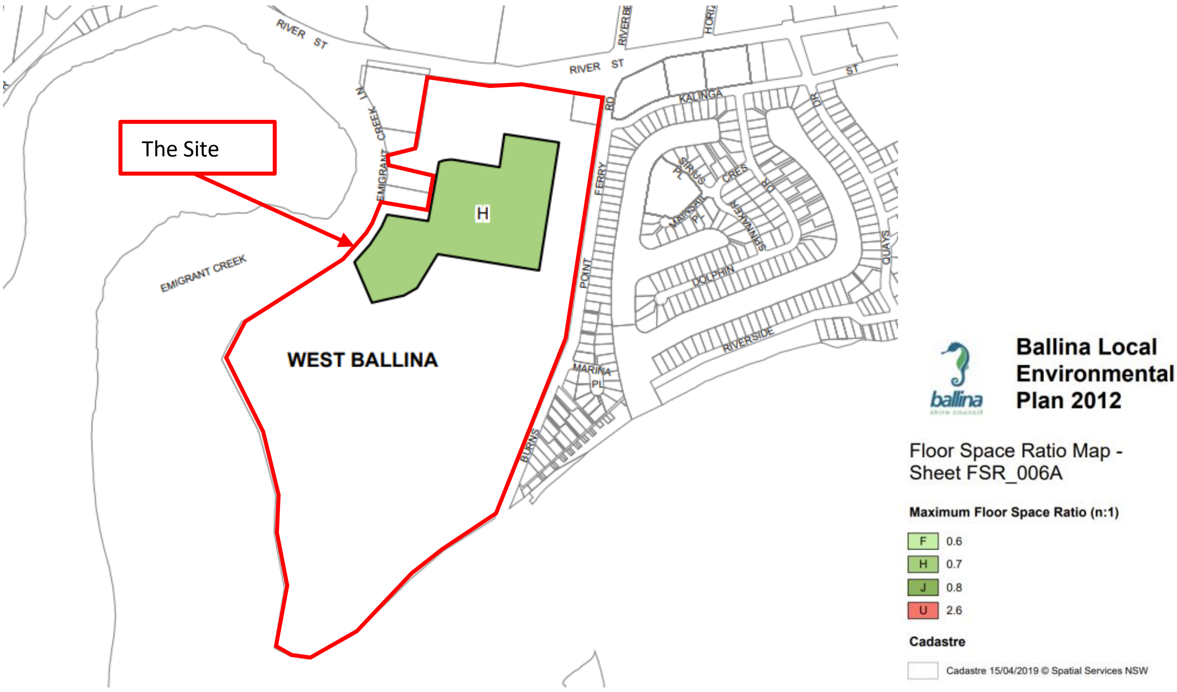

Figure 16: Floor Space Ratio Map (Source: BLEP 2012)

The BLEP 2012 does not identify an FSR for the remainder of the site.

Comment: The application does not provide an assessment against the relevant FSR applying to the site, including identification of those dwellings located within the portion of the site to which the relevant FSR (0.7:1) applies. Therefore**,** compliance with the BLEP 2012 FSR development standard in clause 4.4A cannot be determined.

<u>**Clause 5.10** – Heritage conservation</u>

Clause 5.10 relates to the conservation of heritage items and heritage conservation areas (described in Schedule 5 and identified on the Heritage Map as referred to in the clause) as well as aboriginal objects or sites of significance.

Clause 5.10(1) lists the objectives of the clause and states as follows:

> *"(1)* ***Objectives*** *The objectives of this clause are as follows—*
> *(a) to conserve the environmental heritage of Ballina,*

(b) *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*

(c) *to conserve archaeological sites,*

(d) *to conserve Aboriginal objects and Aboriginal places of heritage significance."*

Non-aboriginal heritage

The site is not identified on the BLEP 2012 Heritage Map.

There are no heritage items located within or located in proximity to the site, and that the site is not located within a heritage conservation area.

Aboriginal heritage

Clause 5.10 also requires the consent authority to consider the effect of the proposal on identified Aboriginal objects and or sites of significance.

Comment: A review of the Aboriginal Heritage Information Management System (AHIMS) indicates that the site adjoins an identified site or object of Aboriginal cultural significance. An Aboriginal Cultural Heritage Impact Assessment has not been submitted with the application. Therefore, insufficient information has been provided to properly assess and determine the impacts of the development on the Aboriginal cultural heritage values of the surrounding area. The consent authority could not be satisfied of the relevant matters in clause 5.10 on this basis.

Clause 5.21 – Flood planning

The site is located within the 'Flood Planning Area' as identified on the BLEP 2012 Flood Planning Land Map.

An extract of the Flood Planning Land Map is provided in Figure 17.

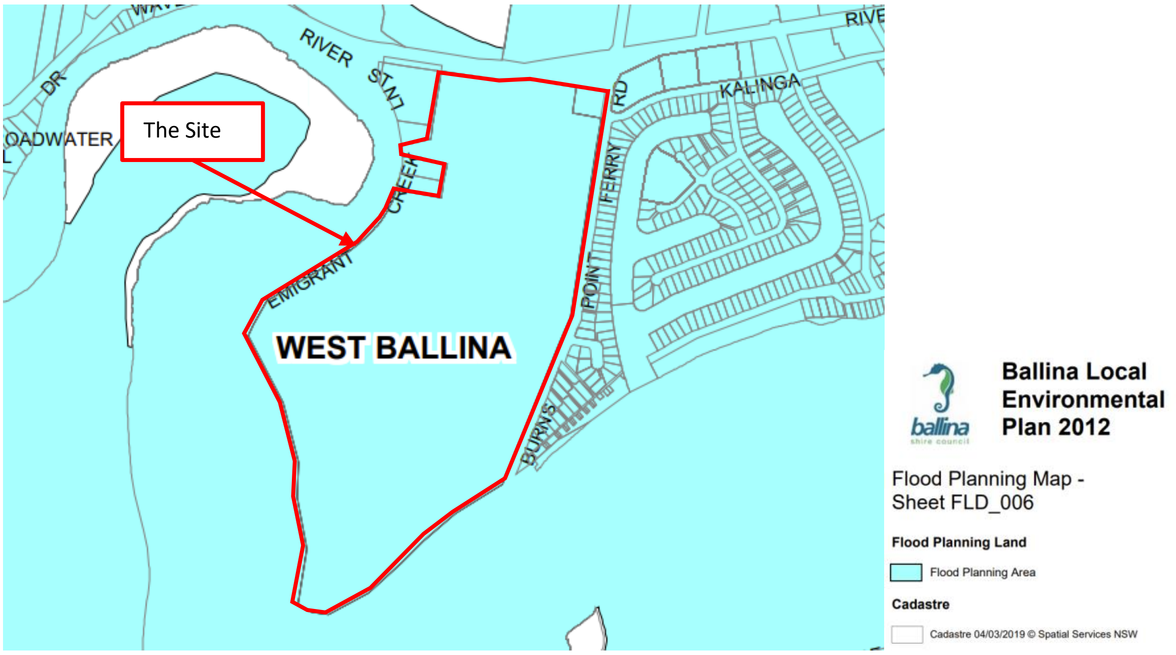

Figure 17: Flood Planning Map (Source: BLEP 2012)

Clause 5.21(2) identifies the matters that the consent authority must be satisfied of, and states as follows:

> *"(2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—*
>
> *(a) is compatible with the flood function and behaviour on the land, and*
>
> *(b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
>
> *(c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
>
> *(d) incorporates appropriate measures to manage risk to life in the event of a flood, and*
>
> *(e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses."*

Clause 5.21(3) sets out the matters that must be considered by the consent authority and states as follows:

> *(3) In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—*
>
> *(a) the impact of the development on projected changes to flood behaviour as a result of climate change,*
>
> *(b) the intended design and scale of buildings resulting from the development,*
>
> *(c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
>
> *(d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*

Comment: The development is proposed to be sited on flood prone land and will be inundated in the 20% AEP flood event. However, inadequate information has been provided to enable a proper assessment of the flooding impacts including risk to human life. For example:

- A Flood Impact Assessment, based on up to date flood modelling, having regard to assessments of the February-March 2022 flood events including the impacts of overland flooding, has not been provided.
- The application relies on an Interim Flood Report, and Council's draft flood policy, '*Ballina Island and West Ballina Overland Flood Study and Flood Protection Feasibility Study and Plan'* dated October 2021 has not been applied.
- The proposal fails to incorporate measures to ensure the safe evacuation of people in the advance of flooding.
- Sufficient detail demonstrating how evacuation from the site during the onset of flooding would be affected has not been provided.

The lack of documentation means that an assessment cannot be undertaken to establish whether the land on which the development is to be sited is compatible with the flood function that has been determined for the site. The flood function, emergency response management and sensitivity of the proposed use of the land for the purpose of seniors housing, are fundamental considerations in the assessment of the application, noting that:

- a flood impact assessment has not been provided;
- it is known that the site will become a “low flood island” during major flooding of the Richmond River and future residents on the site could trapped as flood levels rise;
- during events rarer than the 1% AEP flood and up to the PMF, much of the site and proposed dwellings would be inundated;
- access to the site is proposed via Burns Point Ferry Road which is regularly in undated through flooding and tidal inundation;
- the proposal fails to incorporate appropriate measures to minimise risk to life and ensure the safe evacuation of people in advance of flooding;
- evacuation from the site in a flood exceeding the flood planning level is not achievable on the basis of existing roads; and
- shelter in place is not an endorsed flood management strategy for future development nor would it be considered appropriate based on the likely flooding constraints of the site.

Due to the inadequacy of the submitted flooding information, the consent authority could not be satisfied of the matters set out in clause 5.21 of the BLEP 2012. Development consent could not be granted in these circumstances.

