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Klaus Kerzinger
in reply please quote
24/61159



9 September 2024

Ms Louise McMahon
Director, Planning Proposal Authority
Local Planning and Council Support
NSW Department of Planning and Environment

(Via Email ayva.hamed@dpie.nsw.gov.au)

Attention: M/s Ayva Hamed

Dear Ms McMahon

Re: Rezoning review request – 34 Racecourse Road, Ballina (RR-2024-27)

Reference is made to your letter received under cover of email dated 3 September 2024. This letter provides comments in respect to the matters raised in your letter as well as addressing issues raised in the Memorandum in Support, prepared by Planners North, and dated 9 August 2024.

Do the planning proposal submissions considered by Council in 2023 and 2024 relate to the same proposal?

The planning proposal submissions considered by the Council at its meetings on 23 February 2023 and 27 June 2024 relate to the same proposal. The documents submitted by the proponent's consultant in respect to the initial planning proposal PP-2021-7476 are also considered relevant to the current planning proposal PP-2024-1016.

Why was a new planning proposal submission for the same proposal made in 2024?

It is understood that the proponent could not seek a rezoning review for the Council's decision in respect to PP-2021-7476 as a review was not sought within the required 42-day period following notification of the Council's decision. This then resulted in a new planning proposal application being lodged in May 2024. It was the May 2024 planning proposal that was the subject of a report to the Council at its Ordinary meeting on 27 June 2024.

Why were the officers' recommendations different if it was the same proposal?

The officer recommendation to the relevant Council meetings in 2023 and 2024 were significantly different.

The officer's report to Council of 23 February 2023 advised:

While a gymnasium facility is not directly consistent with the equine – related uses in the immediate area, preliminary assessment indicates that there is unlikely to be significant conflicts between local uses.

The preliminary assessment did not have the benefit of more detailed comments made by Mr Matthew Bertram, CEO of Ballina Jockey Club. Mr Bertram emailed a submission directly to Councillors on the day prior to the 23 February 2023 Council meeting and spoke in opposition to the report recommendation at the meeting. It is noted that Mr Steve Connelly, Planners North, spoke in support of the recommendation at the same meeting.

The assessing officers report to Council's meeting on 27 June 2024 was prepared following a more detailed assessment of the proposal which included the undertaking of a land use survey and discussions with various land occupiers and owners.

The assessing officer also gave weight to the more recent (post the 23/2/2023 Council report) consolidation of racing activities within a 200 metre radius of the subject site. This was evidenced by the purchase of an adjoining property by Racing NSW (June 2023) and the commencement of significant site improvement works on the Ballina Racecourse site.

The above matters are documented in the 27 June 2024 Council report. The recommendation to the Council within the report was not to support the planning proposal.

What potential land use conflicts may arise?

Potential land use conflicts are considered to include those associated with additional noise and traffic, as well as adverse people interaction (children) with more 'high-strung' thoroughbred racehorses.

The potential land use conflicts are considered more significant on a site which immediately adjoins stables associated with Ballina Racecourse on its eastern side, and Racing NSW stables on its western side. In addition, the site is burdened by a right of way along its northern boundary actively used for horse movement.

No expert evidence related to potential noise and people movement impacts associated with the gymnasium use on the adjoining racing use has been provided.

Is there a pressing need for a gymnasium focused recreation facility in the locality?

Planners North submit that there is a pressing need for a gymnasium focused recreation facility in the locality. No evidence has been provided that this is the case.

Is there no land of suitable size and location available to accommodate the proposed gymnasium focused recreation facility in the locality?

Planners North submit that there is no land of suitable size and location available to accommodate the proposed gymnasium focused recreation facility in the locality. They have provided no evidence that this is the case.

Vacant industrial land is located in Boeing Avenue, Ballina, opposite the Ballina Homemaker Centre. The subdivision of this Council owned land is anticipated to be finalised in late 2024. The subdivision contains 12 industrial lots having areas between 1527m² and 4492m². This land is located approximately 1km from the subject site.

What is the relevant history of the Strategic Urban Growth Area in which the subject site is located, and what is the likelihood of this site being rezoned for employment purposes?

The Ballina Shire Growth Management Strategy 2012 (BSGMS) was prepared in response to a requirement of the 2006 Far North Coast Regional Strategy (FNCRS).

The BSGMS was adopted by the Council on 26 July 2012 prior to the notification of Ballina LEP 2012 in January 2013.

The BSGMS was approved by the Department of Planning and Infrastructure on 7 May 2013. The Department's letter of approval includes a number of sites which were outside the then *Town and Village Growth Boundary* of the FNCRS. One of these sites was the North Ballina land adjacent to Ballina Racecourse.

