

Report to the Northern Regional Planning Panel on an application for a site compatibility certificate under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

SITE: Lot 11, DP 1245510, 120 North Creek Road, Ballina (formerly known as Lot 2 DP1155600, 12 Corks Lane Ballina) (Figure 1).

APPLICANT: Planning Ingenuity on behalf of Palm Lake Works Pty Ltd.

PROPOSAL: Development for the purposes of 77 serviced, self-care seniors dwellings under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors Housing SEPP) (**Attachments A1 – A10**). This is an extension of the existing Palm Lake Resort, Ballina, which is located on the same lot. The proposed development will also involve vegetation removal, land modification and environmental protection works, an internal road network including connections to the external road network and stormwater management (Figure 2 & **Attachment B**).

LGA: Ballina

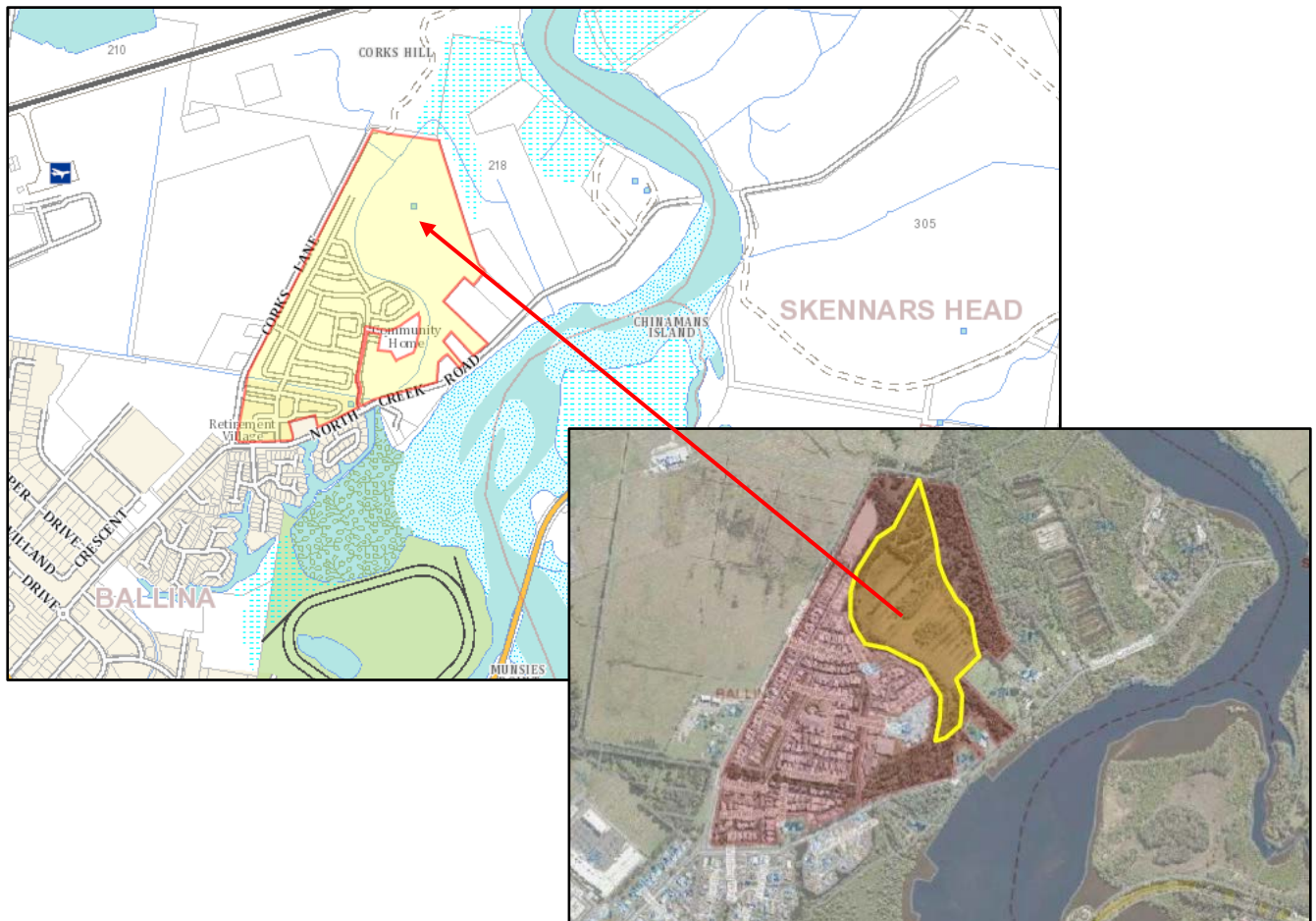


Figure 1 - Site Location showing subject land and SCC footprint (source: Six Maps & SCC application)

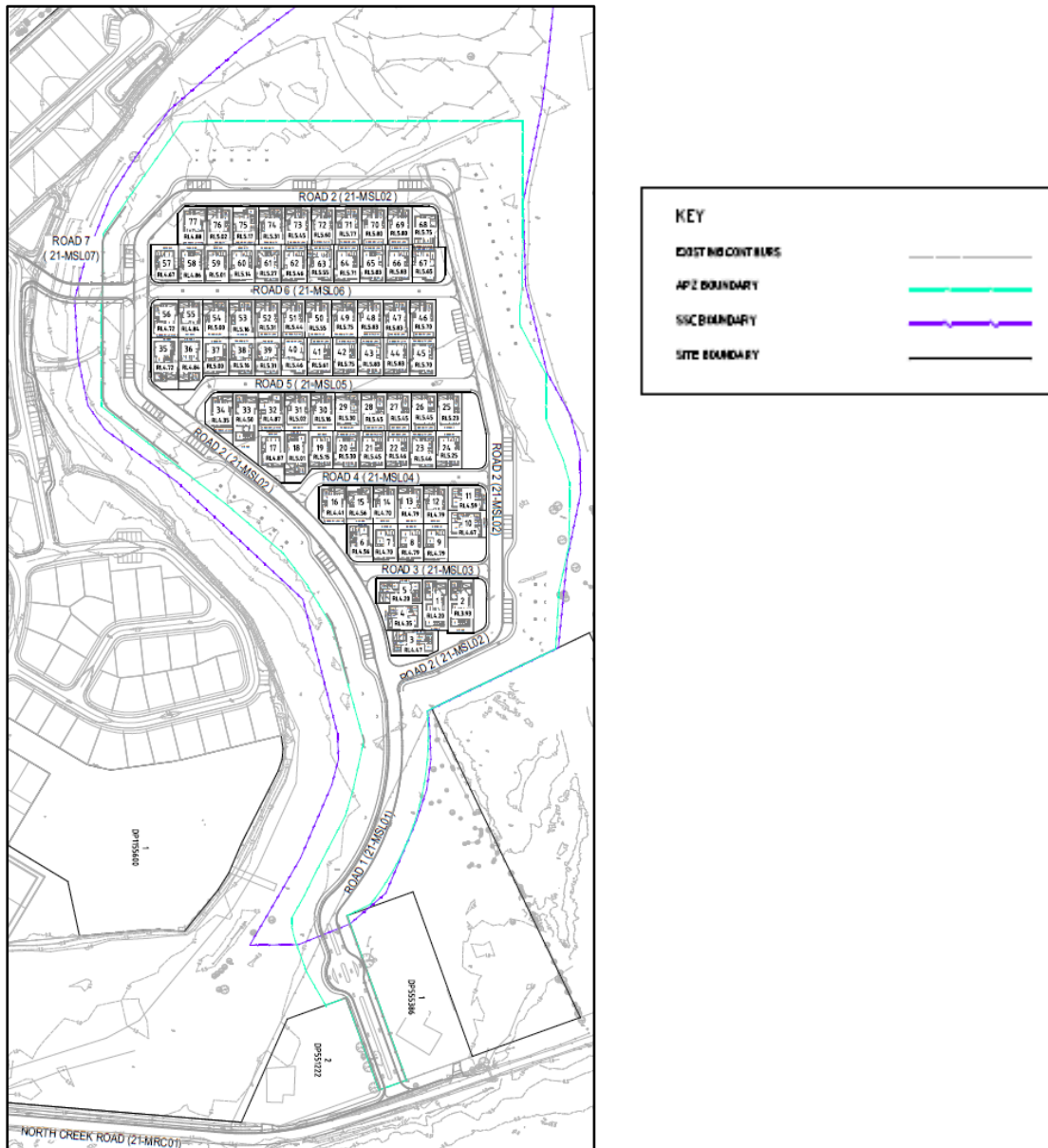


Figure 2 - Proposed development (source: SCC Application Report - Civil Drawings)

PERMISSIBILITY STATEMENT

Site Zoning

The subject land is zoned RU2 Rural Landscape under the Ballina Local Environmental Plan (LEP) 2012. Seniors Housing is not a permitted land use within the RU2 zone (Figure 3).

The provisions under clause 4 (1) of the Seniors SEPP provides that a SCC can be issued on land zoned for, or adjoining land zoned for, urban purposes but only if specific development types, including dwelling houses, are permissible on the subject land.

In order for seniors housing to be permissible on the site, a site compatibility certificate (SCC) is required under clause 24 of the Seniors Housing SEPP.

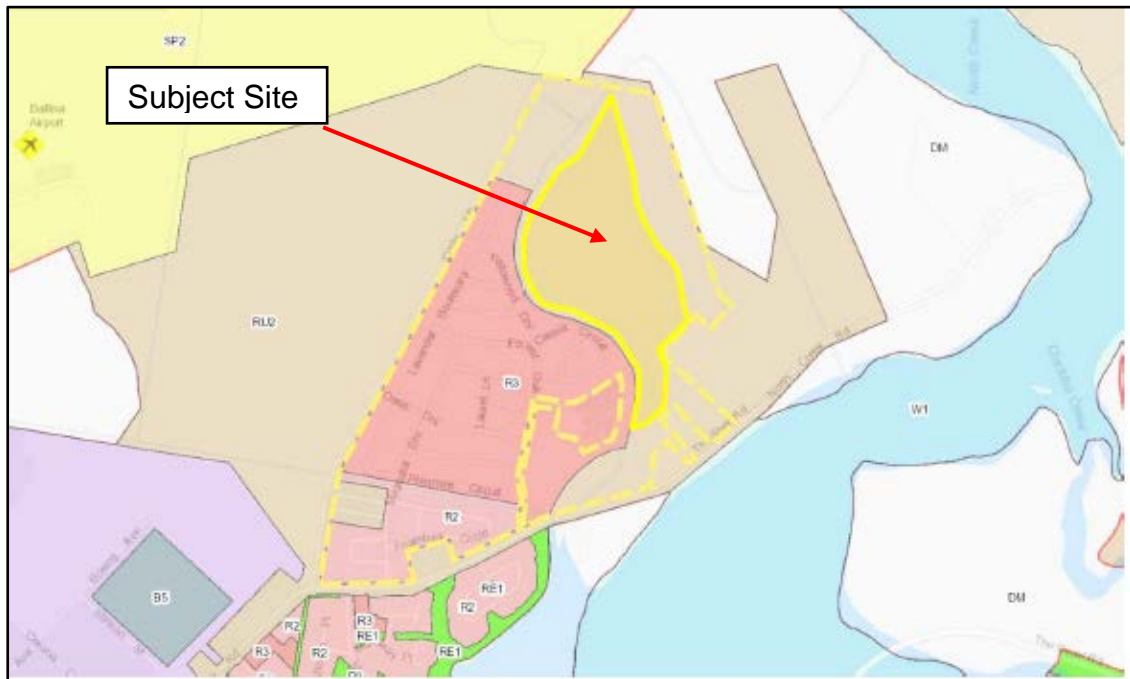


Figure 3 - Zoning of subject site (source: BLEP 2012 & SCC Report – Planning Ingenuity)