<u>**Clause 7.1** – Acid sulfate soils</u>

The Acid Sulfate Soils Map referred to in clause 7.1(2) of BLEP 2012 identifies that the site contains Class 2 acid sulfate soils. An Acid Sulfate Soils Management Plan (ASSMP) is required to be submitted with the application. An extract of the BLEP 2012 Acid Sulfate Soils Map is provided in Figure 18.

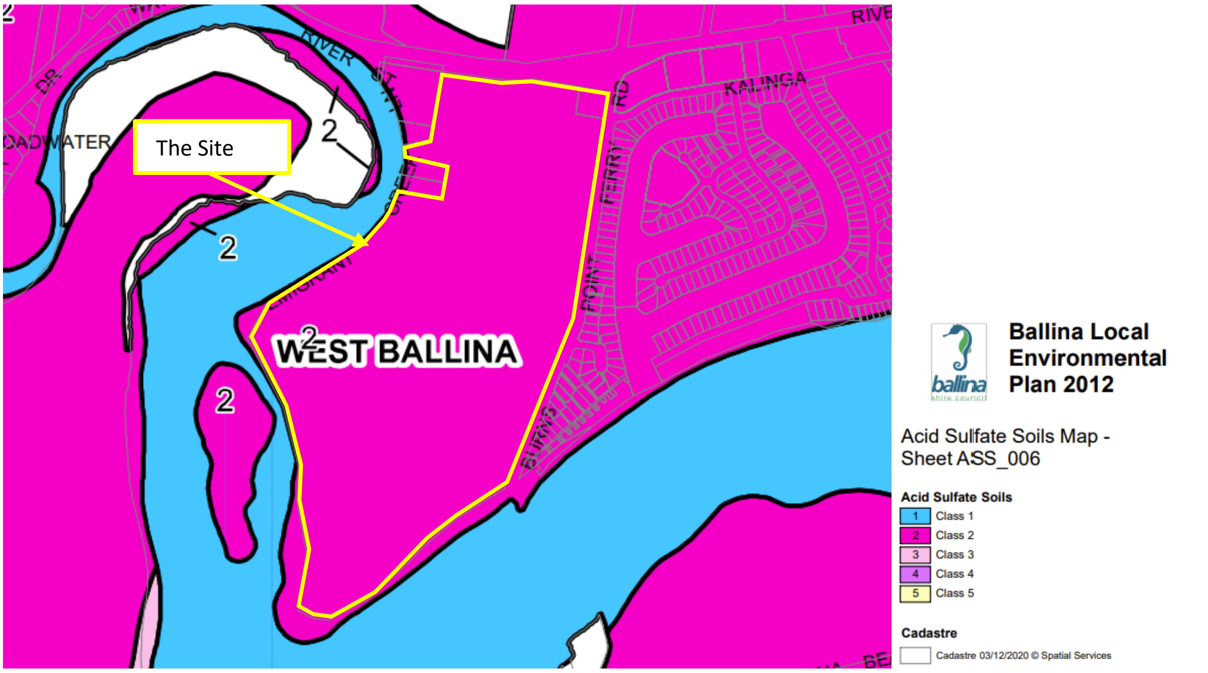

Figure 18: Acid Sulfate Soils Map (Source: BLEP 2012)

Clause 7.1(3) of the BLEP 2012 requires the ASSMP to be prepared in accordance with the Acid Sulfate Manual and states as follows:

> *(3) Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.*

Comment: Insufficient information has been provided to enable a proper assessment of the potential environmental impacts of the proposed disturbance and remediation of acid sulfate soils located on site. For example:

- the submitted (ASSMP) has not been prepared in accordance with the Acid sulfate Soils Manual as required by clause 7.1(3);
- the application does not consider the potential consequences of a change in the water table level as a consequence of the introduction of the proposed stormwater drainage system; and
- sufficient detail relating the proposed extent of disturbance or potential consequences of disturbing acid sulfate soils on site has not been provided.

The application does not adequately demonstrate satisfaction of the matters in clause 7.1(3) of the BLEP 2012. Development consent could not be granted on this basis.

Clause 7.2 – Earthworks

Clause 7.2 identifies matters to be considered to ensure development involving earthworks will not have a detrimental impact on environmental functions and processes, neighbouring development, heritage or features of the surrounding land.

Clause 7.2(3) of the BLEP 2012 states as follows:

> *(3) Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—*
>
> *(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
>
> *(b) the effect of the development on the likely future use or redevelopment of the land,*
>
> *(c) the quality of the fill or the soil to be excavated, or both,*
>
> *(d) the effect of the development on the existing and likely amenity of adjoining properties,*
>
> *(e) the source of any fill material and the destination of any excavated material,*
>
> *(f) the likelihood of disturbing relics,*
>
> *(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
>
> *(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment: The proposed earthworks include an extensive amount of filling on site in addition to pre-loading (including 1 in 1 batters) and insufficient information has been provided to accurately assess the full extent and nature of these works. For example, different fill depths are proposed in the documents and reports accompanying the application. The Geotechnical Report prepared by Pacific Geotech states that fill depth ranges from 2 metres to 4 metres, whereas the SEE indicates a maximum proposed fill depth ranging from 2.44 metres to 3.6 metres.

For the reasons set out earlier in this report in the consideration of the Resilience and Hazards SEPP, it is also considered that the application does not provide sufficient information to enable a proper assessment of the likely hydrological, ecological, heritage, streetscape and amenity impacts of the proposed earthworks. Therefore, the matters in clause 7.2(3) of the BLEP 2012 cannot be considered.

Clause 7.5 – Airspace operations

Clause 7.5 of BLEP 2012 includes provisions to ensure that the ongoing operation of Ballina Byron Gateway Airport is not compromised by development by requiring the consent authority to determine whether the proposed height of a development will penetrate the 'Limitation or Operations Surface' applying to the airport.

As identified in clause 7.5(5) 'Limitation or Operations Surface' is defined as follows:

> ***"Limitation or Operations Surface*** *means the Obstacle Limitation Surface or the Procedures for Air Navigation Services Operations Surface as shown on the Obstacle Limitation Surface Map or the Procedures for Air Navigation Services Operations Surface Map for the Ballina Byron Gateway Airport."*

Clause 7.5(2) of BLEP 2012 states:

> *"(2) If a development application is received and the consent authority is satisfied that the proposed development will penetrate the Limitation or Operations Surface, the consent authority must not grant development consent unless it has consulted with the relevant Commonwealth body about the application."*

Comment: The Ballina Byron Gateway Airport is located within 4 kilometres of the site, for which an Obstacle Limitation Surface (OLS) applies. Referral comments received from the Civil Aviation Safety Authority (CASA) provided at Attachment L identify that an OLS assessment undertaken by Ballina Byron Gateway Airport is required on this basis.

Council has also referred the application to YBNA, however a response remains outstanding.

Clause 7.7 – Essential Services

Clause 7.7 of BLEP 2012 identifies matters to be considered to ensure that development is supplied with adequate levels of infrastructure.

Clause 7.7(2) of BLEP 2012 states as follows:

> *"(2) Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required—*
> *(a) the supply of water,*
>
> *(b) the supply of electricity,*
>
> *(c) the disposal and management of sewage,*
>
> *(d) stormwater drainage or on-site conservation,*

(e) suitable vehicular access,

(f) telecommunication services."

Comment: For the reasons set out earlier in this report in the consideration of the Resilience and Hazards SEPP and the Transport and Infrastructure SEPP, insufficient information has been provided to demonstrate that:

- the site can be adequately drained, and without causing adverse stormwater runoff impacts; and
- arrangements for safe and adequate site access have been made.

Therefore, the consent authority could not be satisfied of the matters in clause 7.7(2)(d) and 7.7(2)(e) and development consent could not be granted on this basis.

5.2.2 Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

(a) Draft BLEP 2012 Amendment (Planning Proposal No. 22/007)

A draft BLEP 2012 amendment is proposed under Planning Proposal No. 22/007 which seeks to:

- introduce the C2 Environmental Conservation and C3 Environmental Management zones into the instrument including amendment of associated clauses; and
- rezone part of Lot 1 DP 124173 (No. 550-578 River Street) for conservation purposes, from part R2 Low Density and part RU2 Rural Landscape to part R2 Low Density Residential and part C2 Environmental Conservation.

As identified earlier in Section 4.3.2, the amendment has been the subject of public consultation under the EP&A Act, and is relevant to the proposal.

The proposed seniors housing development occupies the northern portion of the site zoned R2 Low Density and R3 Medium Density Residential and a large majority of this area is proposed to be zoned from R2 Low Density Residential to RU2 under this amendment.

However, the amendment also includes the introduction of a savings provision for undetermined development applications relating to the site. Condition 1 of the Gateway Determination reads as follows:

"1. The planning proposal is to be amended prior to public exhibition to include a savings provision which identifies that a development application made on the land but not finally determined before the commencement of the LEP amendment must be finally determined as if the plan has not commenced."

Due to the introduction of the proposed savings provision, it is considered that the R2 Low Density zoning of the site under the current BLEP 2012 would be afforded greater weight in these circumstances.

(a) Draft State Environmental Planning Policy (Housing) 2021

An Explanation of Intended Effect (EIE) seeking feedback on proposed amendments to the Housing SEPP (State Environmental Planning Policy Amendment (Housing) 2023) was exhibited from Tuesday 22 November 2022 until Friday 13 January 2023 by the NSW DPE. Feedback The department received in response to the exhibition is currently reviewed by DPE.

The EIE identifies that several amendments are proposed to the Housing SEPP relating to the provision relating to in-fill affordable housing, group homes, hostels temporary supportive accommodation, boarding houses as well as seniors housing.

