



SITE COMPATIBILITY CERTIFICATE APPLICATION REPORT

Development for the purposes of seniors housing including serviced self-care units

120 North Creek Road, Ballina

REF: M180447

10 June 2020



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1. Introduction

This report accompanies an application to the Department of Planning, Industry and Environment (DPIE) for a site compatibility certificate (SCC) under clause 24 of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (Seniors SEPP) in relation to part of the land at 120 North Creek Road, Ballina. The land adjoins an existing seniors housing development known as Palm Lake Resort, Ballina.

The application is made on behalf of Palm Lake Resort Pty Ltd being the owner of the land.

On 12 October 2017, a SCC was issued for the land. 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 land uses.

On 4 June 2018, a development application (DA2018/321) proposing the staged delivery of a seniors housing development was lodged with Ballina Shire Council (council). On 24 October 2018, proceedings were commenced in the NSW Land and Environmental Court (the Court) on a deemed refusal basis and on 4 October 2019, the Commissioner upheld the appeal, granting deferred commencement consent to a seniors housing development (reduced in size from that which was proposed in the original DA submission).

On 29 October 2020, the Council appealed the decision of the Court and on 29 April 2020 the Chief Judge upheld the appeal having found that the Commissioner erred in her findings on five questions of law. The Chief Judge set aside the development consent and remitted the matter back to the Commissioner to be re-determined according to law. The remitted matter has not yet been heard. The Chief Judge has explicitly foreshadowed that an application may be made for a new SCC and that the Court proceedings may be adjourned to enable such an application to be determined.

The SCC on which DA2018/321 relied for permissibility expired on the 12 October 2019. The purpose of this application is to provide for a new SCC in relation to the land the subject of the remitted proceedings, or a future DA. A new SCC must be issued before consent can be granted to the proposed seniors housing development.

This SCC application reflects the reduced seniors housing development which was approved by the Court on 4 October, 2019 (albeit with two additional dwellings). The proposal, as amended from the original DA submission, involves vegetation removal and land modification works, the staged delivery of 77 serviced self-care dwellings, the construction of internal roads and connections, and associated water and vegetation management works.

It is The Court approved 75 dwellings, even though 77 had been sought. Two dwellings were deleted right at the end of process because of height non-compliances. These non-compliances are capable of being addressed in a further development application.

The purpose of this report is to provide a summary of key background information, to describe the extent and nature of the reduced seniors housing proposal, and to demonstrate that the proposed development is compatible with the surrounding environment and surrounding land uses with reference to the assessment criteria contained within the Seniors SEPP.

Given that the form of development envisaged by this current SCC application is significantly reduced in extent and scale compared with that which was originally granted an SCC, and that the site conditions have not changed, it is considered that the assessment and conclusions reached in granting the original SCC would remain relevant and a consistent outcome will be reached.

This application is accompanied by supporting information reflecting the amended proposal listed at Table 1.

This information demonstrates the form of development which is possible under the SCC sought. That is, a form of development consistent with that which was approved by the Court on 4 October 2019. Although the decision to approve that application was set aside on appeal, it is the applicant's position that the matters which were central to that decision are capable of resolution in detailed design stage and should not influence the strategic assessment of this SCC application to reach any conclusion different from the original SCC application.

Table 1 Supporting information

Annexure A	Survey	Andrews and Hansen Consulting Surveyors
Annexure B	Site Analysis	SMEC
Annexure C	Civil Works Plan	Martens and Associates
Annexure D	Shadow Diagrams	Martens and Associates
Annexure E	Biodiversity Development Application Report	Cumberland Ecology
Annexure F	Traffic Impact Assessment Report	Burchills Engineering Solutions
Annexure G	Management Operational Detail	Palm Lake Resort
Annexure H	Previous SCC and Assessment Report	DPIE
Annexure I	Preliminary Site Investigation	Environmental Engineering Solutions



2. Background

A chronology of key events is provided below:

- On **12 October 2017**, a SCC was issued for land the subject of this SCC application. 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 land uses (see **Annexure H** for SCC and assessment report).
- On **4 June 2018**, a development application (DA2018/321) proposing the staged delivery of a seniors housing development was lodged with council. The DA proposed the staged delivery of an expansion to the existing Palm Lake Resort involving the construction of 156 self-care dwellings, recreation facilities, and associated car parking, infrastructure works and site filling.
- On **24 October 2018**, proceedings were commenced in the Court on a deemed refusal basis. The proposal was amended on several occasions during the proceedings. 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.
- On **4 October 2019**, Commissioner Dickson handed down judgement in *Palm Lake Works Pty Ltd v Ballina Shire Council* [2019] NSWLEC 1479. The Commissioner upheld the appeal subject to conditions and granted deferred commencement consent to the (amended) seniors housing development.
- On **12 October 2019**, the SCC expired.
- On **29 October 2020**, the Council, dissatisfied with the decision of the Commissioner, appealed against it on questions of law, under section 56A of the *Land and Environment Court Act 1979*. The Council pressed six grounds of appeal and submitted that the errors of the Commissioner on questions of law were material and vitiated the Commissioner's decision to grant consent.
- On **29 April 2020**, the Chief Judge handed down judgement in *Ballina Shire Council v Palm Lake Works Pty Ltd* [2020] NSWLEC 41. The Chief Judge found that the Council had succeeded in establishing five of its grounds of appeal and determined that the Commissioner's decision and orders should be set aside and the matter remitted to the Commissioner to be re-determined according to law.

At [135] of the judgement, the Chief Judge notes that the SCC had expired and that consent could no longer be granted to the proposed development, however goes on to state that application for another SCC could be made and, in the meantime, an adjournment of the remitted proceedings sought, to await the outcome of the application for a new SCC.

- On **5 June 2020**, Commissioner Dickson handed down a decision in relation to a Notice of Motion to generally adjourn the remitted hearing to allow for submission and determination of a new SCC application. Those Orders were not granted, and the remitted matter will now be heard. However, the Court has said (at [18]) that it will deal with the remitted (legal) issues separately to the SCC, notwithstanding it is a precondition to consent. Once the matters identified in the remitter are determined, dependant on the decision of the Court, the validity of the SCC will become relevant before the matter is **finally** determined.



3. Site and Locality Description

3.1 THE SITE

The site is located at 120 North Creek Road, Ballina and is legally described as Lot 11 DP 1245510 (formerly known as Lot 2 DP 1155600 and Lot 5 DP 565132). The overall site is identified in red outline in the aerial photograph provided at Figure 1. The land for which the SCC application relates is shaded in yellow.



Figure 1 Aerial photograph (Source: Ballina Shire Council)

A detailed Site Analysis which was prepared during Court proceedings in relation to the land is included at **Annexure B**.

In summary, the overall site owned by Palm Lake is a single irregularly shaped allotment with an area of 42.54ha. The site is located on the corner of Corks Lane and North Creek Road. The site is generally flat and low-lying and natural ground ranges in level from RL1.35m to 1.70m AHD.

The western portion of the site contains an existing seniors housing development known as Palm Lakes Resort. Palm Lakes Resort consists of 286 dwellings and associated ancillary facilities. Vehicular access to the internal road network is via two locations on North Creek Road.

The northern and eastern areas of the site, for which the new SCC is sought, contain tracts of vegetation, some of which form part of a *coastal wetland* under the provisions of *State Environmental Planning Policy (Coastal Management) 2018* (Coastal Management SEPP). The portion of the site upon which development is proposed is largely clear of vegetation.



An unnamed creek that contains riparian vegetation traverses the site from north to south. The creek forms the eastern edge of the Palm Lakes Resort and the western edge of the portion of the site upon which the seniors housing development is proposed.

3.2 SCC LAND

This SCC application relates to the eastern portion of 120 North Creek Road as highlighted yellow above.