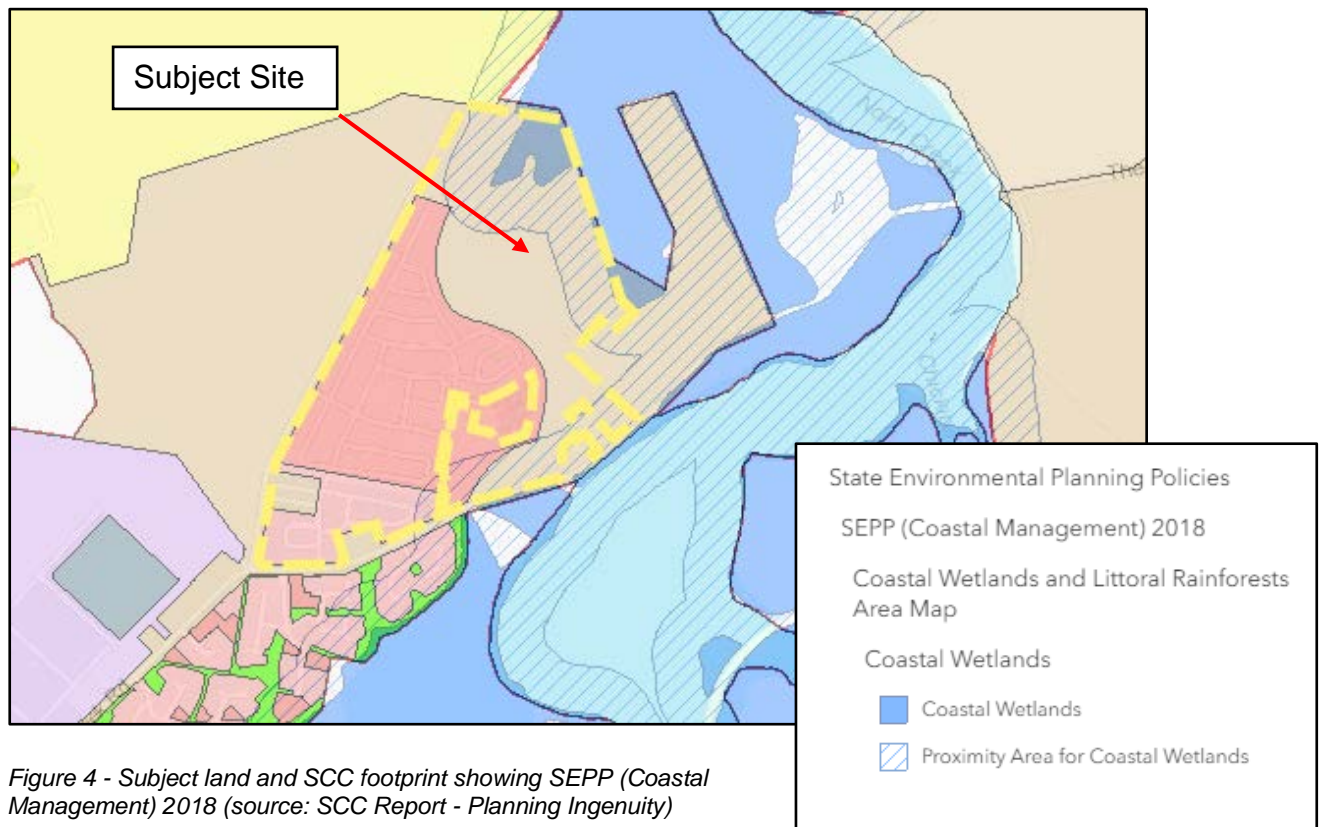
Seniors Housing SEPP

The Seniors SEPP applies to land that is zoned primarily for urban purposes or land that adjoins land zoned primarily for urban purposes, where it satisfies the additional requirements in clause 4 of the SEPP.

As dwelling houses are permissible in the RU2 zone, and the land adjoins and contains land zoned for urban purposes, clause 4(1) can be achieved. Clause 4(6) sets out environmentally sensitive land to which, despite the permissibility established under 4(1), the SEPP does not apply. Schedule 1 describes some environmentally sensitive land and includes land identified as natural wetland, or floodway or high flooding hazard as being excluded from the SEPP.

The subject site contains land mapped as 'coastal wetlands' and 'proximity area for coastal wetlands' under State Environmental Planning Policy (SEPP) (Coastal Management) 2018 (Figure 4). The SEPP does not preclude the issue of a SCC for that part of the property mapped as 'proximity area for coastal wetlands by SEPP (Coastal Management) 2018. The proposed SCC footprint as provided by the SCC application does not impact upon the mapped 'coastal wetlands area' however, Council contends that the proposed development (DA 2018/321) will require elements of the development to protrude into the Coastal proximity area. These works will include extensive earthworks (filling), Asset Protection Zones, internal roadways and carparking spaces, civil and drainage infrastructure, stormwater management devices, pathways, landscaping, removal of existing vegetation and a small amount of the proposed dwellings (and/or their yard space) at the north-eastern and south-eastern extremities.

While the site studies recognise that the northern part of this site is subject to high flood hazard, no EPI identifies this land as such and therefore the land is not excluded from the SEPP on a flood hazard basis.



PREVIOUS SITE COMPATIBILITY CERTIFICATE

A Site Compatibility Certificate (SCC) for the site formerly known as 12 Corks Lane, Ballina was issued on the 12 October 2017 (**Attachment D**). This SCC related to development of the site for the purpose of 175 self-care dwellings and communal facilities (**Attachment C**).

The SCC identified the site as being suitable for more intensive development and found that development for the purpose of seniors housing was compatible with the surrounding landuses, only if it satisfied certain requirements as specified in Schedule 2 of the SCC. These specific requirements related to:

- aircraft noise;
- drainage, flooding and site filling;
- traffic;
- bushfire protection;
- acid sulfate soil management;
- mosquito management;
- land contamination; and
- flora, fauna and tree removal (including impact on SEPP 14 wetlands (now Coastal Management SEPP) and potential compensation for the loss of a former rehabilitation area associated with DA 2004/328).

DA Background and Associated Court Proceedings

On 4 June 2018, a development application (DA 2018/321) was submitted to Council. The DA proposed the staged erection of an extension to the existing Seniors Housing Development (Palm Lake Resort) under SEPP (Housing for Seniors

or People with a Disability) 2004 comprising of 156 self-care dwellings, recreation facilities and associated car parking, infrastructure works, site filling and associated works. The application was to be determined by the Northern Regional Planning Panel, as the CIV for the development exceeded the \$30 million threshold.

After extensive requests for additional information, the applicant lodged a Class 1 Appeal in the Land and Environment Court On 24 October 2018 against the deemed refusal of DA 2018/321. Council was listed as the Respondent in the matter and responded to the Appeal in accordance with the requirements of the Land and Environment Court. The proposal was amended seven times during this appeal period, with the final amendment made in September 2019. Material changes to the proposal included: reducing the number of dwellings to 77 (and then ultimately 75); provision of vehicular access to the development via North Creek Road; removal of the wellness centre; and relocation of the access connecting the existing Palm Lake Resort to the development site. The hearing for the appeal was held in July and August 2019.

On 4 October 2019, Commissioner Dickson handed down her judgement in relation to the application, resolving that the appeal be upheld and that DA 2018/321, for the staged erection of 75 serviced self-care dwellings, car parking, road construction (including an access way off North Creek Road), earthworks, site filling, stormwater management, infrastructure works, vegetation removal, environmental protection works and other associated works under SEPP (Housing for Seniors or People with a Disability) 2004, at 120 North Creek Road (Lot 11 DP 1245510), be approved, as a deferred commencement consent, subject to conditions.

Council lodged an appeal against the Commissioner's decision under Section 56A of the Land and Environment Court Act 1979 in late October 2019. The appeal was based on six grounds relating to:

1. likely impacts of construction of road, civil and infrastructure works in the North Creek Road reserve;
2. the absence of written evidence that the development will be connected to a reticulated water system and have adequate facilities for the removal or disposal of sewage ("the provision of water and sewage services ground");
3. proposed access way from North Creek Road;
4. potential adverse effect on a priority oyster aquaculture area, as required by cl 15B of State Environmental Planning Policy 62 - Sustainable Aquaculture ("Sustainable Aquaculture SEPP") ("the impact on aquaculture ground");
5. absence of an Acid Sulfate Soils Management Plan; and
6. application the provisions of State Environmental Planning Policy 14 -Coastal Wetlands ("SEPP 14") instead of State Environmental Planning Policy (Coastal Management) 2018 ("Coastal Management SEPP").

The case was heard by Chief Judge Preston on 17 April 2020, with a decision handed down on 29 April 2020. Chief Judge Preston found that Council established five of the grounds of error on questions of law (points 1, 2, 4, 5 and 6 above). Chief Judge Preston ordered that Council's appeal be upheld, the decision and orders of Commissioner Dickson dated 4 October 2019 be set aside and the proceedings be remitted to Commissioner Dickson for determination according to Chief Judge Preston's reasons for judgment.

Notwithstanding the decision of Chief Judge Preston, the applicant (Palm Lake

Works) sought orders for delay in the proceedings on several occasions, in order to obtain a fresh Site Compatibility Certificate (as the previous certificate expired in October 2019) and also to re-open the case to provide further evidence. After consideration of arguments from Palm Lake Works and Council, Commissioner Dickson ruled in Council's favour and ordered a hearing date of 8 July 2020 to determine the proceedings.

On 30 June 2020, Council received advice from the applicant that it sought to discontinue the whole of the proceedings, rather than proceed to a hearing on 8 July 2020. The proposed discontinuance was accepted by Council staff, and a formal Notice of Discontinuance (as accepted by both parties) was lodged in the Land and Environment Court shortly after.

PROXIMITY OF SITE TO WHICH THERE IS A CURRENT SITE COMPATIBILITY CERTIFICATE, OR AN APPLICATION HAS BEEN MADE BUT NOT YET DETERMINED

There are no other sites within a one kilometre radius of the subject land for which there is a current site compatibility certificate; or an application for a site compatibility certificate has been made, but not yet determined.

A cumulative impact study pursuant to clause 25(2)(c) of the SEPP is therefore not required.

CLAUSES 24(2) AND 25(5)

The panel must not issue a certificate unless the panel:

- (a) has taken into account any written comments concerning the consistency of the proposed development with the criteria referred to in clause 25(5)(b) received from the general manager of the council within 21 days after the application for the certificate was made;
- (b) is of the opinion that:
 - (i) the site of the proposed development is suitable for more intensive development; and
 - (ii) the proposed development for the purposes of seniors housing is compatible with the surrounding environment and surrounding land uses having regard to the criteria specified in clause 25(5)(b).

CLAUSE 25(2)(c)

A cumulative impact study has not been prepared as there are no other sites within a one kilometre radius of the subject land for which there is a current SCC or an application for an SCC that has been made but not determined.

COUNCIL COMMENTS

Council provided comments to the Department on 8 September 2020 (**Attachment D**). These comments summarised below, form the basis of Council's objection to the issue of a Site Compatibility Certificate for the proposal on the subject site. It is Council's contention that the site is not compatible for future intensified urban uses.

1. Submitted Plans

The area of land subject to this SCC application is identical to that in the previously issued SCC (2017) despite a substantial change in the proposed development. Council is concerned that the 2020 SCC application has not been amended to show that the development footprint:

- extends further south to connect to North Creek Road;
- extends further west into the western creekline (with civil works proposed in that area) with a connecting roadway/bridge over the creekline into the existing Palm Lake Resort; and
- is not to extend into the coastal wetland.

The SCC application area should, at least, be defined by the outer extremity of all works to be undertaken, which includes roads, earthworks, Asset Protection Zones, infrastructure servicing and area of vegetation removal. If this is not undertaken and the SCC application is granted approval, then questions will arise as part of the assessment of any future development application as to the consistency of the proposal with the granted SCC area and permissibility issues. This was an area of contention raised by Council and its engaged experts as part of the court appeal for DA 2018/321.

2. Resolution of issues with DA 2018/321

Council continues to contend that a significant range of issues remain with the proposal. Evidence was not provided by the applicant that allowed Council's experts to compromise or reach agreement in relation to the contentions raised by Council as part of the court proceedings. Many of these issues were not able to be appealed through the section 56A appeal, given they are merit based assessment issues.