The proposed changes to the seniors housing provisions includes updates to the accessibility and usability development standards for seniors independent living units. Additionally, a draft Seniors Housing Design Guide (the draft Guide) has been developed to help inform design and assessment of seniors housing proposals which will replace the current *'Seniors Living Policy: Urban Design Guidelines for Infill Development, 2004'.*

Due to the insufficient information provided, it is considered that a proper assessment of the proposed independent living units against the draft Guide cannot be undertaken.

5.2.3 Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

Ballina Development Control Plan 2012 (BDCP 2012) is the primary development control plan applicable to development within the Ballina Shire local government area (LGA).

The BDCP 2012 provides guidance on provisions for particular land uses and environmental issues, however the plan does not contain controls specifically relating to seniors housing. As such, the general controls set out in Chapter 2 – General and Environmental Considerations and Chapter 4 – Residential and Tourist Development apply to the proposed built form.

Based on the assessment provided in this report, the application does not provide sufficient information for the consent authority to properly assess the proposal against the following relevant Chapters of the BDCP 2012:

- **Chapter 2 – General and Environmental Considerations**
  - Section 3.1 Land Use Conflict
  - Section 3.2 Ridgelines and Scenic Areas
  - Section 3.3 Natural Areas and Habitat
  - Section 3.4 Potentially Contaminated Land
  - Section 3.5 Land Slip/Geotechnical Hazard
  - Section 3.6 Mosquito Management
  - Section 3.7 Waste Management
  - Section 3.9 Stormwater Management
  - Section 3.10 Sediment and Erosion Control
  - Section 3.11 Provision of Services
  - Section 3.12 Heritage
  - Section 3.15 CPTED
  - Section 3.21 Bushfire Management
- **Chapter 2A – Vegetation Management**
- **Chapter 2B – Floodplain Management**
- **Chapter 4 – Residential and Tourist Development**
- **Chapter 8 – Other Uses**
  - Section 3.4 – Signage

The insufficient information provided in relation to the BDCP 2012 sections outlined above has been addressed earlier in Section 4.2.1 (as part of the assessment of relevant EPI's).

5.2.4 Section 4.15(1)(a)(iiia) – Planning agreements under Section 7.4 of the EP&A Act

As part of the Planning Proposal 14/008 the developer entered into a voluntary planning agreement with Ballina Shire Council which has been registered on the title of the Land for current Lot 1 DP 124173. The Material Public Benefit required to be carried out by the Developer is outlined within Schedule 1 – Developers Contributions Schedule of the Voluntary Planning Agreement.

The agreement outlined that prior to the Development Consent for any Development of Land pursuant to and permitted in the R2 and RU2 zoned land, or the lodgement of any Development Application other than for the trial fill pads, the developer had to provide the Material Public Benefit set out in Schedule 1 of the agreement.

Under Schedule 1 the Developer agreed to the following:

1. Prior to the grant of Development Consent for any Development of the Land (other than a Development Application for the subdivision of the Land to create an allotment for the intended Biobank site or other activities in pursuit of the registration of the Biobanking Agreement), the whole of that part of the Land zoned RU2 under the LEP shall be the subject of a Biobanking Agreement pursuant to Division 2 of Part 7A of the Threatened Species Conservation Act 1995. The Biobanking Agreement shall:
   i. Establish as a Biobank Site that part of the Land to which it applies;
   ii. Be registered on the title for that part of the Land; and
   iii. Remain in perpetuity in accordance with Division 2 of Part 7A of the Threatened Species Conservation Act 1995 and the Threatened Species Conservation (Biodiversity Banking) Regulation 2008
2. Prior to the lodgement of a Development Application for any Development of the Land (other than a Development Application for the construction of a trial fill embankment with settlement monitoring plates) comprehensive and detailed geotechnical investigations shall be carried out to accurately assess the required depths of fill for preloading including the construction of a trial fill embankment with settlement monitoring plates.

The Biobanking Agreement as previously referenced within this report is noted to be on the title of the Lot 1 DP 124173.

5.2.5 Section 4.15(1)(a)(iv) - Provisions of Regulations

The *Environmental Planning and Assessment Regulation 2021* (EP&A Reg) provisions are considered as follows:

(a) Section 23 – Persons who may make development applications (requirement for Landowners Consent)

Section 23 of the EP&A Reg requires landowners' consent prior to granting development consent. The relevant landowner's consent has not been obtained for the carrying out of the proposed works as follows:

- **NSW Crown Lands:** The application proposes works within adjoining Crown Land including the construction of stormwater infrastructure to enable stormwater discharge to Emigrant creek and landowners' consent from NSW Crown Lands has not been obtained for these works.

NSW Crown Lands has provided comments (see Attachment K) in response to the application and raises no objection to the proposal on the basis that no works are carried out within the adjoining Crown Land.

- **Ballina Shire Council**: The application proposes earthworks within the road reserve of River Street and landowners' consent from Council has not been obtained for these works.

(b) Section 61 – additional matters the consent authority must consider

Due to the nature of the proposed works, the provisions set out under Section 61 of the *Environmental Planning and Assessment Regulation 2021* (EP&A Reg) are not relevant to the application.

5.2.6 Section 4.15(1)(b) - Likely Impacts of Development

Based on the assessment provided in this report, the application does not provide sufficient information for the consent authority to properly assess and determine the likely impacts (including environmental impacts on both the natural and built environments, and social and economic impacts) of the development as required by Section 4.15(b) of the EP&A Act.

Table 4 identifies the likely impacts and issues for which insufficient has been provided, and the relevant Sections in this report where these matters have been addressed.

Table 4: Likely impacts and key planning considerations

Impact	***Section***
Flood risk and emergency response management	***Section 5.2.1(h)*** – *(BLEP 2012 - clause 5.21)*
Impacts to Biodiversity including EEC's and threatened species (SAII and Indirect impacts)	***Section 5.3.1***– *(BC Act)*
Historical slashing	***Section 5.2.6(a)*** – *see below*
Key fish habitat as identified under the FM Act 1997	***Section 5.3.2*** – *(FM Act)*
Biophysical, hydrological and ecological integrity of the Coastal Wetland environment as identified in the Resilience and Hazards SEPP	***Section 5.2.1(d)*** – ***(****Resilience and Hazards SEPP)*
Impacts to existing Biobanking Site (No. 444) and conflict with existing agreement	***Section 5.2.1(d)*** – *(Resilience and Hazards SEPP)* ***Section 5.3.1***– *(BC Act)* ***Section 5.2.6(i)*** – *see below*
Water quality, erosion and sediment impacts to water bodies within and surrounding the site	***Section 5.2.1(d)*** – *(Resilience and Hazards SEPP)* ***Section 5.2.6(c-d)*** – *see below*
Geotechnical and soil stability impacts	***Section 5.2.6(c)*** – *see below*

Acid sulfate soils	***Section 5.2.1(h)*** *– (BLEP 2012 clause 7.1)*
Land contamination impacts	***Section 5.2.1(d)*** *– **(**Resilience and Hazards SEPP)*
Site isolation	***Section 5.2.6(b)*** *– see below*
Stormwater management and runoff impacts	***Section 5.2.1(d)*** *– (Resilience and Hazards SEPP)* ***Section 5.2.6(d)*** *– see below*
Groundwater impacts	***Section 5.2.6(d)*** *– see below*
Aboriginal Cultural Heritage impacts	***Section 5.2.1(h)*** *– (BLEP 2012 clause 5.10)*
Site access and traffic safety impacts	***Section 5.2.1(d)*** *– (Resilience and Hazards SEPP)*
Mosquito Management	***Section 5.2.6(e)*** *– see below*
Construction impacts	***Section 5.2.6(f)*** *– see below*
Built form and streetscape amenity impacts	***Section 5.2.1(c)*** *– (Resilience and Hazards SEPP)*
Residential amenity impacts	***Section 5.2.1(c)*** *– (Resilience and Hazards SEPP)*
Odour Impacts	***Section 5.2.6(g)*** *– see below*
Wate management	***Section 6.2*** *(Internal Council Referrals)*
Subdivision	***Section 5.2.6(j)*** *– see below*
Bushfire management	***Section 5.2.1(k)*** *– see below* ***Section 6.1*** *(Agency referral and also refer to NSW RFS comments in Attachment H)*

(a) Impacts of historical slashing on the biodiversity values of the site

Slashing at varying frequency has occurred on the site and the submitted documents do not offer an approval pathway for this historical slashing of areas identified as EECs. The slashing has likely caused harm to biodiversity values within the site. The BDAR does not provide an assessment of the impact of the slashing on what is known, or can reasonably be assumed, of the habitat and vegetation that existed before the slashing.

It is also noted that the Vegetation Integrity Scores (VIS) obtained within the slashed area of the site, as presented in the submitted BDAR, are lower than those recorded on the site in 2021, indicating a decline in ecological condition over this time.

(b) Site isolation

The proposed development is likely to result in the isolation of Lot 5 and 6 in DP 537419 immediately adjoining the site to the west. These properties are zoned RU2 Rural Landscape.

The location of these properties is identified in Figure 19.

Figure 19: Location of rural residential properties adjoining the site (Source: SIX Maps)

The application does not provide information as to how these sites could be developed or whether attempts to amalgamate the sites into the development site have been made.

It is also noted that the extent and nature of work proposed along the boundaries of these properties, including the significant increase of surface levels as a result of the prosed filling and the introduction of increased development density is excessive and likely to result in unreasonable amenity impacts in these circumstances.

(c) Geotechnical impacts

Insufficient information has been provided in the submitted Geotechnical Report prepared by Pacific Geotech to enable a proper assessment of the existing geotechnical conditions of the site and the geotechnical impacts associated with the proposed earthworks.