The eastern portion of the site is within Zone RU2 Rural Landscape under *Ballina Local Environmental Plan 2012* (BLEP) and seniors housing is a prohibited use. The proposed seniors housing development will be situated on land within Zone RU2 and therefore a SCC under clause 24 of the Seniors SEPP is required.

The extent of the proposed seniors housing development and its relationship to land for which certification under the Seniors SEPP is sought is illustrated in the diagram provided at Figure 2. The SCC boundary is outlined in red,





Figure 2 Proposed site compatibility certificate boundary

3.3 THE LOCALITY

Land use in the locality varies considerably and includes residential aged care facilities and retirement villages, commercial and industrial land use, significant public infrastructure such as the Ballina Byron Gateway Airport, larger lot rural residential land, smaller lot residential areas and undeveloped land.

Built form in the immediate locality is characterised by low density, single and two storey buildings consisting of a range of materials and finishes.

The SCC land has the following interfaces:

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- **North and East:** The northern and eastern boundaries of the expansion site adjoin a vegetated area that forms part of a *coastal wetland* under the provisions of the Coastal Management SEPP.
 - **South:** The southern boundary of the expansion site adjoins several rural residential properties and has a fragmented frontage to North Creek Road.
 - **West:** The western boundary of the expansion site is defined by an unnamed watercourse containing riparian vegetation which runs north to south through the broader site. On the western side of the watercourse and within the broader site is the established Palm Lake Resort.

On a broader scale the expansion site is located roughly 3 kilometres northeast of Ballina Town Centre.

The locality is experiencing a period of increased development and urban expansion. The proposed seniors housing development responds to the emerging land use character of the area and will provide essential accommodation for the ageing population.



4. The Proposal

The SCC seeks to facilitate a specific form of seniors development, being an expansion of the existing Palm Lake Resort Ballina. The proposed seniors housing concept will involve vegetation removal and land modification works and the staged delivery of 77 serviced self-care dwellings, an internal road network including connections to the external road network, stormwater management, vegetation and environmental protection works.

Plans illustrating the extent of the development is provided at **Annexure C**.

These plans formed part of the approval by the Court on 4 October 2019. It is noted that the plans are for 75 dwellings, but this SCC application allows for 77 dwellings. This is because two dwellings were deleted in the final stages of the proceedings before the development consent was granted, due to a height non-compliance. The sites of those deleted dwellings are shown in those plans and dwellings can still be accommodated on them. The height issue can be addressed in a further development application.

That approval was subsequently successfully appealed by the Respondent. However, that appeal did not relate to the validity or merit of the SCC which was previously granted and upon which the development application relied for permissibility.

The seniors housing concept certified under the expired SCC was considerably larger and involved the staged delivery of 175 serviced self-care dwellings a wellness centre for the residents, a more expansive internal road network and connections to the external road network. The proposal also was for stormwater management, vegetation and environmental protection works.

The proposed seniors housing concept that the new SCC is sought to facilitate is discussed in more detail below.

4.1 VEGETATION REMOVAL

The proposal that the new SCC is sought to facilitate will necessitate the removal of some areas of native vegetation and offsets are required in the form of ecosystem credits. The proposed development will also involve the retention and restoration of riparian habitats within the North Creek tributary under a vegetation management plan (VPM).

A Biodiversity Development Assessment Report (BDAR) was produced in relation to DA2018/321 and was later updated to reflect the amended DA now before the Court and reflects the proposal subject of this SCC application. The updated BDAR describes the extent of vegetation removal and is provided at **Annexure E**.

4.2 LAND MODIFICATION WORKS

The proposal that the new SCC is sought to facilitate will involve filling of the site in response to flooding affectation with typical finished earthworks levels of 3.2m AHD across the development footprint to raise the development above the designated flood level of 2.3m AHD and provide sufficient fall and cover for drainage and services.

The extent of land modification works is illustrated in the plans provided at **Annexure C**.



4.3 ROAD NETWORK, ACCESS, AND PARKING

The proposal that the new SCC is sought to facilitate will gain access onto the wider road network via a new access driveway on North Creek Road and by the existing “Bupa Aged Care” access i.e. an internal link with the existing Palm Lake Resort. Internal roads will be delivered as a shared space and designed to allow a heavy rigid vehicle to service the site.