3. Bushfire Impacts

The subject land is mapped as bushfire prone. In this regard, any future development will be subject to an assessment under the provisions of Planning for Bushfire Protection (PBP) 2019. It is noted that as part of DA 2018/321 and the appeal proceedings the application was assessed under Planning for Bushfire Protection (PBP) 2006. Additionally, the NSW RFS did not issue General Terms of Approval/Bush Fire Safety Authority and the Commissioner dealt with this in her decision on the proposal.

In addressing compliance with PBP 2019, any future application will need to identify the works to be carried out to the land, in order to provide compliant Asset Protection Zones (APZs) (proposed landscaping works and any removal of vegetation), compliant access (grades, widths, passing bays etc.), compliant building construction (BAL), compliant water supply and utilities (access to Council's water supply and hydrant coverage) and emergency management. In the case of the proposal, given extensive earthworks (filling) are to be undertaken to achieve minimum floor levels, compliant grades and slopes for access roads and APZs will also need to be addressed. A report addressing these matters will need to be prepared by a suitably qualified Bushfire Planning and Design practitioner as part of any future application. The bushfire implications as a result of the proposal are linked in and tied to other disciplines. Additionally, the report needs to address bushfire management for the existing Palm Lake Resort, which was not sufficiently dealt with as part of the proceedings for DA 2018/321.

Related issues of concern include:

- a. The level of vegetation that will need to be removed to facilitate a compliant APZ. The existing vegetation should be classified as a constraint, particularly in those areas which have been noted as an Endangered Ecological Community, Threatened Plant Community and/or within a mapped coastal wetland proximity area;
- b. NSW RFS (in their request for information relating to the development proposed as part of DA 2018/321) raised the issue regarding the relationship and conflict between the proposed development (including its proposed Vegetation Management Plan - VMP) and the existing Palm Lake Resort development (as approved via DA 2004/328 and Creek and Vegetation Management Plan – CVMP)); and
- c. Existing dwellings in the eastern section of the Palm Lake Resort are within close proximity to the western creekline, which divides the existing resort from the site of the proposed SCC area. The western creekline has not been maintained by the developer for around 10 or so years, despite the requirements of the approved CVPM. This has resulted in natural regeneration of the area and this western creekline now comprises a thickly vegetated riparian corridor which has the potential to create a bushfire risk to the existing Palm Lake Resort.

4. Mosquito Impacts

The proposed development site is located on the coastal plains and lowlands in an area of high risk, close to known and suspected mosquito breeding sites as identified on Council's Mosquito Management Maps (Figure 5). These areas are much more likely to be affected by significant mosquito outbreaks, depending on particular events and climatic circumstances. The lack of maintenance of the western creekline has resulted in the creation of an additional breeding and harbourage area. It is also noted that existing stormwater management devices on the existing Palm Lake Resort site have not been maintained and do not drain as required, resulting in mosquito breeding areas.

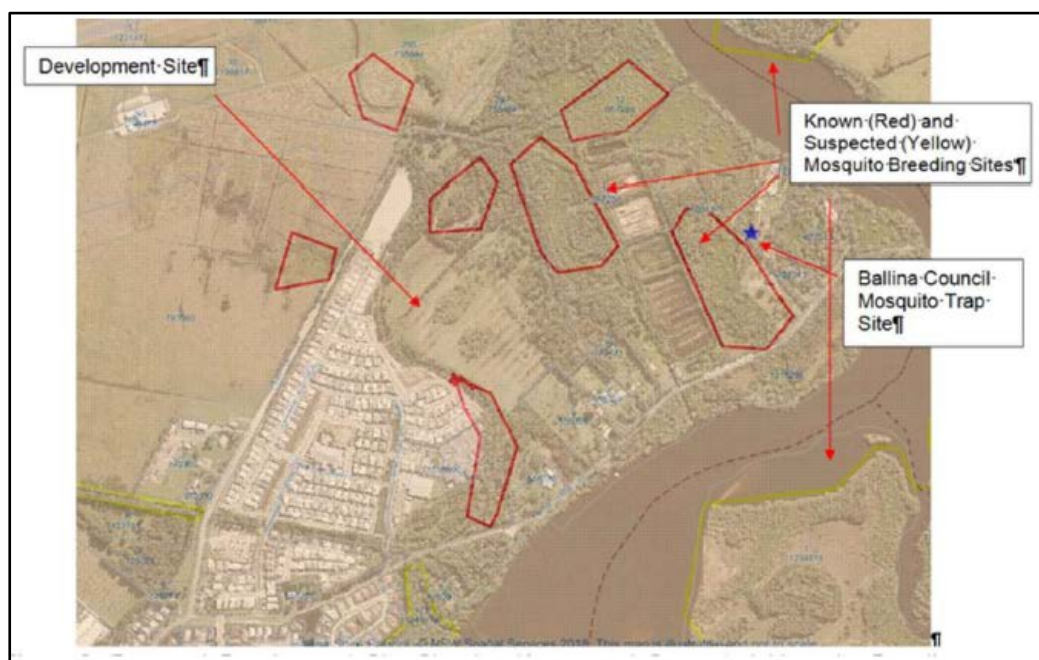


Figure 5 - Mosquito breeding areas (source: Ballina Shire Council comments and DCP 2012)

Council's assessment of the proposal as part of DA 2018/321 was that mosquito risk could not be adequately managed for future residents of a development on the SCC Application site as:

- The *Verrallina funerea* mosquito breeding in coastal protection habitat east of the development, will not be adequately managed by the proposed mosquito buffer zone and Asset Protection Zone; and
- The open space Mosquito Buffer would not be effective at managing *Aedes vigilax* (salt marsh Mosquito). The *Aedes vigilax* is a seasonal nuisance biting and public health pest over most of the coastal regions of Australia where tidal saltmarsh exists, and it affects communities over the wider Ballina region in general including this development.

Any future application will need to provide credible sampling results in relation to trapping of mosquito populations to ensure that there is a reliable measure of current and future mosquito activity. This was not undertaken as part of the proceedings for DA 2018/321.

5. Stormwater, impacts on Hydrology and Groundwater

The SCC application documentation does not address the issues of stormwater, impacts on hydrology and groundwater except to say that "*Water quality and associated downstream impacts of development were dealt with at length by the hydraulic and ecological experts in relation to the amended DA before the Court*".

The comments made by the applicant in the SCC application in relation to the successful appeal can only apply to the "impact on aquaculture ground" as determined by Chief Judge Preston. There were no hydrological (merit) grounds contended in the s56A appeal.

The SCC application does not specifically address stormwater management or groundwater impacts however, based on the information provided as part of DA 2018/321, Council considers that the proposal will have detrimental impacts on the existing groundwater regime of the site and consequently the surrounding environment, particularly as the subject site is surrounded by a sensitive environment, including land mapped on the biodiversity values map, coastal wetlands, EEC vegetation, key fish habitat, North Creek (including tributaries - namely the western creekline) and priority oyster growing areas.

Council believes that in the absence of more detailed information, there cannot be a conclusive assessment as to ground water levels and whether there will be adverse impacts on Endangered Ecological Communities and groundwater dependent ecosystems that are located within and/or adjoin the subject site.

6. Satisfaction with provisions of applicable SEPPs

- a. SEPP Housing for Seniors and People with a Disability 2004 (Seniors Housing SEPP) specifically in relation to:
 - Services - Council raises questions about the ability to service the site in terms of water and sewer infrastructure, given that detailed design has not occurred and there is no clarity in terms of impacts on the environment (including Aboriginal heritage, hydrology and ecology) within the North Creek Road reserve. The impacts (and assessment of those impacts) of the proposed servicing therefore needs to be addressed and cannot be

- dealt with under a separate Local Government Act application.
 - Location and access to facilities - The comments made in the SCC application documentation are largely agreed with, in that as part of DA 2018/321 however further detail would be required in regard to several operational aspects.
 - Solar access
 - Bushfire Management.
- b. SEPP Primary Production and Rural Development 2019 (PPRD SEPP) - Priority Oyster Aquaculture Areas.

Land mapped as priority oyster aquaculture areas and protected under State Environmental Planning Policy (Primary Production and Rural Development) 2019 (PPRD SEPP) are located within North Creek in close proximity to the site (Figure 6). The proposal within the SCC application also involves a stormwater management regime for the development that directs discharge into North Creek, at which is close to a Priority Oyster Aquaculture Area.

Council is uncertain as to whether the information provided in the SCC application can demonstrate that a proposed seniors housing development, of the scale shown, would be compatible with the surrounding environment, including receiving waters of coastal wetlands and priority oyster growing areas.

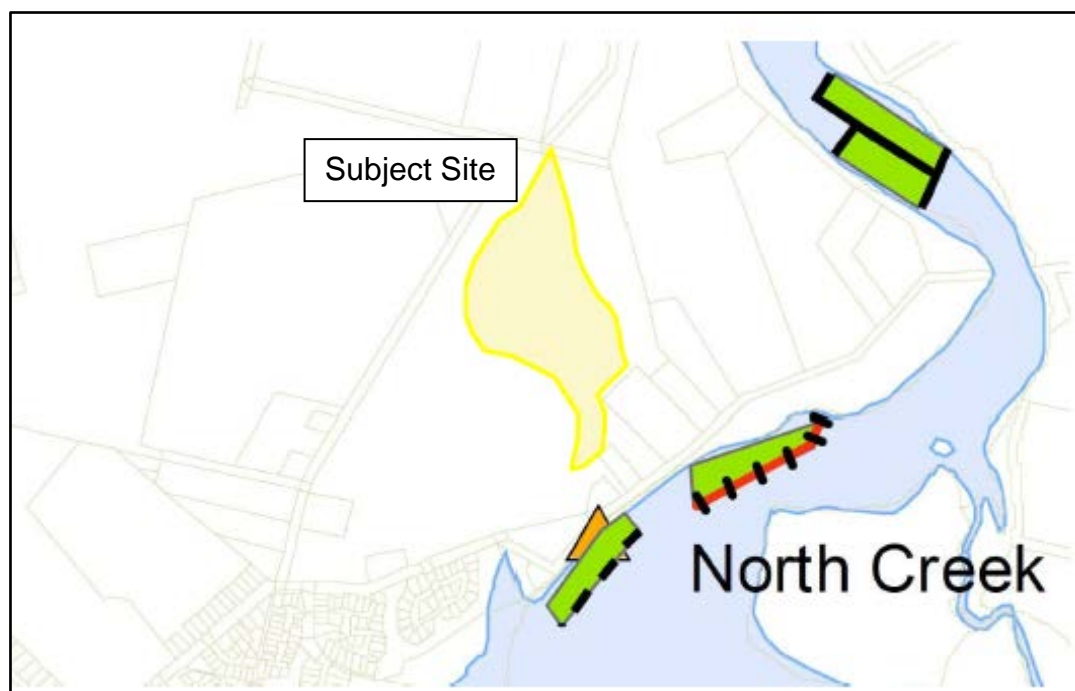


Figure 6 - Priority Oyster aquaculture area (source: SCC Application Report - Planning Ingenuity)

The NSW DPI Fisheries provided advice in relation to DA 2018/321 and identified adverse effects that the development may have on priority oyster aquaculture areas (water pollution from the discharge of urban stormwater) and that the development as proposed, is incompatible with existing priority oyster aquaculture areas.

c. Coastal Management SEPP 2018

It is noted that the footprint of the development, as shown in the SCC Application documentation is not located within the mapped Coastal Wetlands area, however the development is partially located within the coastal wetland proximity area. It is noted

that the elements of the development that protrude into the proximity area include extensive earthworks (filling), Asset Protection Zones, internal road ways and car parking spaces, civil and drainage infrastructure, stormwater management devices, pathways, landscaping, removal of existing vegetation and a small amount of the proposed dwellings (and/or their yard space) at the north-eastern and south-eastern extremities.