The Geotechnical Report is considered inadequate for the following reasons:

- Assessment of the draining of surficial water and prevention of impacts on surficial water outside the site has not been provided.

- Inadequate information has been provided to demonstrate that there is a separation between the surface water and groundwater systems on the site, such that any removal of water during construction activities only represents removal of surface water.
- Stability analyses for the proposed magnumstone geogrid reinforced retaining wall have not provided results for long term parameters, with and without pre-loading and immediately post flood, where a potential rapid drawdown condition could exist.
- No sensitivity analyses for varying soil profiles within the Site have been reported in relation to the potential impact on the stability of the proposed magnumstone geogrid reinforced retaining walls.
- Inconsistent information regarding the timing of construction of the retaining walls has been provided. The Geotech Report indicates that these will be constructed before the preload, whereas the Construction Management Plan (CMP) prepared by Westera Partners states that this will occur after preload.
- A stability assessment of regarding the retaining walls following preload has not been provided.
- Due to the inconsistent fill depths identified across the submitted documents, it is considered that the settlement analysis provided in the Geotech Report may not be accurate.
- The fill heights and batter slopes recommended in the GeoTech Report are inconsistent with those outlined in the civil drawings included in the Engineering Assessment Report prepared by Westera Partners (refer to Drawing No. G22-053-PC08 and 09).

(d) Stormwater management and runoff impacts

Insufficient information has been provided to demonstrate that stormwater drainage is available for the site, and that adequate arrangements have been made to make drainage available. On this basis, the likely stormwater runoff impacts of the development cannot be properly assessed.

It is considered that the submitted Concept Stormwater Plans included in the Civil Engineering Drawings (provided at Attachment C) and the Stormwater Management Plan (SMP) prepared by Westera Partners are insufficient and do not provide the level of detail required to provide an assessment of the functionality of the proposed system for managing stormwater on the site. For example the SMP:

- identifies earthworks that are located outside the property boundary within the property boundary of No. 33 Emigrant Creek Lane (Lot 6 DP 537419);
- refers to lawful points of discharge, however clear illustrations of the internal or external catchments or their associated conveyance paths to the points of discharge have not been provided;
- does not address the proposed stormwater discharge to Emigrant Creek (as identified in the submitted Aquatic Ecology Technical Report and the SEE;
- refers to the use of onsite detention to attenuate developed catchment flows, however, there are no clear catchment/conveyance plans that show how the detention devices interact with the conveyance infrastructure. Whilst there is a reference to "engineering drawings" these drawings are unclear on the criteria flow splitting, for what portion of flow is to be attenuated and what is to be bypassed unattenuated. It is also considered that the engineering drawings are unclear in the eastern portion of the site where it appears internal bypass flows are discharged to the external catchment conveyance system.

(e) Groundwater impacts

The application does not provide sufficient information to verify the conclusions within the Groundwater Monitoring Assessment and Management Plan prepared by Gilbert & Sutherland, which affects the assessment of the environmental and biodiversity impacts of the development. For example, Section 3.6 of this plan concludes in part:

> *"The bore logs and conceptual models indicate there is a hydraulic boundary that is coincident with the central drain. The boundary is such that it forms a sink that takes water flow during high rainfall times but also a source during low rainfall times. The consequence of this is that the hydraulic boundary or the central creek form a separation barrier between the proposed development footprint and the adjacent wetlands east of the drain. Any impact of the development will be limited to the wetlands west of the central drain.*
>
> *The investigation indicates that the flow direction is from the wetland to the central flowline and from the proposed development toward the central flow line. As such the central flow line form a hydraulic boundary between the proposed development in the western portion of the site and the wetland in the eastern part of the site. In addition the groundwater velocity is slow in the order of 2.6 m/y. To put this into perspective, at this velocity over a period of ten years, the movement of any wetting front would be approximately 26m"*

It is considered that further definitive evidence would be required to verify this conclusion, including a peer review of this section of the Groundwater Monitoring Assessment and Management Plan, as it has major implications for related environmental and biodiversity impact assessment. The BDAR relies on the hydraulic boundary that is purported to exist at the site and therefore evidence to confirm this would be essential to the application.

It is also noted that the Groundwater Monitoring Assessment and Management Plan was carried out after three years of above average rainfall. The Plan does not assess the movement of groundwater during normal periods or below average rainfall periods. The velocity of groundwater throughout the site was estimated using one logger and is not considered to be indicative of the velocity of groundwater during normal periods.

(f) Mosquito Management

Insufficient information is provided in the Mosquito Impact Assessment (MIA) prepared by Mosquito Consulting Services to properly assess and determine the impacts development in relation to mosquito management and demonstrate compliance the relevant provisions of the BCDP 2012.

The submitted MIA is considered inadequate for the following reasons:

- The MIA does not address all requirements for the preparation of a MIA as outlined in Chapter 2, Part 3.6 of the DCP.
- A Mosquito Buffer Zone of 25m width with appropriate vegetation management, is recommended in the MIA to minimise risk of nuisance impacts on residential allotments within the Proposal. However, there is no specific reference to, or assessment of the adequacy of, mosquito proposed actions or final plans in the MIA.
- The MIA does not refer to the:
    - VMP prepared by Cumberland Ecology;

- final versions of the Landscape Report prepared by CUSP; and the
- Stormwater Management Report prepared by Westera Partners.

- In accordance with Section 3.2.3.2(4) of the DPI *Policy and Guidelines for Fish Habitat Conservation and Managements (Updated 2103)* foreshore buffer zones are not to be used for other asset protection purposes to ensure that buffers for the protection of fish habitat can be fully vegetated. The proposed Mosquito Buffer Zone conflicts with these requirements.
- The VMP refers to sparse interplanting of canopy trees (typical of Plant Community Type (PCT) 1235 - Swamp Oak swamp forest of the coastal lowlands of the NSW North Coast Bioregion) being undertaken at no more than one tree per 10 m^2. This planting density and mix of plant species has not been addressed in the MIA.
- The VMP states that “one artificial drainage line will require removal and replacement with a drain that will drain freely (i.e. without pooling for prolonged periods to avoid providing habitat for mosquitoes). A separate mosquito impact assessment is being prepared.” This is not addressed in the MIA.
- The Stormwater Management Report prepared by Westera Partners states that stormwater from the proposed point of discharge identified as "LPOD 2" discharges to an existing pond/lake with the biobank/conservation area. However, this has not been considered in the MIA as it is likely to increase the production of mosquitoes.
- The MIA does not address the aquatic vegetation in stormwater conveyance infrastructure (i.e. proposed swales, bioretention basins and box culverts).
- The MIA does not include a current proposed ‘Mosquito Awareness and Avoidance Program' in accordance with Control (x) in Part 3.6.3 of Chapter 2 the BDCP 2012.

(g) Construction Management

The application does not include adequate, consistent mitigation measures and/or monitoring programs to protect the environment during the construction phase of the project. For example:

- The Construction Management Plan (CMP) prepared by Westera Partners dated 12 December 2022, proposes a separate construction access onto River Street and is indicated in “Figure 3 – Staging plan for the development”, details for which have not been provided.
- The requirements for site stripping are unclear. There are no details on the quantities, likely composition, and management arrangements for stripped material or details on how leachate from stripped material will be dealt with.
- It is unclear how construction impacts to surface water will be managed and if detained waters on the site will be released and if a release is required, where this will occur and what type of sediment and nutrient loading these waters will contain. The BDAR has not considered if the measures are adequate, instead it repeats the measures outlined in Section 7.7.3 of the CMP.
- Inconsistent references to fill quantities provided in the application means that an understanding of the number of trucks accessing the site and the movement on the road network cannot be quantified. Additionally, there is no assessment of the impacts on the safety and efficiency of the surrounding network during the construction phase of the development.
- The application does not provide sufficient information to demonstrate how the proposed staging of construction will occur, how access will be obtained to each stage as it is being constructed nor does it provide an assessment of the likely impacts on the residents (both within and adjoining the site) as future stages are being constructed.

(h) Odour Impacts

The application fails to demonstrate how odour from the mangroves, as a result of organic matter breaking down will be managed for future occupants. This is an ongoing issue within the Ballina Shire and these impacts have not been appropriately addressed.

(i) Conflict with existing Biobanking Agreement (#444)

The proposal is inconsistent with the existing Biobanking Agreement (#444) as follows:

- The application is inconsistent with Biobanking Agreement (#444) Item 4 – Management of human disturbance. Specifically, human activities that adversely affect biodiversity values within the Biobanking Site (including repeated disturbance of native animals) cannot be carried out, or caused or permitted to be carried out on the Biobanking Site, for example, disposing and permitting waste on the Biobanking Site.
- The application is inconsistent with Biobanking Agreement (#444) Item 14 – Maintenance or reintroduction of natural flow regimes in that artificial structures that impede the natural flow regimes on the Biobanking Site must not be constructed. It is unclear how groundwater dependent ecosystems within the Biobanking Site will be affected by increased filling as a result of the proposal.
- The application seeks that Council approve a VMP over land that is affected by Biobanking Agreement area No. 444. Council has no legal power to approve plans and/or require a landholder to undertake works on land that is affected by an existing Biobanking agreement (nothing that the BDAR is inconsistent with the submitted VMP when identifying the amount of land proposed for inclusion into the Biobanking Site).
- The VMP states that Zone 2 (4.65ha) is to be added to the existing Biobanking Site. However, part of the land to be included into the new expanded Stewardship site will be affected by the preloading also forms part of the nominated mosquito buffer.
- It is unknown whether the Biodiversity Conservation Trust (BCT) will accept the inclusion of additional area to the existing Biobanking Site and/or what conditions and management actions may be imposed if that land is included.