Integrated parking will be delivered in conjunction with each dwelling for resident use and visitor parking will be provided on-street and within perpendicular parking bays uniformly spread throughout the site.

The anticipated increase in traffic volume along North Creek Road between the existing “Bupa intersection” and the proposed new access driveway requires that the road be upgraded to “collector street standard” involving the delivery of half the collector road width standard along the site frontage.

An Amended Traffic Impact Assessment (TIA) Report was produced to support the amended DA before the Court and the subject of this SCC application. The TIA describes the proposed road network, access and parking arrangements and is provided at **Annexure F**.

4.4 SERVICED SELF-CARE DWELLINGS

The proposal that the new SCC is sought to facilitate involves the staged delivery of 77 serviced self-care dwellings arranged and designed to respond to the existing layout, configuration and character of dwellings within the adjacent Palm Lake Resort.

Each dwelling will be single storey and will contain a master suite, additional bedroom, main bathroom, study, kitchen, dining, lounge, laundry, outdoor living area, porch and secure double garage. Building materials will include hebel walls, cladding and Colourbond roofing of neutral colours.

Several services will be made available to residents on site such as caretaker and emergency services, registered nurse, personal care, meal services, and housekeeping services.

Plans illustrating the extent of the development are provided at **Annexure C**.

4.5 RESIDENT TRANSPORT

A bus service operated by Palm Lake Resort will be made available to transport residents of the development from the site to essential facilities and services. The bus service will be available to transport residents from the site to Ballina Fair and Ballina Central Shopping Centre at least once between 8am and 12pm each day and at least once between 12pm and 6pm each day.

Documentation containing details of the proposed resident transport service is provided at **Annexure G**.



5. Strategic Justification

5.1 SEPP (HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY) 2004

5.1.1 Permissibility Statement

The Seniors SEPP applies to land that is zoned primarily for urban purposes, or land that adjoins land zoned primarily for urban purposes, provided the land satisfies the preconditions described in clause 4 of the Policy.

Clause 4(1) provides that the Policy applies to land zoned for urban purposes, or land that adjoins land zoned primarily for urban purposes, but only if specific development types, including dwelling houses, are permissible on the subject land.

The subject land is within RU2 Rural Landscape and is adjacent to land within Zone R3 Medium Density Residential under the *Ballina Local Environmental Plan 2012* (BLEP). As dwelling houses are permissible within Zone RU2, and the land adjoins land zoned primarily for urban purposes, clause 4(1) is satisfied.

Clause 4(6) states that the Seniors SEPP does not apply to “environmentally sensitive land” as described in Schedule 1. Environmentally sensitive land as described in Schedule 1 includes land identified as being a natural wetland, or a floodway, or as high flooding hazard.

Part of the land is identified as “proximity area for coastal wetlands” and “coastal wetlands” under *State Environmental Planning Policy (Coastal Management) 2018* (Coastal SEPP). However, pursuant to clause 4(7), nothing in Schedule 1 operates to preclude the application of the Seniors SEPP because it is identified under the Coastal SEPP.

While site studies recognise that the northern part of the site is subject to flood hazard, no environmental planning instrument describes the land as high flood hazard or floodway and therefore the land is not excluded from the application of the Seniors SEPP.

5.1.2 SCC Criteria Summary

Provided in the table below is a response to the SCC criteria contained within the SEPP Seniors.

Table 2 SCC Assessment Criteria	
Requirement	Response
Part 1A Site compatibility certificates	
Clause 24 - Site compatibility certificates required for certain development applications	
(1) This clause applies to a development application made pursuant to this Chapter in respect of development for the purposes of seniors housing (other than dual occupancy) if: (a) the development is proposed to be carried out on any of the following land to which this Policy applies: (i) land that adjoins land zoned primarily for urban purposes,	Land adjoining the site to the west is within Zone R3 Medium Density Residential. The development is proposed to be carried out on land that adjoins land zoned primarily for urban purposes. A site compatibility certificate is therefore required under clause 24.