Council believes that a detailed assessment has not been undertaken by the applicant to date as to the impacts on the coastal wetland which would result from the road upgrades to North Creek Road. It therefore cannot be determined that access can be provided to the site for the purpose of the proposal and that there has been due consideration for the relevant provisions of the Coastal Management SEPP 2018 and Coastal Management Act 2016.

Council also believes that the proposal has not demonstrated that it will not cause an adverse impact on:

- 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);
- d. marine vegetation, native vegetation and fauna and their habitats; and
- e. Aboriginal cultural heritage, practices and places.

It must be noted that the Seniors Housing SEPP does not preclude the issue of a site compatibility certificate on that part of the subject land mapped as “proximity area for coastal wetlands”.

7. Ecology

On the basis of the information provided as part of the SCC application, (and as was the case with the proceedings for DA 2018/321), Council continues to contend that the proposal will have unacceptable impacts on the terrestrial and aquatic environments. The legislation that is relevant to this is the Biodiversity Conservation Act 2016 (animals and plants) and the Fisheries Management Act 1994 (fish and marine vegetation).

In regard to potential impacts on the ecology of the site and related information submitted with the SCC application, Council has highlighted the following issues:

- a. The Biodiversity Development Assessment Report (BDAR) – is not sufficient to address all impacts of the proposal, particularly in regard to the western creekline, increased stormwater discharge on downstream TEC's and coastal wetlands and presence of Groundwater Dependent Ecosystems;
- b. The SCC application includes comments that the proposed development will predominantly avoid TEC vegetation, and will not remove any areas of coastal wetlands. This statement cannot be verified as correct, as detailed design has not been undertaken of the proposed works to be carried out to North Creek Road and within the road reserve;

- c. The SCC application details that the proposal will involve the retention and restoration of riparian habitats within the North Creek tributary under a Vegetation Management Plan (VMP). However, the previous material lodged as part of DA 2018/321 did not address the current state of the western creekline, its hydrology and ecology;
- d. There has not been an assessment of the aquatic functioning of the western creekline or the aquatic species present, identification of ecological sensitivities and how the development may influence aquatic ecology;
- e. There has not been a detailed assessment undertaken of the proposal with respect to the Guidelines for controlled activities on waterfront land and the required width of riparian buffers for the western creekline; and
- f. There has not been sufficient assessment undertaken by the applicant as to the impacts of the development on Key Fish Habitats.

8. Construction related Issues

- a. Geotechnical - Insufficient information to determine fill levels, temporary filling, extent of earthworks etc. This has a flow on effect regarding potential daily truck movements and related impact on the surrounding road system and neighbouring dwellings.
- b. Traffic associated with earthworks - The SCC application has not referred to any construction impacts as a result of the earthworks that will be required to be carried out for the proposal. These impacts will result primarily from the additional heavy vehicle traffic hauling the substantial amounts of fill onto and off the site.

The truck movements associated with the importation of fill (and temporary filling/surcharge loading) will have a significant impact on the amenity and enjoyment of the adjoining properties whilst the construction of the road/driveway access into the subject site and the expected road works within the North Creek road reserve to facilitate the proposal will result in tree impacts and/or tree removal on adjoining properties. Noise and dust from truck movements is also considered to be a potential issue that hasn't been sufficiently assessed.

- c. Access and Roads
 - Existing access – potential problems with access to the site from existing BUPA aged care;
 - Intersection design – greater detail needed regarding the upgrading of North Creek Road regarding speed, sight distance, land acquisition etc;
 - Future upgrade to North Creek Road – to cater for an increase in traffic volumes. Concerns are also around potential impacts on coastal wetlands as well as of any impacts to the mangroves on the southern side of North Creek road which may have implications for hydrology, salinity regime and ecology.

9. Flooding

The subject site is located within a Flood Planning Area under BLEP 2012. It is

acknowledged that the proposal seeks to fill the land in order to provide compliance with Council's minimum fill levels and so provide flood protection to the proposed future dwellings. It is anticipated that this will result in offsite impacts to surrounding properties. The proposal will additionally result in a loss of floodplain storage.

The SCC application indicates that a "shelter in place" approach, as included in a Flood Evacuation and Emergency Management Plan, is an acceptable emergency response approach in the circumstances and that this approach was accepted by the Court in the proceedings for DA 2018/321. However, this document was not prepared as part of the proceedings, with conditions imposed by the Commissioner requiring its preparation prior to the issue of the first Construction Certificate for the development. Council did not (and will not) support the proposed "shelter in place" approach. As part of the proceedings for DA 2018/321, Council's opposition was founded partly on the basis that it was unlikely that potable water and flushing toilets would be available to residents that shelter in place. There was no proposal to include a storage tank and its associated infrastructure to reach each dwelling in the documentation or plans. No explanation was provided as to where on the site that back-up power supply and water supply would be located. As part of the SCC application documentation and plans, there is no indication that these facilities would be provided as part of the proposal and so the issues remain for Council in its consideration of the SCC application.

10. Strategic Planning

- a. The Ballina Growth Management Strategy, adopted on 26 July 2012, includes the subject site as a Strategic Urban Growth Area however the Strategy's executive summary states that *'strategic growth areas will be subject to detailed consideration through the statutory rezoning process prior to the land being available for development. Such considerations will include the analysis of environmental constraints to development, and the capacity of urban and community infrastructure.*
- b. The North Coast Regional Plan 2036 identifies the subject site on the "Urban growth area map for Ballina Local Government Area" and as an "Investigation Area - Urban Land" however Figure 13 of the Plan includes a note that *"Land that is subject to significant natural hazards and/or environmental constraints will be excluded from development"*.
- c. The Ballina LEP 2012 zones the subject site is located in the RU2 Rural Landscape. The proposed use is not a permissible use in the zone and it is acknowledged that the SCC is effectively a mechanism which permits a use that is not permitted. Council however considers that the proposal in the SCC application does not satisfy the objectives of the RU2 zone and fails to maintain the rural landscape character of the land as:
 - the subject site is not a transition site, as the current zoning has intentionally sought to establish a demarcation of lands, distinct from the urban area;
 - the proposal would result in land use conflict within the zone, and
 - the proposal (and supporting infrastructure) encroaches into mapped coastal wetlands and mapped proximity to coastal wetland areas.

11. Aboriginal Heritage

A midden has been identified as being located in the proximity of the North Creek Road upgrade works. The proposal within the SCC application has the potential to impact the midden and these impacts would not be able to be assessed in the absence of detailed information regarding the works in the North Creek Road reserve, including road works, installation of infrastructure servicing and pedestrian pathways.

12. Acid Sulfate Soils

The land is identified as containing Class 2 Acid Sulfate Soils (ASS) on the Acid Sulfate Soils Map attached to the BLEP 2012.

Council cannot be certain that there is the ability to provide an appropriate and compliant Acid Sulfate Soils Management Plan (ASSMP) for the proposal, particularly in relation to the western creekline. The mobilisation of ASS from the development site and monosulfidic black ooze (MBO) from the western creekline poses risks to water quality in North Creek, and therefore key fish habitats, coastal wetlands, EEC, priority oyster growing areas.

13. Earthworks

Clause 7.2 of the BLEP 2012 is relevant in the assessment of a future development application for the proposal.

It was considered that the proposal (DA 2018/321) did not appropriately respond to the site's constraints. This continues to be the case in relation to the proposal within the SCC application.

14. Flood Planning

Clause 7.3 of BLEP 2012 is relevant in the assessment of a future development application for the proposal.

Council has concluded that the site is not suited to intense urban development. Based on the information provided in the proceedings for DA 2018/321 and the information provided in the SCC application, Council considers that the provisions of Clause 7.3 will not be able to be satisfied.

15. Servicing

Clause 7.7 of the BLEP 2012 is relevant in the assessment of a future development application for the proposal.

As part of the proceedings for DA 2018/321, Council considered that the applicant could not demonstrate compliance with 7.7 (2) (a), (c), (d) or (e). There remains significant reservations that the essential services cannot be provided for a future proposal, on account of the impacts of those works.

16. Conflicts and competing interests

- a. Upgrade to North Creek Road and works in the road reserve - documentation provided by the applicant in the SCC application identifies the need to upgrade North Creek Road. The degree of impact from this

upgrade (particularly in the road reserve) covers a multitude of areas, such as:

- Encroachment to coastal wetlands;
- Impact on land within proximity to coastal wetlands area;
- Impacts on ecological significant vegetation and vegetation generally (trees);
- Impacts on Aboriginal archaeology;
- Impacts on amenity of adjoining properties;
- Impacts on key fish habitat and priority oyster aquaculture areas; and
- Hydrological and stormwater management.

17. Vegetation Management Plan

The documentation and plans lodged by the applicant as part of the proceedings for DA 2018/321 contained a series of inconsistencies, particularly between bushfire, mosquito, riparian and vegetation management outcomes. This is also the case for the information provided as part of the SCC application. There are also inconsistencies in the Vegetation Management Plan and the appropriate offsets for the loss of vegetation.

Conclusion to Council comments

Council maintains the position in relation to the current SCC application that the applicant has not sufficiently addressed the concerns and issues raised by Council in the two court proceedings within the SCC application material, such that Council would change its position in relation to any future development of the subject site. Council also notes that the proposal shown in the SCC application is the same as that which was subject to proceedings in the Land and Environment Court as part of DA 2018/321.

Council considers the site to be fundamentally unsuitable for the proposed development in regard to the following:

- a. The encroachment of any development into the coastal wetland and the proximity to coastal wetland area and removal of vegetation from areas mapped as proximity to coastal wetlands both within the site and as a result of the construction of the road/driveway access from North Creek Road to the site;
- b. Inconsistencies between bushfire management and vegetation outcomes;
- c. The subject site is identified as Flood Planning Land on the Flood Planning Map under the BLEP 2012. The resultant land modification as a result of the amount of fill required;
- d. The subject site is a known mosquito hazard area and is mapped on the Mosquito Management Map under Ballina DCP 2012;
- e. The subject site is mapped on the Ballina Bushfire Prone Land Map as Category 1 Bushfire Prone Vegetation;
- f. The subject site is mapped as containing Class 2 Acid Sulfate Soils on the Acid Sulfate Soils Map under the BLEP 2012;
- g. Options for access to the site are available (through the existing facility at connections from Cork Lane or North Creek Road, a new point of access off North Creek Road at two locations and a new point of access off Cork Lane).

However, the proposed point of access is between two small rural residential properties and will significantly alter the amenity currently enjoyed by property owners at 174 and 186 North Creek Road;

- h. At particular times of bushfire and flood events, residents will be required to shelter in place with limited access to meal services and medical services, as these facilities are not on site but provided by a third-party contractor; and
- i. The degree of modification required to the site to accommodate the development, the alteration of proximity areas to wetlands and riparian areas, the amenity impact in terms of change to rural outlook, traffic and acoustic mitigation measures.

The matters raised by Council are considered below in the body of this report.

SUITABILITY FOR MORE INTENSIVE DEVELOPMENT

The panel must not issue a certificate unless the panel is of the opinion that the site of the proposed development is suitable for more intensive development (clause 24(2)(a)).

1. The site of the proposed development is suitable for more intensive development (clause 24(2)(a))

Lot 11, DP 1245510 has an area of approximately 42ha and is located approximately 3km from Ballina CBD. The portion of Lot 11, DP 11245510 subject to the proposed development comprises an area of approximately 9ha. The site is generally flat and low-lying and contains some tracts of vegetation, some of which forms part of a coastal wetland under the provisions of State Environmental Planning Policy (SEPP) (Coastal Management) 2018 (Figure 4).

Whilst the proposed development footprint as submitted with the SCC application appears to be largely clear of vegetation, Council contends that several aspects of the proposed development will require protrusion into the coastal proximity area and potentially the coastal wetland itself.

Landuse in the general locality of the subject lot includes the existing Palm Lake Resort retirement village consisting of an existing 286 homes, commercial and industrial landuse, large lot rural and residential zoned land and a full range of retail, commercial, recreational, health, welfare and educational services and facilities at Ballina town centre. The site is also located close to major transport infrastructure such as the Ballina Byron Gateway Airport. Whilst the proximity to and from such services make it suitable for more intensive development, numerous additional factors must also be taken into consideration.