(j) Subdivision

The proposal contains insufficient information as to the area of exclusive use under the proposed lease agreements (under the *Residential (Land Lease) Communities Act 2013* to determine whether subdivision of land (for the purposes of Part 6 of the EPA Act is sought).

(k) Bushfire management

The site is not located on bushfire prone land. An extract of the Bushfire Prone Land Map provided via Council' online Geographical Information System is provided in Figure 20 below.

A Bushfire Statement prepared by Bushfire Hazard Solutions accompanies the application, however, this does not provide an adequate assessment of the potential bushfire hazards associated with the existing vegetation within the site as well as the adjoining areas within bushfire prone land. These matters are also raised by NSW RFS in their comments provided at Attachment H, including a request for a Bushfire Assessment Report which remains outstanding.

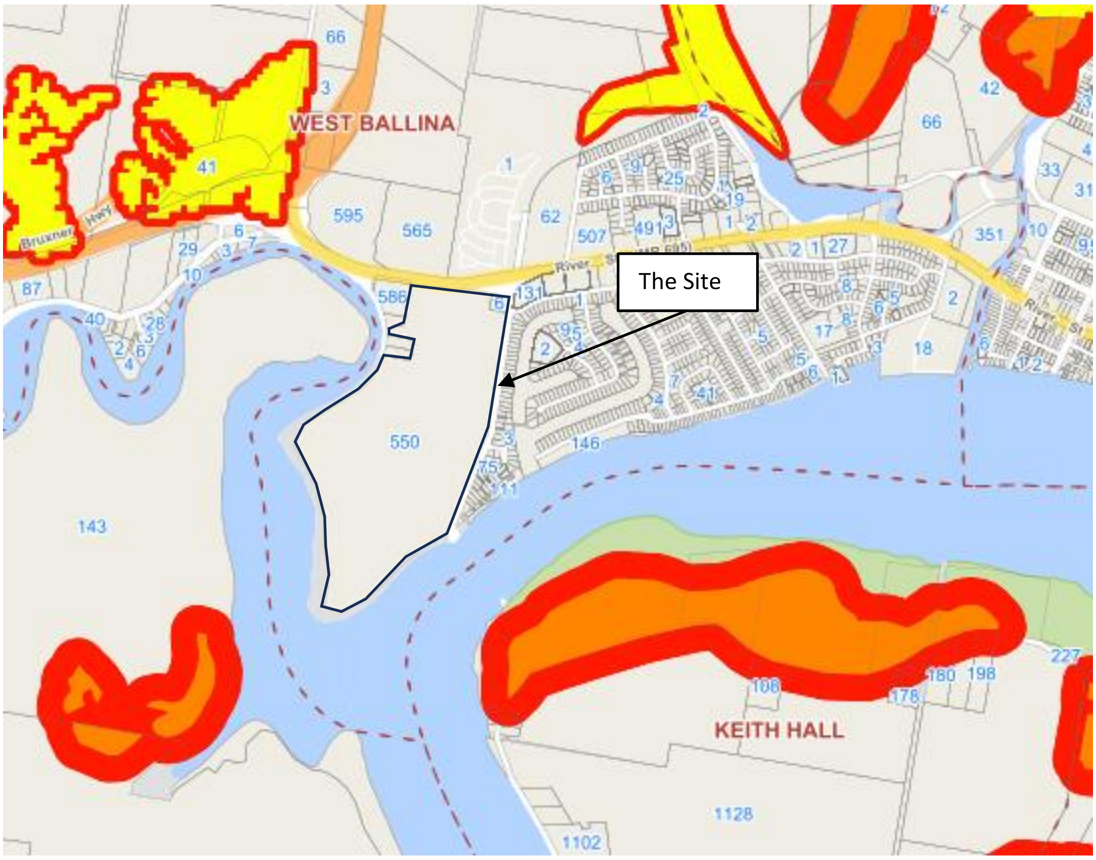

Figure 20: Bushfire Prone Land Map (Source: Ballina Shire Council online mapping-GIS)

5.2.7 Section 4.15(1)(c) - Suitability of the site

Due to the insufficient information provided, it is considered that the application does not adequately demonstrate that the site is suitable for the proposed development for the following reasons:

- The application does not adequately demonstrate that:
  - the proposed works will achieve an appropriate response to the identified environmental and physical constraints of the site;
  - the proposal will not result in adverse flooding impacts and risk to human life; and
  - the proposal will not adversely impact the biodiversity values of the site and adjoining lands including EEC, coastal wetland and key fish habitats.
- The extent of modification to the landform in regard to the amount of fill to be imported to the site, and subsequent impacts on the environment and character of the site has not been made clear;
- The landscape outcomes for the site fail to respond to the character of the surrounding locality;
- The proposal will result in a vulnerable resident population being isolated in the event of flood;
- The mitigation measures required to accommodate the proposal, including the extent of fill required, acoustic wall, impacts on vegetation and biodiversity for mosquito management, earthworks, and batters result in unreasonable impacts to the site and adjoining land;

- The proximity of development to mangroves results in potential odour and mosquitoes which will impact on the amenity of future residents; and
- The proposal abuts lands that are zoned W1 Natural Waterways. The proposal does not meet the objectives of the W1 Natural Waterways zone.

5.2.8 Section 4.15(1)(d) - Public Submissions

These submissions are considered in Section 6.3 of this report.

5.2.9 Section 4.15(1)(e) - Public interest

The application does not provide sufficient information to properly assess and determine the likely impacts of the proposed development. Further, the application in its current form is insufficient for consent authority to be satisfied of the matters set out in the relevant environmental planning instruments applying to the development.

It is also considered that the application does not adequately demonstrate that the proposal will facilitate the orderly and economic development of the subject land.

The flooding and associated emergency response management considerations are considered fundamental issues to the application. This is of particular concern due to the sensitivity of the proposed use of the land for the purpose of seniors housing. Insufficient information is provided to demonstrate that these matters can be appropriately managed and resolved.

The development will result in unreasonable and additional burdens on State Emergency Services and pose significant risk to human life in the event of a flood, where the risk is known and could reasonably be avoided.

Accordingly, the application in its current form would not be in the public interest and it is considered that development consent could not be granted on this basis.

5.3 Other Acts and Policies

5.3.1 *Biodiversity Act 2016*

The *Biodiversity Conservation Act 2016* (BC Act) is the legal framework for land management and biodiversity conservation in New South Wales.

The relevant provisions of the BC Act are considered as follows:

Part 6 – Biodiversity Offsets Scheme (BOS)

Part 6 of the BC Act identifies that the impact on biodiversity values of the clearing of native vegetation and the loss of habitat is to be offset by the retirement of biodiversity credits or other conservation measures under the Biodiversity Offsets Scheme (BOS), in circumstances where a development exceeds the relevant BOS threshold or is likely to significantly affect threatened species or ecological communities, or their habitats. This is a requirement for any application seeking development consent under Part 4 of the EP&A Act.

The *Biodiversity Conservation Regulation 2017* (BC Reg) sets out the BOS threshold test and comprises two key considerations:

- whether the extent of vegetation being cleared exceeds a prescribed area threshold; and

- whether the development (i.e., impacts) are located on land with high biodiversity value as identified on the Biodiversity Values Map (referred to in clause 7.3(3) of the Biodiversity Conservation Regulation 2017.)

As demonstrated in Figure 21, the site is identified as containing land with high biodiversity value on the Biodiversity Values Map and therefore triggers the BOS threshold.

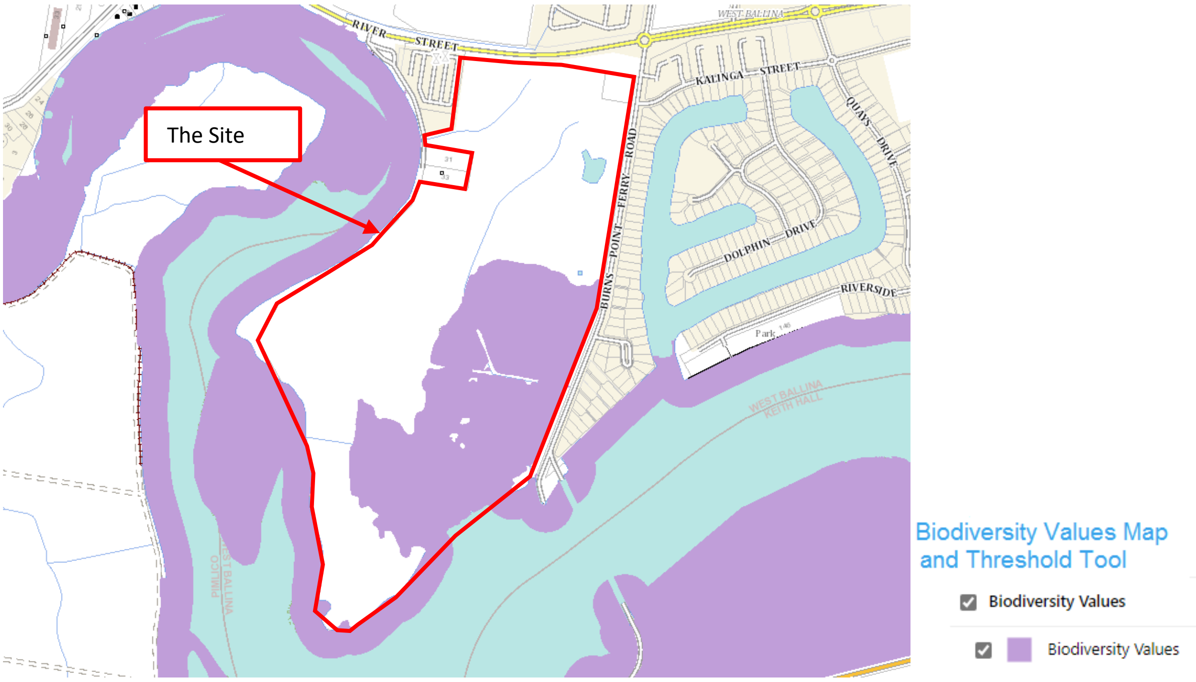

Figure 21: Biodiversity Values Map (Source: NSW DPE, BMAT tool)

Additionally, the development includes the removal of approximately 7.7 hectares of land and therefore exceeds the prescribed area threshold relevant to the site of 1 hectare.