Table 2 SCC Assessment Criteria

<p><i>(2) A consent authority must not consent to a development application to which this clause applies unless the consent authority is satisfied that the relevant panel has certified in a current site compatibility certificate that, in the relevant panel's opinion:</i></p> <p><i>(a) the site of the proposed development is suitable for more intensive development, and</i></p> <p><i>(b) development for the purposes of seniors housing of the kind proposed in the development application is compatible with the surrounding environment having regard to (at least) the criteria specified in clause 25(5)(b).</i></p>	<p>The site is suitable for more intensive development. Detailed discussion at Section 5.6.1.</p> <p>Development of the site for the purpose of seniors housing is compatible with the surrounding environment having regard to the criteria specified in clause 25(5)(b) which has been addressed in this table below.</p>
<p>Clause 25 - Application for site compatibility certificate</p>	
<p><i>(2) An application:</i></p> <p><i>(b) specify, in the manner required by the Planning Secretary, whether any site compatibility certificates have previously been issued in respect of the land (or any part of the land) to which the application relates, a</i></p> <p><i>(c) for land that is next to proximate site land—must be accompanied by a cumulative impact study that has been prepared in accordance with any guidelines issued by the Planning Secretary from time to time.</i></p> <p><i>(2A) Land is next to proximate site land for the purposes of this clause if the land (or any part of the land) is located within a one kilometre radius of 2 or more other parcels of land (the proximate site land) in respect of each of which either:</i></p> <p><i>(a) there is a current site compatibility certificate, or</i></p> <p><i>(b) an application for a site compatibility certificate has been made but not yet determined</i></p>	<p>The site has been the subject of a previous SCC. The details of this SCC haven been set out in this document.</p> <p>The site is not next to <i>proximate site land</i> and a cumulative impact study is not required.</p>
<p><i>(5) The relevant panel must not issue a site compatibility certificate unless the relevant panel:</i></p> <p><i>(b) is of the opinion that the proposed development is compatible with the surrounding land uses having regard to (at least) the following criteria:</i></p>	<p>The relevant panel can be satisfied that the proposal is compatible with surrounding land uses based on an assessment of the applicable criteria for the reasons described below.</p>

Table 2 SCC Assessment Criteria

<p><i>(i) the natural environment (including known significant environmental values, resources or hazards) and the existing uses and approved uses of land in the vicinity of the proposed development,</i></p>	<p>Features of the natural environment and the compatibility of the proposed development with these features is discussed at Section 5.5.2.</p> <p>The relationship of the proposed development with existing and approved land uses in the vicinity of the site is discussed at Section 5.5.3.</p>
<p><i>(ii) the impact that the proposed development is likely to have on the uses that, in the opinion of the relevant panel, are likely to be the future uses of that land,</i></p>	<p>The use of the site for seniors housing is consistent with the likely future uses of the land, being residential.</p> <p>This position is discussed in detail at Section 5.5.4.</p>
<p><i>(iii) 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,</i></p>	<p>Services and infrastructure required to meet the demands of the development are available or will be delivered or upgraded as required.</p> <p>This is discussed in detail at Section 5.5.5.</p>
<p><i>(iv) 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,</i></p>	<p>The application does not relate to land that is zoned open space or special uses therefore this consideration is not applicable.</p>
<p><i>(v) 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,</i></p>	<p>The bulk, scale, built form and character of the proposed development is consistent with core development standards and compatible with existing and potential future uses of land in the vicinity of the development.</p> <p>Bulk, scale, built form and character is discussed at Section 5.5.6.</p>
<p><i>(vi) 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.</i></p>	<p>The proposed development will have an acceptable impact on the conservation and management of native vegetation.</p> <p>Vegetation impacts and associated management strategies are discussed at Section 5.5.2.7.</p>
<p><i>(vii) the impacts identified in any cumulative impact study provided in connection with the application for the certificate</i></p>	<p>A cumulative impact study is not required in relation to this proposal.</p>

5.2 NORTH COAST REGIONAL PLAN 2036

The North Coast Regional Plan 2036 (NCRP) was introduced to guide the NSW Government's land use planning priorities and decisions in the region to 2036. It provides an overarching framework to guide subsequent and more detailed land use plans, development proposals and infrastructure funding decisions.