This site is identified as being within the Urban Growth Area Boundary for Ballina in the North Coast Regional Plan 2036, indicating that it may be considered for urban development. However, Council has drawn attention to the note attached to Figure 13 of the Regional Plan, which states that 'Land that is subject to significant natural hazards and/or environmental constraints will be excluded from development'. Council consider this is the case for this site.

Ballina Shire's Local Growth Management Strategy (LGMS) 2013 identifies the land as a Strategic Urban Growth Area. This is land which Council considers warrants

further detailed investigation to determine its urban suitability. Council has however argued that the Executive Summary of this Strategy requires that consideration of areas identified for further urban growth take into account an analysis of environmental constraints to development and the capacity of urban and community infrastructure.

A high demand exists for seniors housing accommodation within the Ballina LGA and wider region. The North Coast Regional Plan identifies that within the next 20 years, almost one third of residents in the region will be over 65 years of age. The Ballina Local Strategic Planning Statement also identifies that changing household types and population aging will generate the need for more seniors housing than is currently available with the Ballina LGA. A short term action of the LSPS is the preparation of a housing strategy as part of the review of the Ballina LGMS.

As discussed further in this report, it is considered that the current SCC application does not provide sufficient detail or evidence to confirm that the site is suitable for the proposed development, particularly in regard to clearing of native and ecologically significant vegetation; potential impacts on land within proximity to coastal wetlands area; Aboriginal archaeology; key fish habitat and priority oyster aquaculture areas; hydrological and stormwater management; amenity of adjoining properties; and traffic and intersection design. While some constraints could be satisfactorily addressed through appropriate design responses at the development application stage should an SCC be issued, it is considered that any development of the site for more intensive purposes would be premature until sufficient information that addresses such issues is available.

COMPATIBILITY WITH THE SURROUNDING ENVIRONMENT AND LAND USES

The panel must not issue a certificate unless the panel is of the opinion that the proposed development for the purposes of seniors housing is compatible with the surrounding environment and surrounding land uses having regard to the following criteria (clause 25(5)(b)) and clause 24(2)(b)):

The natural environment (including known significant environmental values, resources or hazards) and the existing and approved uses of land in the vicinity of the proposed development (clause 25(5)(b)(i))

Vegetation/Natural Environment

The subject site has a total area of approximately 42 ha and adjoins vacant rural land and the Ballina Airport to the west and north, residential properties to the south and rural residential properties to the east. The site is generally flat and low-lying and contains some tracts of vegetation, some of which is known to contain Threatened Ecological Communities (TECs) and part of a coastal wetland under the provisions of State Environmental Planning Policy (SEPP) (Coastal Management) 2018. The proposed development footprint is approximately 9ha in area and is largely clear of native vegetation (Figure 7). The road upgrade works within the North Creek Road reserve as necessitated by the proposed development have however, the potential to impact on:

- TEC vegetation;
- Aboriginal archaeology;
- salt marshes;
- hydrology of the wetland system;
- vegetation on public and private land; and

- fish habitats.

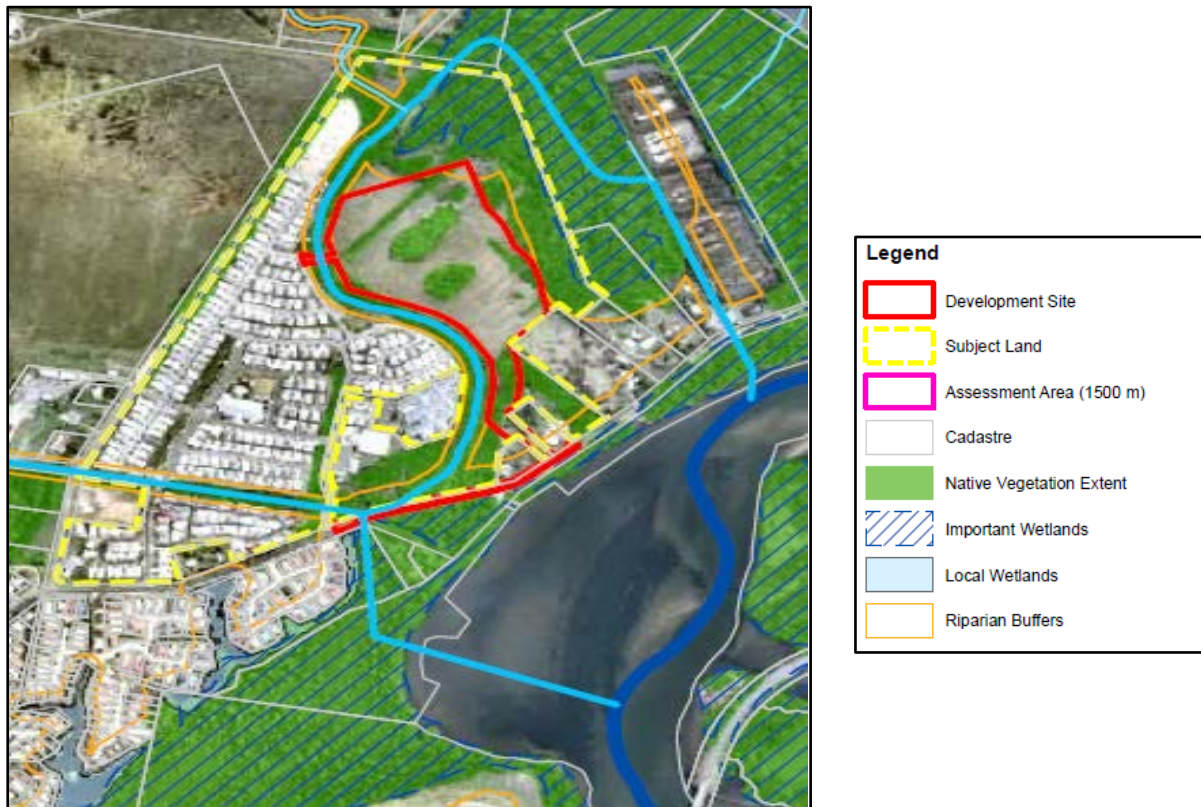


Figure 7 - Native Vegetation on site (source: BDAR June 2019 - Cumberland Ecology)

Historically the subject land was used for agricultural purposes, most likely for cattle grazing and, and has been vacant for more than 15 years. Management by the current owners has involved continued slashing in parts of the site to maintain the Asset Protection Zone (APZ) to the existing development to the west.

It is anticipated that the development will result in the loss of approximately 2.23ha of Swamp Oak Floodplain Forest and 0.05ha Swamp Sclerophyll Forest (Figures 8 & 9). Whilst the SCC application states that the proposed development will predominantly avoid TEC vegetation and will not remove any areas of coastal wetlands, Council have argued this not to be the case. As mentioned, the SCC application does not address the road access to the SCC development footprint which is outside the proposed SCC footprint. The road/driveway access is located in the coastal wetland proximity area with a linkage to the road reserve of North Creek Road. According to Council, portions of North Creek Road subject to these upgrades as required by the proposed development are located within the coastal wetland itself. The SCC application states that these road upgrades will be subject to a separate Roads Act approval. However, Commissioner CJ Preston (in his findings regarding Council's appeal to the decision made by Commissioner Dickson) found that the road access was 'a fundamental element of the development'. The likely impacts of these road works were however not considered by Commissioner Preston and as such, a detailed assessment as to the impacts on the coastal wetland from the road upgrades has never been undertaken.

The SCC application states that the Project will include as a design component the retention of the remaining native vegetation and habitat within the subject land, where compliant with the approval for the existing Palm Lake Resort (which includes provisions for APZs to that development). The retained vegetation will be managed

under a fully funded (for a 5-year duration) Vegetation Management Plan (VMP – **Attachment A10**). The VMP will focus on restoring riparian habitats and buffering the Coastal Wetlands, while complying with the bushfire protection and mosquito management requirements of the existing development.

Council has raised an issue of inconsistencies between the plans and documentation lodged as part of the court proceedings for DA 2018/321; the information detailed in the SCC application; and between the bushfire, mosquito, riparian and vegetation management outcomes detailed in the VMP. These issues arise in part as the Creek and Vegetation Management Plan (CVMP) as approved for DA 2004/328 (the existing Palm Lake Works Resort) required rehabilitation of the site, the subject of the 2020 SCC application. The previously issued SCC (2017) stated that the site was suitable for more intensive development subject to satisfaction of numerous requirements, one being 'flora, fauna and tree removal (including impact on SEPP 14 wetlands and the potential compensation for the loss of a former rehabilitation area associated with DA 2004/328). The proposed development will result in the loss of vegetation required to be retained and managed as part of the CVMP including two large tracts in the centre of the site and the management of riparian areas for bushfire purposes.

In regard to the assessment of the proposed development on vegetation, a Biodiversity Assessment Report (BDAR) was undertaken to support DA 2018/321 and was subsequently amended in response to issues raised by Council with the 2017 SCC. This has resulted in amended development plans, a reduction in the development footprint to fall within the approved SCC boundary and also road upgrade plans for North Creek Road (located outside of the subject land- although considered by Commissioner Preston and Council to be an integral part of the proposed development). Council is concerned that as only indicative plans were provided as part of the appeal for DA 2018/321, with no detailed design carried out for the road upgrade, the BDAR does not sufficiently address all impacts of the proposal (addressed earlier).

The SCC application states that no area of SEPP Coastal Wetland will be removed by the project. There is however potential for some indirect impacts to occur to SEPP Coastal Wetlands outside the development site through erosion and sedimentation caused by construction works. These potential impacts could potentially be avoided through the implementation of appropriate erosion and sedimentation control measures and can be adequately addressed at the development application stage.

However, the SEPP Coastal Wetlands that adjoin North Creek Road are located very close to the proposed construction area for the proposed road widening, and there is the potential for indirect impacts in this location, and downstream aquatic habitats, including Priority Oyster Aquaculture Areas. Despite the SCC application stating that the road upgrade works are minor in nature, and that with the implementation of appropriate mitigation measures to protect water quality in this sensitive environment, no reduction in water quality will be experienced, Council contends that the potential for impacts outside of the development footprint could be far reaching and that the SCC application does not address issues of stormwater, impacts on hydrology and groundwater. In the absence of such information, Council is extremely concerned about the potential impact on EEC's and groundwater dependant ecosystems as well as terrestrial and aquatic environments that are located within or adjoining the subject site.

If the SCC were to be issued, the DA would need to resolve the competing issue the CVMP and the VMP as well as providing an updated BDAR and ecological assessment that considers the impacts of road works within the North Creek Road Reserve. Due to the concerns raised by Council and the lack of information specific to the impact on existing vegetation, particularly the offset areas as part of DA 2004/328, vegetation along the western creekline (required for an APZ) and road works with the road, it is not considered possible to determine the extent, impact or appropriateness of development of the site in regard to proposed vegetation removal.