<u>**Section 6.5** – Serious and irreversible impacts on biodiversity values</u>

Section 6.5 of the BC Act applies to development which the BOS applies and therefore is of relevance to the application and requires the consent authority to determine whether the development will have a serious and irreversible impact (SAII) on the biodiversity value of the site.

Section 6.7 of the BC Reg provides the criteria for determining whether an impact is to be regarded as serious and irreversible and states as follows:

"(1) This clause applies for the purposes of determining whether an impact on diversity values is a serious and irreversible impact for the purposes of the biodiversity offsets scheme.

(2) An impact is to be regarded as serious and irreversible if it is likely to contribute significantly to the risk of a threatened species or ecological community becoming extinct because—

(a) it will cause a further decline of the species or ecological community that is currently observed, estimated, inferred or reasonably suspected to be in a rapid rate of decline, or

(b) it will further reduce the population size of the species or ecological community that is currently observed, estimated, inferred or reasonably suspected to have a very small population size, or

(c) it is an impact on the habitat of the species or ecological community that is currently observed, estimated, inferred or reasonably suspected to have a very limited geographic distribution, or

(d) the impacted species or ecological community is unlikely to respond to measures to improve its habitat and vegetation integrity and therefore its members are not replaceable."

Comment: It is considered that the application fails to provide an adequate assessment to establish that the development will not have a SAII on the biodiversity values of the site. The inadequacy of the application in this regard is further detailed below with reference to the relevant provisions of the BC Act 2016.

Section 6.12 - Biodiversity Development Assessment Report

Under Section 6.12 of the BC Act, development which exceeds the BOS threshold must be accompanied by a Biodiversity Development Assessment Report (BDAR). The BDAR must assess whether the development involves any impacts to any threatened species or ecological communities as per Schedules 1 and 2 of the BC Act and must also be certified by an accredited person.

Comment: A Biodiversity Development Assessment Report (BDAR) prepared by Cumberland Ecology accompanies the application which identifies the following EECs and threatened species within the site:

- Coastal Saltmarsh EEC
- Freshwater Wetland EEC
- Swamp Oak Floodplain Forest EEC
- Large-footed Myotis
- Black-necked stork
- Curlew Sandpiper
- Collared Kingfisher
- Mangrove Honeyeater

It is considered that the BDAR does not provide a proper assessment of the biodiversity values of the site and the impact of the proposal as required by Section 6.12 of the BC Act.

The inadequacies identified in relation to the BDAR are further discussed below and with reference to the relevant requirements under Part 7 of the BC Act.

Part 7 – Biodiversity assessment and approvals under Planning Act

Part 7 of the BC Act specifically relates to development the subject of a development application submitted under Part 4 of the EP&A Act and that is likely to significant affect threatened species, exceeds the BOS threshold scheme or that is carried out on a declared area of outstanding biodiversity value. Of note, Section 7.5 of the BC Act identifies that Part 7 of the BC Act prevails to the extent of any inconsistency with the EP&A Act.

Part 7 includes provisions under which consideration must be given to the likely impacts of the development on the biodiversity values as assessed in the BDAR (pursuant to Section 7.7 and

7.13) as well as matters that the consent authority must be satisfied of (pursuant to Section 7.16) before granting consent to the application. These matters are addressed below.

Section 7.7 – Biodiversity assessment for Part 4 development (other than State significant development or complying development)

Section 7.7(2) of the BC Act identifies that a BDAR must be submitted if the development is likely to significantly affect threatened species.

Section 7.7(2) states as follows:

> *(2) If the proposed development is likely to significantly affect threatened species, the application for development consent is to be accompanied by a biodiversity development assessment report.*

Section 7.13 – Development other than State significant development or infrastructure

Section 7.13 of the BC Act requires the consent authority when determining the development application to consider the potential biodiversity impacts as they are assessed in the submitted BDAR.

Section 7.13(3) states:

> *(2) The consent authority, when determining in accordance with the Environmental Planning and Assessment Act 1979 any such application, is to take into consideration under that Act the likely impact of the proposed development on biodiversity values as assessed in the biodiversity development assessment report that relates to the application. The consent authority may (but is not required to) further consider under that Act the likely impact of the proposed development on biodiversity values.*

Comment: It is considered that the BDAR does not demonstrate that impacts have been adequately avoided, minimised or offset pursuant to Section 7.13 of the BC Act. Reasons for this are listed in the discussion of Section 7.16 of the BC Act provided below.

Section 7.16 – Proposed development or activity that has serious and irreversible impacts on biodiversity values

Section 7.16 of the BC Act relates to development proposed under Part 4 of EP&A Act and requires the consent authority to assess and determine whether the development will result in serious and irreversible impacts on the biodiversity values of the site.

Section 7.16(2) operates a precondition to the granting of development consent and states as follows:

> *"(2) The consent authority must refuse to grant consent under Part 4 of the Environmental Planning and Assessment Act 1979, in the case of an application for development consent to which this Division applies (other than for State significant development), if it is of the opinion that the proposed development is likely to have serious and irreversible impacts on biodiversity values."*

Comment: The assessment and level of detail provided in the BDAR is considered inadequate for several reasons, examples of which include:

- Certification that the report has been prepared in accordance with the Biodiversity Assessment Method (BAM) has not been provided with the BDAR and therefore the report is not properly certified (pursuant to Section 6.15 of the BC Act).
- Eco-systems credits have not been properly quantified.
- Justification that areas of vegetation are not part of EECs are not well supported.
- Vegetation integrity scores (VIS) have been used for some Plant Community Types (PCTs) that are much lower than those previously recorded for the site.
- The BDAR does not:
    - adequately demonstrate that the proposal will not result in a further loss of habitat for a range of threatened species and decline in each of the identified EECs that are already undergoing a rapid rate of decline.
    - demonstrate that impacts have been adequately avoided, minimised or offset pursuant to Section 7.13 of the BC Act noting that the proposal is likely to have an adverse impact on the extent of EEC's and will result in a loss of Swamp Oak Floodplain Forest EEC, Freshwater Wetland EEC and result in indirect impacts on Coastal Salt Marsh EEC.
    - adequately assess indirect impacts on threatened species, EEC's including protected fauna, as required by the Biodiversity Assessment Method (BAM).
    - consider the effect of stormwater discharge including erosion on vegetation communities that occur along the banks of Emigrant Creek, which consists of mangroves, Swamp Oak Forest EEC, Saltmarsh EEC and threatened species habitat.
- It is also unknown if stormwater discharge will result in changes to the quality and quantity of stormwater entering the avoided habitat/Biobanking Site and the BDAR does not include the retirement of ecosystem credits for any changes within the avoided habitat.

Further, the BDAR indicates reduced VIS for the areas within the site subject to historical slashing compared to those recorded in 2021, indicating a decline in ecological over time. The BDAR does not assess the impact of the slashing on what is known or can be reasonable assumed, of the habitat and vegetation that existed before the slashing.

Having regard to the above, it is considered that the submitted BDAR fails to properly assess whether the development will have a SAII on the biodiversity values of the site (as described in Section 6.7 of the BC Reg) in these circumstances.

Accordingly, the consent authority could not be satisfied of the relevant matters in Section 7.16(2) and it is considered that development consent could not be granted on this basis.

5.3.2 *Fisheries Management Act 1997*

One of the objectives *Fisheries Management Act 1994* (FM Act) is to 'conserve key fish habitats', a term which is not defined in the Act.

The NSW DPI – Fisheries has identified key fish habitats, as 'aquatic habitats that are important to the sustainability of the recreational and commercial fishing industries, the maintenance of fish populations generally, and the survival and recovery of threatened aquatic species'.

Further, Chapter 3 of the *'Policy and Guidelines for Fish Habitat conservation and Management (2013 update)'* (Fish Habitat Policy 2013) for the purpose of applying the provisions of the FM Act, identifies a range areas and species to be considered as key fish habitat. These areas include certain coastal environments containing marine vegetation, including mangroves as well as coastal saltmarsh greater than five square metres both of which are located on site.

Part 7 and 7A of the Fisheries Management Act 1994 sets out the regulatory framework for the protection of fish habitats and the conservation of threatened species within these habitat areas and therefore are of relevance to the application. The relevant provisions set out under these parts are considered below.

Part 7 – Protection of aquatic habitats

The provisions in Part 7 requires permits and approvals for certain works proposed within identified key fish habitats, including dredging as well as any actions that may cause potential harm to existing marine vegetation such as mangroves.

Section 201 – Circumstances in which a person (other than a public or local government authority) may carry out dredging or reclamation.

Section 201(1) of the FM Act states as follows:

> ***201 Circumstances in which a person (other than a public or local government authority) may carry out dredging or reclamation***
>
> *(1) A person must not carry out dredging work or reclamation work except under the authority of a permit issued by the Minister.*

Section 201 – Marine vegetation – regulation of harm

> *(2) A person must not harm any such marine vegetation in a protected area, except under the authority of a permit issued by the Minister under this Part.*

Comment: The proposed development includes a range of works including dredging works within Emigrant Creek which comprises marine vegetation including mangroves. Therefore, a permit (approval) from DPI – Fisheries is required to be obtained. As identified in Section 5.1.2, the development is Integrated Development pursuant to Section 4.46 of the EP&A Act on this basis.