The BSGMS 2012 provides the following commentary relating to Strategic Urban Growth Areas:

The purpose of identifying Strategic Urban Growth Areas for each urban locality in the shire is to:

- *improve transparency and community understanding of the planning process; and*
- *provide a clear strategic approach to land development, to avoid the negative effects associated with: land speculation on non-urban land, including the sterilisation of agricultural activities due to inflated land values; and the tying up of Council resources in the assessment of nebulous development proposals; and*
- *provide a solid basis for long-term infrastructure planning, including roads, water, sewerage infrastructure and community infrastructure.*

Strategic Urban Growth Areas (SGA) have been identified via Council's long-term strategic planning for the shire, in prior Urban Land Release Strategies and in the following local strategies:

- *Wardell Strategic Land Use Plan 2003*
- *Lennox Head Structure Plan 2004*
- *Cumbalum Structure Plan 2006*
- *West Ballina Planning Study & Structure Plan 2011*

The designation of an area as a 'Strategic Growth Area' should not be interpreted as indicating that Council considers the land suitable for urban use or that it will become available for urban purposes in the future. These Strategic Urban Growth Areas will be subject to detailed assessment prior to rezoning, to determine appropriate land uses, as outlined in Part 7 (Land Release Program) of this Strategy. (pp31-32 BSGMS2012).

The subject site is located within an area designated as a Strategic Urban Growth Area (SUGA) within the BSGMS and subsequently designated as a SUGA in Ballina LEP 2012. As indicated above, designation as a SUGA should not be interpreted as indicating that Council considers the land suitable for urban use or that it will become available for urban purposes in the future, but rather that the land has potential for urban use subject to further and more detailed investigation.

Why was the North Ballina land adjacent to Ballina Racecourse retained as SUGA in the 2022- 2023 SUGA review?

The BSGMS has now largely been superseded by the Ballina Shire Local Strategic Planning Statement 2020 – 2040 (BSLSPS). The BSLSPS was endorsed by the Department of Planning and Infrastructure by letter dated 20 July 2020.

The BSLSPS was prepared in response to the then North Coast Regional Plan 2036 and in response to Section 3.9 of the *Environmental Planning & Assessment Act 1979*. Of relevance the BSLSPS contained an action related to the review of SUGA areas.

The LSPS references the 6.2ha SUGA site adjacent to Ballina Racecourse as a potential industrial land supply site and contains the following commentary:

Land identified as an Investigation Area – Employment Land in North Coast Regional Plan 2036. Approximately half of this area already developed for horse racing related purposes. Remaining vacant land subject to flooding and adjacent to wetland area. (BSLSPS p36)

The Council reviewed SUGA areas in the period May 2022 to May 2023. Ballina LEP 2012 mapping amendment M6 was notified on 29 September 2023 and finalised the SUGA review.

The subject site is contained within a 6.2ha SUGA referenced as Site 20 within the SUGA report.

In respect to Site 20 the SUGA report contains the following statements:

Initially included in the Urban Land Release Strategy.

Anticipated at the time as having potential commercial development in association with the adjacent Ballina Racecourse.

Urban design considerations:

- Despite the rural zoning of the land, part of the site and the development thereon functionally forms part of the Ballina urban locality.*
- The existing uses on the site appear to be equine (racecourse) related rural activities and associated residential uses.*
- The site is located in close proximity to the Ballina Racecourse and to industrial and residential uses.*
- Being located adjacent to multiple different land use types (including areas of high ecological value) complicate the determination of appropriate zoning. (p58)*

The SUGA report notes that Site 20 is impacted by flooding constraints and bordered by SEPP wetlands.

The SUGA report recommended to retain Site 20 as a SUGA on the basis that:

Having regard for the complex nature of the site and multiple adjacent land use types, detailed assessment through the planning proposal process may determine an appropriate land use planning outcome for the site. (P59)

Has a detailed assessment of SUGA Site 20 been carried out?

No detailed assessment of Site 20 has been undertaken. There remains considerable uncertainty as to whether the primary flooding constraint can be successfully mitigated.

The impact of filling the 6.2ha site to mitigate against flooding has not been modelled.

The above information has been provided to assist the Department and the Regional Planning Panel in the evaluation of the merit of the planning proposal.

If you require any additional information regarding the matters raised in this letter, please contact me on 02 6681 0541 or via email klaus.kerzinger@ballina.nsw.gov.au .

Yours faithfully



Klaus Kerzinger
Strategic Planner
Planning and Environmental Health Division