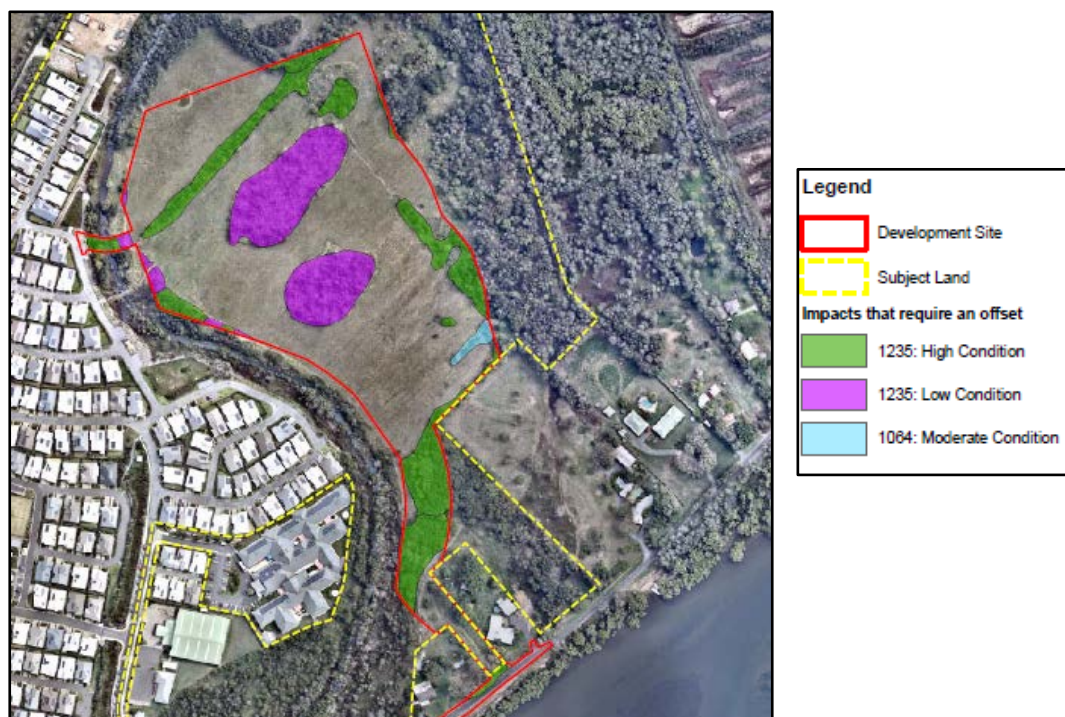


Figure 8 - Location of impacts that require an offset (BDAR - June 2019 Cumberland Ecology)



Figure 9 - Threatened Ecological Communities (BDAR June 2019 - Cumberland Ecology)

Flooding, water quality impacts, drainage and filling

The land is mapped as being within the flood planning area by Ballina LEP 2012 similar to the majority of the existing Ballina urban area (Figure 10). Ballina Development Control Plan also identifies the site as having a medium to high flood risk. High hazard flooding is particularly prevalent in the north of the site. The SCC application states that the proposed development will require filling of the site to raise the development footprint above the 2.3m AHD to a typical finished earthworks level of 3.2m AHD and provide enough fall and cover for drainage and services, however the extent of filling and earthworks required to meet Council's minimum fill levels has not been detailed.

In regard to filling of the site, Council has determined from the plans that there will be a height difference of up to nearly 5m from the outer extremities of the development to the finished floor levels of the dwellings. Details provided as part of the appeal for DA 2018/321 showed that some areas of the site would be subject to filling works of over 4m on top of existing ground level with the majority of the site being subject to 2 to 4m of fill over the existing ground level.

Cumulative impacts of the filling of the site were predicted as part of the court proceedings for DA 2018/321. It was found that impacts external to the site were predicted up to 50mm flood level increases. This potential impact combined with the cumulative impact that surrounding development has already had on flooding in the area is of concern and has not been fully addressed by the application.

Additional flooding issues as raised by Council include the loss of floodplain storage and the inclusion of a 'shelter in place' approach (noting that the local egress route would be flooded and impassable for about 40 hours and in times of a flash flood, about 12 hours). Council has stated that they will not support the 'shelter in place' approach and that a flood management plan is considered a threshold issue that must be dealt with as part of any DA particularly given that the applicant still does not have a flood evacuation strategy in place for the existing Palm Lakes Resort as required by the conditions of DA 2004/328.

The SCC application has referenced a Hydraulic Impact Assessment Report that was prepared for DA 2018/321 and amended with additional specific assessment of the site as required by the court proceedings. In particular, the predicted post development flood behaviour was modelled to determine off-site hydraulic impacts. The modelling found minor hydraulic impacts external to the site within Corks Lane and North Creek Road and within several private residential properties along North Creek Road to the south and east of the site.

If the SCC is approved, a flood management plan including a flood evacuation strategy for both the existing and proposed developments would be required at DA stage. Given that Council will not support a 'shelter in place' approach, the logistics of managing an emergency event given the age and mobility of the residents and the lack of information in regards to modification of the site and how this will impact on onsite and offsite hydrology, the application for an SCC for the site cannot be supported.



Figure 10 - Flood Planning Area (source: Ballina LEP 2012 Map Sheet FLD_006 & SCC Report – Planning Ingenuity)

Bushfire Prone Land

The site is identified as being bushfire prone (Figure 11). The SCC application, in relation to the bushfire risk of the site, states that:

- the amended DA, the subject of the court hearing was found to be consistent with Planning for Bushfire Protection 2006
- management of bushfire risk is satisfactory because the proposed development has an appropriate APZ, the internal road system is compliant and appropriate (multiple) egress points were provided.
- evidence presented at the court demonstrated that bushfire risk can be managed without prejudicing vegetation management outcomes detailed in the VMP for the site.

The SCC report/BDAR has acknowledged that native vegetation has regrown in a number of areas that are required to be managed for bushfire protection purposes (slashed) under the VMP, in order to comply with the approval for the existing Palm Lake Resort (DA 2004/328). The proponent, Palm Lake Works, has stated that they intend to either carry out rectification works under DA 2004/328 or, if necessary, make a modification application for that consent to carry out the works. As a result, the BDAR has recommended that a site-specific Fuel Management Plan is prepared that addresses the ongoing fuel management of the subject land as required under the existing and proposed DAs.

In relation to these claims, Council has indicated that while DA 2018/321 and subsequent appeal proceedings assessed the proposed development under the PBP 2006, the NSW RFS did not issue General Terms of Approval/Bush Fire Safety Authority. In addressing compliance with PBP 2019, the applicant would be required to identify the works to be carried out such as compliant APZs, access, building construction, water supply and utilities and emergency management. Whilst the applicant can undertake such work through the commissioning of a report, the issue becomes complicated for the following reasons:

- the level of vegetation that will need to be removed to facilitate a compliant APZ. In this regard the applicant has undertaken a BDAR to address the removal of vegetation to facilitate an acceptable bushfire outcome for the new development. Council does not support this approach;
- the relationship and conflict between the proposed development (DA 2018/321 and VMP) and the existing development (DA 2004/328) with the 2020 SCC application failing to assess how the proposed development will affect the bushfire management of the existing development.

If the SCC were approved, the DA would need to comprehensively demonstrate that the proposed development conforms to the specifications and requirements of the PBP 2019 particularly taking into account the conflicts between bushfire management and ecology.

Whilst it is considered that compliance with relevant bushfire regulations can be addressed at the DA stage, the complicating factors detailed above, particularly in relation to APZ compliance/vegetation removal mean that it is not possible to determine the suitability of the site for more intensive development.

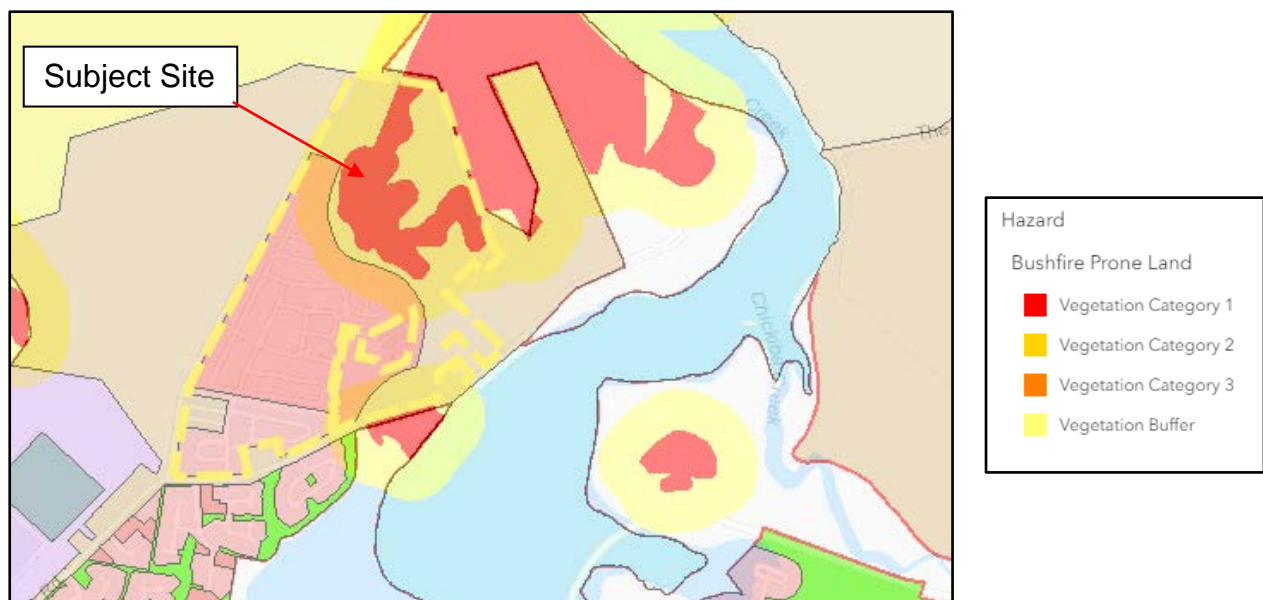


Figure 11 - Bushfire Prone Land (source: NSW Government e-Planning Spatial Viewer)

Acid Sulfate Soil Management

The land is mapped as having Class 2 acid sulfate soils (ASS) soils (Figure 12). The Ballina LEP 2012 requires that development consent is required for any works below the natural ground surface on land mapped as class 2 and the development application must include an acid sulfate soils management plan.

A preliminary site investigation for potential contamination and ASS was undertaken to support DA 2018/321. The ASS investigation included the drilling of an additional 19 boreholes (to those drilled for assessing potential contamination) across the site, with associated soil sampling to quantify actual and potential acidity levels in the soils.

The results of the testing indicate that both actual and potential acid sulfate soils are present at the site, and that these will require liming to neutralise their acidity, should they be disturbed during construction activities associated with the proposed residential development.

Information provided by the SCC application indicates that although up to 2 m thickness of fill material will be placed on the site during its development, some excavation into the natural soils may be required to construct bio-retention basins and swales near the eastern boundary of the site.

On the basis of the ASS investigation results, consultants recommend that an Acid Sulfate Soil Management Plan (ASSMP) is prepared to assist with the appropriate management of site soils during the future construction activities to mitigate the potential for environmental harm associated with the actual and potential acidity of the soils.

Council is unsure as to whether the applicant can provide an appropriate and compliant ASSMP for the proposal, particularly in relation to the western creekline and that the mobilisation of MBO from this specific area poses a risk to water quality in North Creek and therefore key fish habitats, coastal wetlands, EEC and priority oyster growing areas.

Whilst it is considered that the Class 2 acid sulfate soil designation in isolation is not a significant impediment to the suitability of the site for the proposed development and the LEP contains suitable measures that can be considered and addressed at the development application stage to ensure development and earthworks carried out on land containing ASS soils are appropriately managed, given the complicating factors detailed above, it is not considered possible to determine the appropriateness of the site for more intensive use at this time.