The application has been assessed by DPI – Fisheries and several issues have been raised, including a request for additional information.

As such, GTAs have not been issued by the relevant approval body and the application fails to demonstrate that the works are of an acceptable nature for the purpose of obtaining the permit required under Section 201 of the FM Act. It is considered that development consent could not be granted in these circumstances.

Part 7A – Threatened species conservation

The provisions in Part 7A ensure impacts associated with actions affecting threatened species, populations and ecological communities of fish and marine vegetation are properly assessed and Division 12 of this part specifically relates to the refusal of a development application under Part 4 of the Planning Act.

Division 12 requires the consent authority to determine several matters when determining an application. The matters to be determined which are of relevance to the application include:

Section 221ZV – Determination of whether the proposed development is likely to significantly affect threatened species, population or ecological community

Section 221ZV of the FM Act states:

"221ZV Determination of whether proposed development or activity likely to significantly affect threatened species, population or ecological community

The following is to be taken into account for the purposes of determining under this Division whether a proposed development or activity is likely to significantly affect threatened species, populations or ecological communities (unless it is carried out in critical habitat)—

(a) in the case of a threatened species, whether the proposed development or activity is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction,

(b) in the case of an endangered population, whether the proposed development or activity is likely to have an adverse effect on the life cycle of the species that constitutes the endangered population such that a viable local population of the species is likely to be placed at risk of extinction,

(c) in the case of an endangered ecological community or critically endangered ecological community, whether the proposed development or activity—

(i) is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or

(ii) is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction,

(d) in relation to the habitat of a threatened species, population or ecological community—

(i) the extent to which habitat is likely to be removed or modified as a result of the proposed development or activity, and

(ii) whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed development or activity, and

(iii) the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the threatened species, population or ecological community in the locality,

(e) whether the proposed development or activity is likely to have an adverse effect on any critical habitat (either directly or indirectly),

(f) whether the proposed development or activity is consistent with a Priorities Action Statement,

(g) whether the proposed development constitutes or is part of a key threatening process or is likely to result in the operation of, or increase the impact of, a key threatening process.

The assessment guidelines under section 220ZZA apply to the determination of whether any such proposed development or activity is likely to significantly affect threatened species."

Section 221ZW – When species impact statement required for development consent under Part 4 of the Planning Act

In accordance with Section 221ZW, if it has been determined that a development proposal is likely to significantly affect threatened species, populations or ecological communities, then a species impact statement (SIS) is also required to accompany the DA.

Section 221ZW relevantly states:

> ***"221ZW When species impact statement required for development consent under Part 4 of Planning Act***
>
> *(1) If proposed development is likely to significantly affect threatened species, populations or ecological communities, an application for development consent under Part 4 of the Planning Act is to be accompanied by a species impact statement.*
>
> *(2) This section does not apply to State significant development."*

Comment: As identified in this report, the site contains EECs and threatened species and areas of key fish habitat. The application is accompanied by an Aquatic Ecological Technical Report, prepared by FRC Environmental, and it is considered that this report does not contain adequate information to determine the matters in Section 221ZV and 221ZW.

The submitted application, including the assessment provided in the Aquatic Ecological Technical Report is insufficient for the following reasons:

- The likely impacts, including the exact areas of impacts to key fish habitat within the site have not been specified;
- the need to undertake development within areas of key fish habitat has not been justified;
- Impacts of changed hydrology on areas of key fish habitat have not been considered;
- The proposal has not demonstrated how impacts to key fish habitats have been avoided and minimised; and
- Assessment of fish habitat buffers as required by the Fish Habitat Policy 2013 has not been provided.

Accordingly, it is considered that insufficient information has been provided for the consent authority to be satisfied that a SIS is not required to accompany the application.

The issues listed above have also been raised by NSW – DPI in their written response to the application which is provided at Attachment E.

Additionally, DPI have identified that where there are impacts to marine vegetation within key fish habitat (i.e., mangroves and saltmarsh not located within an artificial drainage line) a suitable offset project is required to be developed. The application has not proposed suitable offsets.

6 REFERRALS AND SUBMISSIONS

6.1 External Agency Referrals and Concurrence

The development application has been referred to various external agencies for comment/concurrence/referral as required by the EP&A Act.
Each of the agency responses are attached to this report and summarised in **Table 5** below.

Some of the agency responses raise issues and request additional information regarding the potential flooding, biodiversity and bushfire impacts of the proposal, all of which are unresolved and remain outstanding.

Table 5: Concurrence and Referrals to agencies

Agency	***Concurrence/ referral trigger***	***Comments (Issue, resolution, conditions)***	***Resolved***
Concurrence Requirements (s4.13 of EP&A Act)			
Transport for NSW (TfNSW)	*Section 138 – Roads Act 1993*	The proposal includes works within the existing road reserves including the construction of driveways and associated infrastructure. Comments have been issued by TfNSW (refer to Attachment I) which indicate that Concurrence has been granted.	Y
Referral/Consultation Agencies			
Electricity supply authority (Essential Energy)	*Section 2.48 – Transport and Infrastructure SEPP Development near electrical infrastructure*	The application was referred to Essential Energy pursuant to Section 2.48 and comments have been provided (refer to Attachment J). No objections have been raised regarding the proposal, subject to recommendations.	Y
TfNSW	*Section 2.122 – Transport and Infrastructure SEPP Development that is deemed to be traffic generating development in Schedule 3.*	The application was referred to TfNSW pursuant to Section 2.122(4)(b)(i) and comments have been issued (refer to Attachment I). No objections have been raised regarding the proposal, subject to conditions.	Y
Civil Aviation Safety Authority (CASA)	*Obstacle Limitation Surface (OLS) applies to the site*	Referral comments have been provided by CASA (refer to Attachment L) identifying that Ballina Byron Gateway Airport is located within 4 kilometres of the site, for which an OLS applies and an OLS assessment is required on this basis. Council has also referred the application to YBNA, however a response remains outstanding.	N
NSW DPE – Biodiversity, Conservation	*The application has been referred to BCD for comment in relation to flood risk impacts and*	Two separate referral responses have been issued by BCD (refer to Attachments F and G) which raise several issues regarding the	N

and Science (BCD)	*impacts to biodiversity values of the site.*	adequacy of information provided to assess the biodiversity impacts and flood risk impacts of the development. Further information has been requested on this basis. These matters remain unresolved.	
NSW Rural Fire Service (RFS)		The application was referred to NSW RFS and referral comments have been issued (refer to Attachment H) including a request for further information (Bushfire Assessment Report) to enable a proper assessment of the potential bush fire hazards associated with the proposal. This matter remains unresolved.	N
NSW Crown Lands	*NSW Crown Land is adjoining landowner and drainage works are proposed within the Crown Land (Emigrant Creek)*	Comments have been issued by NSW Crown Lands which identify that no objections are raised regarding the proposal provided that no works are carried out within the adjoining Crown Land. Landowners consent for the drainage works proposed within the adjoining Crown Land has not been obtained. These matters remain unresolved.	N
Integrated Development (S 4.46 of the EP&A Act)			
DPE – Water	*Section 91 – Water Management Act 2000* *Controlled Activity Approval*	The development involves earthworks and drainage construction works within 40 metres of Emigrant Creek and the tributaries of the creek (i.e., waterfront land) and therefore requires a Controlled Activity Approval under Section 91 of the WM Act. On 29 August 2023, the DPE – Water issued General Terms of Approvals (GTAs) (refer Attachment D).	Y
DPI – Fisheries	*Section 201 and 205 – Fisheries Management Act 1994* *Circumstances in which a person (other than a public or local*	The development involves dredging and reclamation works, as well as likely harm to marine vegetation within identified areas of	N

	government authority) may carry out dredging or reclamation (S201); *Marine vegetation—regulation of harm (S205)*	key fish habitat and therefore requires a permit under Section 201 and 205 of the FM Act, respectively. On 14 July 2023, the DPI – Fisheries issued a referral in response to the request for GTAs (refer to Attachment E), identifying that insufficient information has been provided to properly assess the application. Further information has been requested on this basis. These matters remain unresolved.	

The outstanding issues raised by External Agencies are further detailed in Section 4.2.1 and 4.2.6.

In addition to the referrals identified above, Council also referred the application to the NSW State Emergency Services (SES), Local Aboriginal Land Council, NSW Police and Ballina Byron Gateway Airport and comments from these agencies/organisations remain outstanding.

6.2 Internal Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 6.**

Table 6: Consideration of Council Referrals

Officer	***Comments***	***Resolved***
Engineering	Council's Engineering Officer reviewed the proposal and raised concerns regarding flooding, groundwater, construction management impacts and as well as stormwater management. Additional information has been requested on this basis.	N
Environmental Health	Council's Environmental Health Officer reviewed the proposal and raised concerns in relation to potential acoustic impacts associated with the proposed manager's residence, mosquito management and odour management. Additional information has been requested on this basis.	N
Environmental Scientist	Council's Environmental Scientist has reviewed the proposal and raised concerns in relation to the potential impacts on coastal wetlands and endangered ecological communities, the direct impacts to vegetation communities and threatened fauna.	N
Waste	Council's Waste and Resource Recovery Officer review the proposal and identified that insufficient information has been provided in relation to bin sizes and associated storage areas, management of waste within the site as well as collection	N

	services for both the proposed dwelling and club house / community facility, bulky waste storage and disposal and the internal road layout in terms of manoeuvring area for collection vehicles.	
Environmental Health (Food)	Council's Environmental Health Food Specialist reviewed the proposal and raised concerns in relation to compliance with the Food Standards Code, food preparation areas, and compliance with the Public Health Act.	N
Access Reference Group	The Access Reference Group has reviewed the proposal and identified that public spaces, being the clubhouse and public amenities will need to comply with AS 1428 for liveable housing design requirements and National Construction Code.	Y

Further to the internal referrals identified in Table 6, independent peer review and assessment of the submitted documentation (including the BDAR, Geotechnical Report, Mosquito Impact Assessment (MIA) as well as the proposed stormwater management system) has also been carried out by an Environmental Consultant/Expert (for each respective discipline) to assess and determine the likely ecological, hydrological and flood impacts of the development. Each assessment identifies that insufficient information is provided to enable a proper assessment of the application.