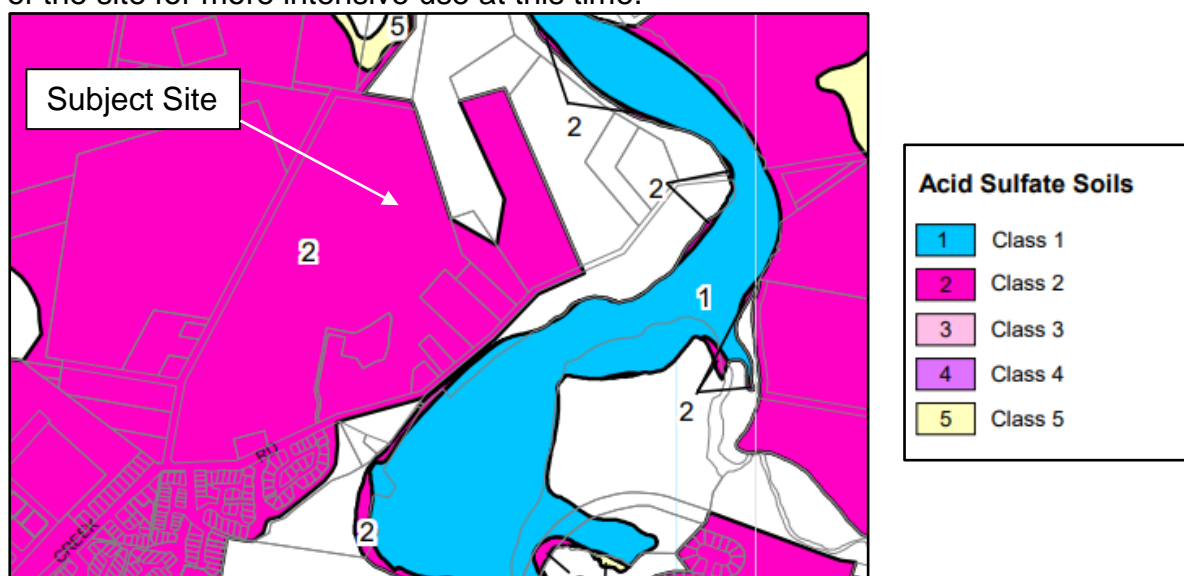


Figure 12 - Acid Sulfate Soils (source: Ballina LEP 2012)

Mosquito Management

The site is in close proximity to coastal wetlands and a tidally influenced creekline and as such is identified on the Ballina Development Control Plan (BDCP) Mosquito Management Plan Map as an area of High Mosquito Risk (Figure 13).

The SCC application states that a Mosquito Impact Assessment (MIA) Report was produced in relation to DA 2018/321 and found that the mosquito management measures proposed by the development complied with the mosquito management requirements of BDCP. A revised MIA Report accompanied the amended DA before the Court and similarly found that the mosquito management measures proposed by the development satisfied the requirements of BDCP. Measures include provision of a 25m mosquito buffer zone, and ongoing vegetation and water management to reduce harbourage opportunities.

Council's assessment of the SCC application however has found that risk of *Verrallina funerea* mosquito breeding and *Aedes vigilax* (salt marsh Mosquito) nuisance for future residents could not be adequately managed by the proposed buffer (see Council comments). Taking into consideration the location of the proposed development and the proximity of estuarine and brackish water wetlands, representing a source of locally important mosquitoes of pest and public health concern, the proposal would not satisfy section 3.6 Mosquito Management within Chapter 2 of the Ballina Shire Development Control Plan 2012, in that it does not substantially minimise nuisance and health risk associated with mosquitoes or minimise human contact with mosquitoes.

Whilst it is considered that proposed development may be able to address issues relating to mosquito management through conditioning of consent, complicating factors between the requirements of the proposed development VMP and the existing Palm Lake Resort CVMP in relation to maintenance of the western creekline and stormwater management devices mean that it is not possible to determine the suitability of the site more intensive development.

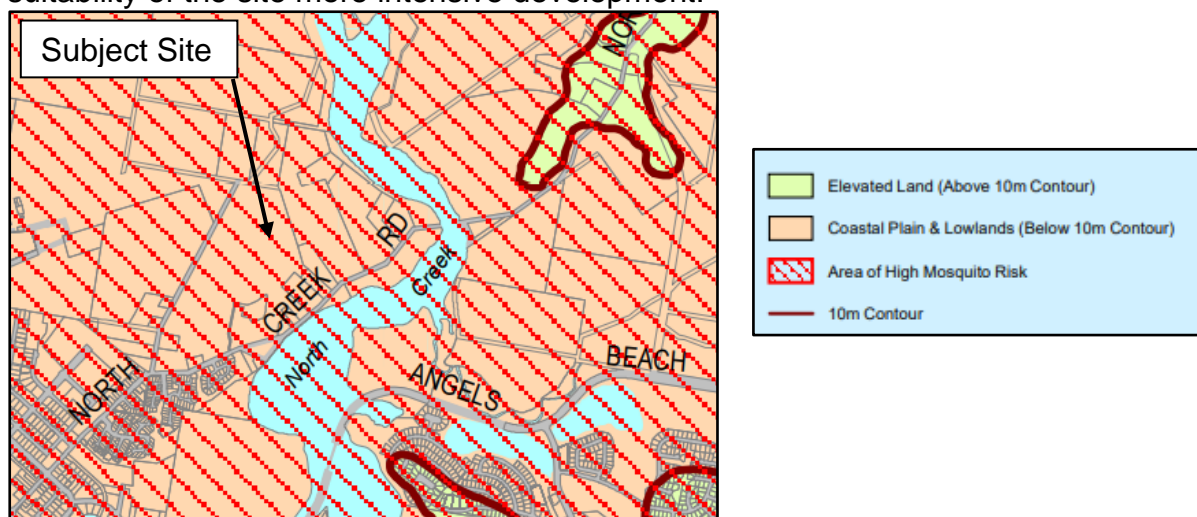


Figure 13 - Mosquito Management Map (source: Ballina DCP 2012)

Land contamination

A preliminary Site Investigation Report was produced in relation to DA 2018/321. Findings of the report indicated that whilst the land was historically used for agricultural purposes and potentially subject to activities that involved the application

of persistent pesticides such as organochlorine pesticides (OCPs) and/or fertilisers to ground surfaces, from a chemical perspective, the soils are considered suitable for the proposed residential development.

The presence of contaminated soils is considered unlikely to be a major constraint to development and can be adequately addressed by further assessment at the development application stage if necessary.

Aircraft noise

The Noise Exposure Forecast Contour Map for the Ballina Byron Gateway Airport indicates that the northern portion of the subject site is within an ANEF contour of 20 and therefore subject to clause 7.6(3) of Ballina LEP 2012. The dwellings proposed within the development footprint are however located outside the ANEF contour and it is therefore considered that this is a matter that can be adequately considered by Council at the development application stage of the proposal.

Cultural Heritage

A midden has been identified as being located in the proximity of the North Creek Road upgrade works. The proposal within the SCC application has the potential to impact the midden and these impacts would not be able to be assessed in the absence of detailed information regarding the works in the North Creek Road reserve, including road works, installation of infrastructure servicing and pedestrian pathways.

Without detailed information regarding the road works required above, it is not considered that the potential impacts or the appropriateness of the proposal in regard to this issue can be adequately determined.

Ecology

The subject site contains the following significant plant communities listed under both Federal and State legislation (Figures 9):

- Swamp Oak Swamp Forest of the Coastal Lowlands of the NSW North Coast Bioregion/ Swamp Oak Floodplain Forest of the NSW North Coast, Sydney Basin and South East Corner Bioregion (Endangered Ecological Communities (EEC) pursuant to the Biodiversity Conservation Act 2016);
- Paperbark Swamp Forest of the Coastal Lowlands of the NSW North Coast Bioregion and Sydney Basin Bioregion (EEC pursuant to the Biodiversity Conservation Act 2016);
- Coastal Saltmarsh of the Coastal Lowlands of the NSW North Coast Bioregion (EEC pursuant to the Biodiversity Conservation Act 2016); and
- Mangrove – Grey Mangrove Low closed Forest of the NSW Coastal Bioregion (key fish habitat under the Fisheries Management Act 1994)

Specific details regarding the potential impact of the proposal on these vegetation communities has been addressed Section 1 of this report. Council contends that the proposal will have unacceptable impacts on the terrestrial and aquatic environments. The lack of detailed information in the proposal regarding the potential impact on the proposed development on the ecology of the site mean that it is not possible to determine the suitability of the site for more intensive use.

Existing and approved uses of land in the vicinity

The subject land is located less than 1km to the south of the Ballina-Byron Gateway Airport and a small portion of the proposed development is within the 20 ANEF contour. As detailed above, the location of proposed dwellings is outside the contour and able to be considered further by Council during the development assessment process.

To the south of this land is established residential land. To the west is rural land acting as a buffer to the airport, with industrial land further west. To the east of this land is North Creek and some vegetated rural land.

Whilst it is considered that the proposed seniors development is theoretically compatible with existing landuses in the vicinity, particularly given that a similar development already exists in the area, concerns are raised about the impacts arising from the degree of modification to the site required to accommodate the proposed development (in regards to fill), the impacts of associated truck movements to deliver the fill, the changes to character and nature of the land given the potential loss of vegetation and the bulk and scale of the finished development given the height required to address flooding issues.

1. The impact that the proposed development is likely to have on the uses that, in the opinion of the panel, are likely to be the future uses of that land (clause 25(5)(b)(ii))

The subject site is currently zoned RU2 Rural Landscape and has an area of approximately 9ha. While the RU2 Rural Landscape zone permits a wide range of land uses, the agriculture capability of the site is considered to be minimal due to the size of the site.

It is expected that the likely future use of the subject land would be for residential purposes. which is consistent with the identification of the land within the Ballina Town and Village Growth Boundary in the (former) Far North Coast Regional Strategy. The subject site is the only area identified as urban area (versus Employment Land) on North Creek Road.

Urban Growth Areas are defined in the North Coast Regional Plan as follows:
"Includes all land zoned for various urban purposes and all future potential urban land releases as illustrated on the Urban Growth Area Maps. These areas will provide housing, business, industrial, infrastructure and community facilities to accommodate future regional population. Not all land identified within the Urban Growth areas will be suitable for development and further detailed assessment will be required". It is also noted that Figure 13 of the Plan includes a note that *"Land that is subject to significant natural hazards and/or environmental constraints will be excluded from development."*

Council previously stated in a letter to the Department dated 28 March 2011 in relation to the Far North Coast Regional Strategy and its review, that they believed *'that the area of the lot outside the approved development (i.e. existing Palm Lake Resort) is not suitable for further urban development being important as a buffer area and subject to a range of constraints including mosquitoes and ecological values. it is requested that the FNCRS town and village growth boundary be amended to reflect the approved development footprint'*. Despite this, the site is identified on the North Coast Regional Plan Urban Growth Area Map as an

'Investigation area – Urban' and as such, urban uses of the site can be considered by Council subject to further consideration of potential impacts and constraints at the development application stage.

However, given the potential environmental constraints of the site, development other than that directly related to the existing uses on the southern part of the site is limited. The nature of the site is such that direct access to the public road network for a potential development not associated with the retirement village is through wetland mapped under the Coastal Management SEPP and therefore would require considerable vegetation removal.

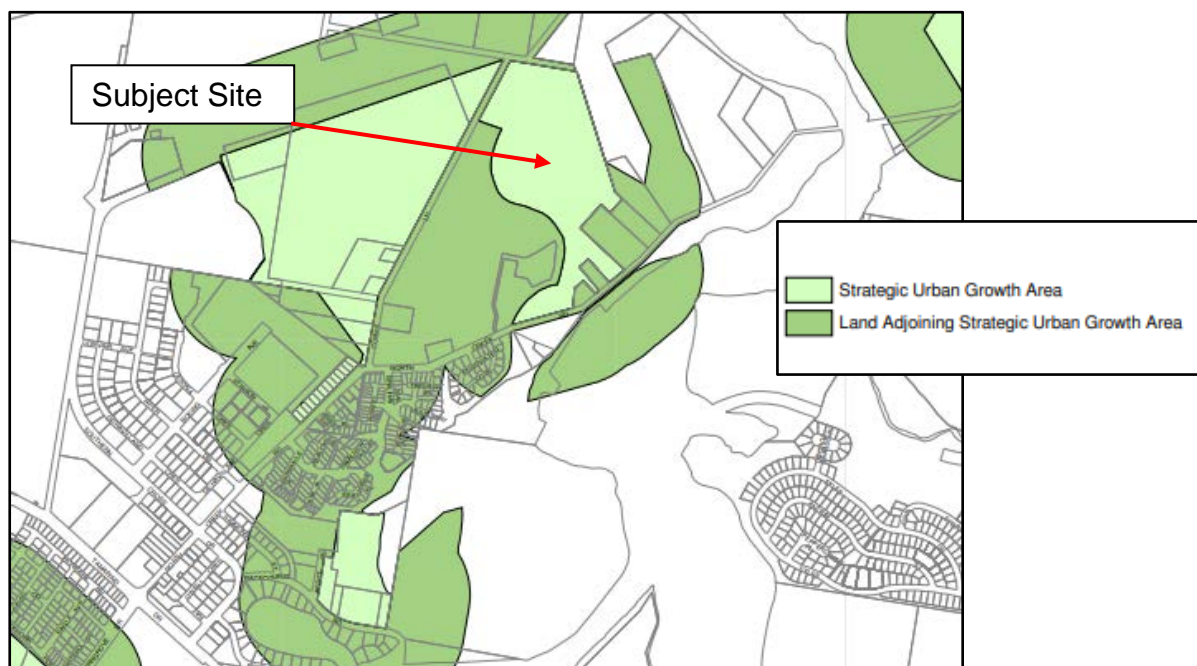


Figure 14 - Strategic Urban Growth Area (source: Ballina LEP 2012)

- 2. The services and infrastructure that are or will be available to meet the demands arising from the proposed development (particularly, retail, community, medical and transport services having regard to the location and access requirements set out in clause 26) and any proposed financial arrangements for infrastructure provision (clause 25(5)(b)(iii))**

Services

The subject site has access to existing water, sewer, electricity and telecommunication services as a result of its proximity to the adjoining seniors residential village. Service layout plans associated with amended DA 2018/321 indicate the delivery of works for services to be within the North Creek Road reserve however Council contend that the applicant could not demonstrate that this could be achieved through the provisions of detailed plans and a proper impact assessment of these works. This issue is compounded by the presence of Coastal wetlands within the road reserve.

Arboricultural experts for both Council and the applicant for the proceedings for DA 2018/321 also confirmed that the indicative design surface was outside the pegged extents of the road works. This means that the impacts of the proposed design on coastal wetlands as well as mangroves on the southern side of North Creek Road

have not been assessed, due to uncertainty with the final design. This in turn may have implications for hydrology, salinity regime and ecology.

The lack of detailed information in the proposal regarding the location of services and the potential impact on vegetation within the road reserve means that a final assessment cannot be made as to the suitability of the site for more intensive development.

Location and Access to Facilities

Clause 26(1) of the SEPP requires that a proposed development must have access to:

- shops, bank service providers and other retail and commercial services that residents may reasonably require;
- community services and recreational facilities; and
- the practice of a general medical practitioner.

The subject site is located within 3km of Ballina CBD where all of the above services are available. There is also a small shopping development including an Aldi supermarket on North Creek Road which is 1km from the subject site and the Ballina Homemakers centre within 500m of the site (Figure 15).

Clause 26 also requires that access to these services is available and may be provided by a transport service that meets specific requirements set out in clause 26(2)(c). The site is on an established bus route and access to the pickup/drop off point is within 400m of the facility. Alternatively, the resort provides a daily courtesy bus to Ballina CBD to enable the residents to access a wide range of services and facilities (**Attachment A8**).

In regard to the provision of other onsite services as required by the definition of **‘Serviced self-care housing’**, that being “seniors housing that consists of self-contained dwellings where the following services are available on the site: meals, cleaning services, personal care, nursing care”, the SCC application has stated that a registered nurse and personal care, meal services and housekeeping services will be available on site. This was raised as an issue by Council who contend that such services are located on the adjoining Palm Lakes Resort and not within the new proposed development footprint. The definition of **‘Serviced self-care housing’** details that such services must be available on the site. The existing Palm Lakes Resort is located on Lot 11 DP1245510, 120 North Creek Road, the same as the proposed development and therefore meets the requirements of this definition.

It is considered that the SCC application satisfies the requirements of clause 26(1) of the SEPP in regard to location and access to facilities.



Figure 15 - Local context (source: SCC Application report)

LEGEND			
01	Proposed Development Site	11	Angels Beach Drive
02	North Creek	12	North Creek Road
03	Ballina/Byron Gateway Airport	13	Ballina Fair / Ballina Central
04	Ballina Town Centre	14	Richmond Christian College
05	East Ballina	15	Bus Stop
06	North Ballina Centre	16	Ballina Botanical Gardens
07	Richmond River	17	Sports Fields/Large Open Space
08	Ballina Head	18	Golf Course
09	Black Head	19	Race Course
10	Tamarind Drive		
	— Subject Property Boundary		
	■ Proposed earthworks extents / APZ		

Traffic Assessment

The subject land has existing road frontage and access from Corks Lane and North Creek Road. Access to the existing retirement village is provided at Corks Lane and two access points along North Creek Road. The amended planned extension to the retirement village gains access to the external road network via a new access driveway intersecting North Creek Road.

A Traffic Impact Assessment (TIA – **Attachment A7**) was undertaken for the original DA and amended to support the amended DA (77 dwellings). It concluded that the proposal when ultimately completed, will generate up to 28 vehicles per hour during morning peak and 31 vehicles per hour during evening peak hour. Ninety percent of all development traffic from the expansion site is expected to be distributed directly to North Creek Road via a new access driveway intersecting North Creek Road and the remaining 10% via the existing Bupa Aged Care Access Road (an internal link with the existing Palm Lake Resort). This access with North Creek Road differs from that originally proposed for the original SCC and associated development due to Council concerns.

The TIA has also recommended the following works be undertaken within the existing Palm Lake Resort as part of Stage 1 of the expansion site:

- a concrete footpath along the western site boundary of the expansion site access driveway and proposed frontage works in North Creek Road

- connecting to the existing path along North Creek Road;
- internal paths linking the residential units with the existing Community Centre in Palm Lake Resort; and
- an additional 20 car spaces.

Council raised the following issues (specifically the lack of sufficient information to properly assess potential impacts) in regard to traffic associated with the proposed development:

- Existing access and future upgrade to North Creek Road – the need for the creation of a new access to the site from North Creek Road (and the associated issues of additional works within a Coastal Wetland area, increased traffic movements within an already congested internal road system and impacts on adjoining properties; and
- Intersection design – the current design is not adequate to ensure long term operational safety at this location and given the location of existing properties it is unknown whether compliance with various components of AUSTROADS can be achieved;

Whilst the potential impacts on local street networks and the safety and efficiency of the road network could potentially be addressed at the DA stage, the lack of detailed information in regard to the impact of such works on Coastal Wetlands is unknown and therefore, the suitability of the site for more intensive use cannot be determined under the present application.

3. In the case of applications in relation to land that is zoned open space or special uses—the impact that the proposed development is likely to have on the provision of land for open space and special uses in the vicinity of the development (clause 25(5)(b)(iv))

The subject land is not zoned for open space or special uses. The subject land is zoned RU2 Rural Landscape and therefore this criteria is not applicable to the proposal.

4. Without limiting any other criteria, the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development (clause 25(5)(b)(v))

The surrounding development consists of low density residential accommodation. The dominant built form is single-storey residences. The SCC application states that the proposed retirement village will be of similar type, form and design as the existing seniors housing development.

The Ballina LEP 2012 does not set a floor space ratio for the subject land due to its current rural zone. The subject site and surrounding residential zoned land are subject to a building height control of 8.5m. The proposed single storey detached dwellings will be consistent with this building height control.

The subject land has a 40ha minimum lot size (MLS) under the Ballina LEP 2012 as does the existing Palm Lake Resort.

It is noted that the original SCC for the subject site was granted where the concept

plan for potential future development showed 175 dwellings. The reduction in the proposed building area, to respond to environmental constraints and other concerns raised by Council, has reduced the potential development to 77 dwellings (DA 2018/321 relates to 75 dwellings however).

Council contends that as a result of the amount of fill and subsequent modification of the site, the proposed development will not be in keeping with surrounding landuse, particularly in regard to height. This in turn has the potential to detrimentally impact on the amenity and rural outlook enjoyed by existing surrounding residents.

Despite this concern by Council, it is considered that the proposed development is not inconsistent with the height requirements of the Ballina LEP 2012 or the existing approved uses and future uses of land in the vicinity of the development. If the proposal was to proceed, further detailed design and assessment of the built form outcomes could be assessed at the DA stage.

5. If the development may involve the clearing of native vegetation that is subject to the requirements of section 12 of the Native Vegetation Act 2003—the impact that the proposed development is likely to have on the conservation and management of native vegetation (clause 25(5)(b)(vi))

The *Native Vegetation Act 2003* has been repealed and does not apply to the proposal.

Native vegetation occurring on the site includes:

- Swamp Oak Floodplain Forest Threatened Ecological Community (TEC),
- Swamp Sclerophyll Forest TEC,
- Coastal Saltmarsh TEC, and
- Mangroves

Mapped Coastal Wetlands occur in the eastern, north eastern, and southern portions of the subject land.

An area of planted native and landscaped vegetation is also present at the site, however the SCC application states that the ecological value associated with this vegetation was found to be low despite the fact that it was an offset planting area required as a condition for the development of the adjoining Palm Lakes Resort.

The proposal will necessitate the removal of the following areas of native vegetation (Figure 8):

- Swamp Oak Floodplain Forest: 2.23ha; and
- Swamp Sclerophyll Forest: 0.05ha

The SCC application states that the proposed development will predominantly avoid TEC vegetation and will not remove any areas of coastal wetlands. Council however contend that this cannot be verified as a detailed final design has not been undertaken of the proposed works to be carried out to North Creek Road and the road reserve. These works also have the potential to impact directly and indirectly on coastal wetlands, Priority Oyster Aquaculture Areas, key fish habitats and groundwater.

A Biodiversity Development Assessment Report (BDAR – **Attachment A6**) was produced in relation to DA 2018/321 and was later updated to address impacts

associated with works in North Creek Road and to reflect the amended DA. The result of this assessment is that the loss of native vegetation as a result of the proposed development will require compensation in the form of ecosystem credits.

The proposed development will also involve the retention and restoration of riparian habitats within the North Creek tributary (western creekline) under a VMP. Council has however stated that previous material lodged as part of DA 2018/321 did not address the state of the western creekline, its hydrology or ecology.

The subject land is also subject to a Creek and Vegetation Management Plan as part of the conditions of DA 2004/328 which relates to the development of the existing retirement village on the southern portion of the site. This management plan provides that the part of the site now intended for the additional 77 self-care dwellings be rehabilitated. Advice provided under the 2017 SCC was that the two patches of vegetation that required rehabilitation, now consist mainly of dying vegetation and therefore has been recommended by a consulting ecologist for removal.

Council have raised the issue of the conflicts and competing interests between the CVMP for the existing development and the VMP for the proposed development particularly in regard to the retained offset areas described above (as part of the conditions for DA 2004/328) and the bushfire protection, mosquito, riparian and vegetation management outcomes associated with the VMP for DA 2018/321 as detailed previously in this report.

As a result of the complicating and competing factors detailed above, the suitability of the site for more intensive development cannot be determined.

6. The impacts identified in any cumulative impact study provided in connection with the application for the certificate (clause 25(5)(b)(vii))

As previously discussed in this report, a cumulative impact study pursuant to clause 25(2)(c) of the SEPP is not required as there are no current or undetermined SCCs on land within a 1km radius of the subject site.

CONCLUSION

The site is considered unsuitable for more intensive development for the purposes of seniors living having regard to the criteria set out in clause 25(5)(b) of the Seniors Housing SEPP because the SCC application contains insufficient information supporting the suitability of the site regarding:

- impacts on native and ecological significant vegetation;
- drainage, flooding and site filling;
- bushfire management/protection;
- mosquito management;
- impacts on Aboriginal cultural heritage; and
- conflicts between the existing CVMP and the proposed VMP in regard to vegetation clearing, APZ's and compensation for the loss of former rehabilitation area associated with DA 2004/328.

ATTACHMENTS

A1	SCC Application – Applicant's Report
A2	SCC Application – Survey
A3	SCC Application – Site Analysis
A4	SCC Application – Civil Drawings
A5	SCC Application – Shadow Diagrams
A6	SCC Application – Biodiversity Report (DBAR)
A7	SCC Application – Traffic Impact Assessment (TIA)
A8	SCC Application – Operational Detail
A9	SCC Application – Preliminary Site Investigation
A10	SCC Application - VMP
B	Site Map
C	Previous approved SCC
D	Council comments

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