The outstanding issues raised by Council officers and independent Environmental Consultants are further detailed in Section 4.2.1 and 4.2.6.

Due to the extent of insufficient information provided, comments from Council's building and plumbing departments have not been sought.

6.3 Community Consultation

The proposal was notified in accordance with the Council's Community Participation Plan from 15 March 2023 until 14 April 2023. Council received a total 73 unique submissions (refer to Attachment M), comprising 72 objections and 1 submission in favour of the proposal. The key issues raised in these submissions are considered in **Table 7** below.

Of note, flooding has been raised in 70 (or 97%) of the objection submissions.

Table 7: Public Submissions

Issue	Concerns raised	Council brief comments
Flood risk and impact	- Located on a flood plain - Increased risk of flooding in the future, frequency, duration and severity of floods - Reference to the 2022 floods – determination should not be made until data from 2022 floods is finalised - Not enough support or accommodation for the additional people if a flood was to occur again. - Street often flooded even at king tides - Motel previously located onsite was demolished due to flooding - Decrease pervious services and increase floodwater volumes - Filling will result in dispersal of more water across West Ballina	At this stage the final flood report has not been provided with the application. The Biodiversity Conservation Division (BCD) of the DPE have additionally requested further information in relation to flooding which also remains outstanding. As identified in Section 5.2.1(h), inadequate information has been provided to enable a proper assessment of the flooding impacts including risk to human life.
Environmental Impact	- Impact and loss of wetland - Destruction of mangroves - Endangered - Ecological Communities and threatened species on the site - Loss of flora and fauna and impacts to native wildlife - Site contains sensitive species - Entire site is wetland and should be declared biobanking area	As demonstrated in Section 5.3.1, it is considered that the application, namely the BDAR, fails to properly assess the potential ecological impacts of the proposal including whether the development will have a SAII on the biodiversity values of the site as required under the relevant provisions of the BC Act. Further information has also been requested in relation to ecological impacts by Council and the BCD which has not been provided by the applicant and therefore these matters remain unresolved.
Land concerns	- Quantity of fill - Land contamination - Impacts on soil stability	As identified in this report, insufficient information has been provided in the submitted Geotechnical Report prepared by Pacific Geotech to enable a proper assessment of the existing geotechnical conditions of the site and the geotechnical impacts associated with the proposed earthworks. Inconsistent information regarding the proposed fill depths has also been provided and therefore the exact amount of filling to be carried out on site cannot be determined.

		In terms of land contamination, whilst the relevant provisions of the Resilience and Hazards SEPP have been addressed, insufficient information is provided regarding the adequate treatment and remediation of acid sulfate soils which occur on the site and the impacts of these measures on the surrounding sensitive coastal environmental and biodiversity values of the land.
Aquatic impact	- Fish kills - Pollutants	As identified in Section 5.3.2, insufficient information has been submitted to properly assess and determine the likely impacts to key fish habitat areas and the need to undertake development within areas of key fish habitat has not been justified. Further, several issues have been raised by DPI – Fisheries in relation to the inadequate information regarding impacts to key fish habitat areas and these matters remain unresolved. As such, GTAs have not been issued by this approval body as required by Section 4.47(2) of the EP&A Act.
Increased traffic and congestion	- Traffic assessment report is flawed	The application was referred to TfNSW as the proposal is defined as 'traffic generating development' under the Transport and Infrastructure SEPP. Whilst no objection has been raised by TfNSW assessment of the application in relation to traffic safety has revealed that insufficient information has been provided to demonstrate that safe and adequate site access arrangements have been made.
Drainage and Stormwater Runoff	- Where will stormwater be directed - Changes to water flow - Pressures on existing drainage	As identified in Section 5.2.6(d), insufficient information has been provided to demonstrate that stormwater drainage is available for the site, and that adequate arrangements have been made to make drainage available. On this basis, the likely stormwater runoff impacts of the development cannot be properly assessed.

Not in the best interest of the local community	- Doesn't meet housing supply needs in regard to the need of low cost and social housing - Strain on local healthcare system	Whilst the proposed development is permissible within the R2 Low Density Residential and R3 Medium Density Residential zones and that the proposed seniors housing is intended to cater for the increased aging population and increased population in the Ballina Shire area, it is considered that the application fails to demonstrate that the proposal would be in the public interest for several different reason as outlined in Section 5.2.9. Additionally, insufficient information has been provided to properly assess the proposal against the relevant design requirements applying to seniors housing development set out under the Housing SEPP and the proposal in its current form is therefore considered unacceptable on this basis.
Impacts of fill on surface water	- Impacts to hydrology and catchment health	The application does not provide sufficient information to adequately assess the potential impacts to surface water within and surrounding the site. The proposed stormwater infrastructure works have also not been made clear and the proposal fails to demonstrate that the proposed works cannot be undertaken without adversely affecting the quantity and quality of surface and ground water flows to and from the coastal wetlands within the site.
Aboriginal Cultural significance sites	-	As identified in Section 5.2.1(h) as part of the assessment of clause 5.10 of BLEP 2012, review of the Aboriginal Heritage Information Management System (AHIMS) demonstrates that the site adjoins an identified site or object of Aboriginal cultural significance. An Aboriginal Cultural Heritage Impact Assessment has not been submitted with the application. Therefore, insufficient information has been provided to properly assess and determine the impacts of the development on the Aboriginal cultural heritage values of the surrounding area.

The site is not appropriate for the proposed development is an overdevelopment		As demonstrated in Section 5.2.7, the site is not considered suitable for the proposed development based on the nature of issues raised in the assessment of the application. Of note, the mitigation measures required to accommodate the proposal, including the extent of fill required, acoustic wall, impacts on vegetation and biodiversity for mosquito management, earthworks, and batters are likely to result in unreasonable impacts to the site and adjoining land and it is considered that the proposal would result in an overdevelopment of the site in these circumstances.
Inappropriate bulk and scale	- Negative visual impacts	Assessment of the application against the relevant built form provisions set out under the Housing SEPP in Section 5.2.1(c) indicates that insufficient information has been provided to properly assess and determine the bulk, scale, and amenity impacts of the proposed development. Notwithstanding this, it is considered that the intensity of development (including fill, retaining structures and stormwater infrastructure) at the interface with adjoining development and its elevation from existing ground levels results in unreasonable impacts in terms of bulk, scale and overlooking.

Based on a review of the public submissions summarised in Table 7 above, it is considered that the issues raised are of relevance to the assessment of the proposal development and would warrant refusal of the application. The public submissions are provided at Attachment M.

7 CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report.

As demonstrated by the assessment provided in this report, the application does not provide sufficient information to properly assess and determine the likely impacts of the proposed development.

Due to the insufficient information provided, it is considered that the application does not adequately demonstrate that:

- the proposal will not result in adverse environmental, social, economic impacts;

- the proposal will facilitate the orderly and economic development of the subject land;
- the site is suitable to accommodate the proposed development; and
- the proposed development is in the public interest.

Additionally, the flooding and associated emergency response management matters raised in this report are considered fundamental issues to the application, which are of particular concern due to the sensitivity of the proposed use of the land for the purpose of seniors housing. The application in its current form does not provide adequate information to demonstrate that these issues can be appropriately managed and resolved.

The assessment provided in this report demonstrates that the key issues relate to insufficient information, the likely ecological impacts, flood risk having regard to site suitability for the proposed land use, and the extent of modification to the landform to accommodate the proposed development, all of which remain unresolved.

It is considered that the nature of the unresolved issues, including matters raised by the Integrated Approval body, DPI – Fisheries, pursuant to Section 4.46, would preclude the determining authority from granting consent to the application in its current form.

The application cannot be supported in these circumstances.

8 RECOMMENDATION

That the Development Application DA No 2022/721 for vegetation removal, earthworks (including filling and pre-loading), staged construction and use as a seniors housing development comprising 148 independent living units (4 x two bedroom and 144 x three-bedroom units), club house, managers residence, outdoor recreation areas and car parking with associated stormwater management, infrastructure, and landscape works, located at Lot 1 DP 522558, 6 Burns Point Ferry Road and Lot 1 DP 124173, 550-578 River Street, West Ballina be REFUSED pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979* subject to the draft reasons for refusal attached to this report at Attachment A.

The following attachments are provided:

- **Attachment A:** Draft Reasons for refusal
- **Attachment B:** Architectural Plans
- **Attachment C:** Civil Engineering Drawings
- **Attachment D:** General Terms of Approval, DPE – Water
- **Attachment E:** Request for additional information, DPI – Fisheries
- **Attachment F:** Request for additional information (Biodiversity), BCD
- **Attachment G:** Request for additional information (Flooding), BCD
- **Attachment H:** Request for additional information, NSW RFS
- **Attachment I:** Referral comments, TfNSW
- **Attachment J:** Referral comments, Essential Energy
- **Attachment K:** Referral comments, NSW Crown Lands
- **Attachment L:** Referral comments, CASA
- **Attachment M:** Public Submissions