The site is identified as “investigation area – urban land” on the urban growth area map for Ballina Local Government Area. A guiding principle of the NCRP is to direct growth to identified urban growth areas. The NCRP states that “investigation areas” within the urban growth areas represent potential future land release opportunities.

The status of the site as “investigation area” in the NCRP was previously recognised by the Department of Planning and Environment in making the decision to issue a SCC in respect of the land. It remains the case that the land is designated as an investigation area for urban growth and it follows that an SCC should again be issued for the land.

It is also noted that the Land and Environment Court in determining the appeal in *Palm Lake Works Pty Ltd v Ballina Shire Council* [2019] NSWLEC 1479 raised no concern in relation to the strategic context of the site for the proposed seniors housing use. Matters of technical detail raised by the Respondent in the appeal against this decision can be dealt with in detailed design.

5.3 BALLINA SHIRE GROWTH MANAGEMENT STRATEGY

The Ballina Growth Management Strategy (GMS) was adopted in July 2012 and its stated purpose is to provide the framework for managing population and employment growth in Ballina Shire, with respect to residential, commercial and industrial development opportunities, over the planning period of 2012-2031.

The GMS identifies 'strategic urban growth areas' in non-urban parts of the LGA which have strategic potential to accommodate future urban growth, subject to “detailed consideration through the statutory rezoning process prior to the land being available for development”.

The site is identified as a strategic growth area in the GMS and this was previously recognised by the Department of Planning and Environment in making the decision to issue a SCC in respect of the land. It remains the case that the land is within a strategic urban growth area and it follows that an SCC should again be issued for the land. This does not absolve the need to deal with matters of technical detail in a Development Application for the land, however it is considered that these matters can be adequately resolved.

5.4 BALLINA LOCAL ENVIRONMENTAL PLAN 2012

Ballina Local Environmental Plan 2012 (BLEP) applies to the site.

Core development standards contained within BLEP and relevant to the site have been identified and briefly addressed below. These development standards are considered in detail by the development application the subject of the remitted proceedings.

5.4.1 Zoning and Permissibility

The land owned by Palm Lake resort Ballina has a split zoning and is within:

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

The portion of the site to which this SCC application relates is entirely within Zone RU2. An extract of the zoning map is provided at Figure 3 (SCC boundary in yellow).

Land uses permitted with consent include:



Agriculture; Airstrips; Animal boarding or training establishments; Aquaculture; Boat launching ramps; Boat sheds; Camping grounds; Car parks; Caravan parks; Cellar door premises; Cemeteries; Charter and tourism boating facilities; Community facilities; Correctional centres; Crematoria; Depots; Dual occupancies; **Dwelling houses**; Environmental facilities; Extractive industries; Farm buildings; Flood mitigation works; Forestry; Function centres; Helipads; Home businesses; Home industries; Home occupations (sex services); Information and education facilities; Jetties; Kiosks; Liquid fuel depots; Marinas; Markets; Mooring pens; Moorings; Mortuaries; Open cut mining; Passenger transport facilities; Public administration buildings; Recreation areas; Recreation facilities (major); Recreation facilities (outdoor); Restaurants or cafes; Roads; Roadside stalls; Rural industries; Rural supplies; Rural workers' dwellings; Sewerage systems; Signage; Storage premises; Tourist and visitor accommodation; Turf farming; Vehicle repair stations; Veterinary hospitals; Water recreation structures; Water supply systems; Wharf or boating facilities [emphasis added]

Seniors housing is prohibited in the RU2 Zone however permissibility is achieved under the Seniors SEPP because the land adjoins land zoned primarily for urban purposes and dwelling houses are permissible within Zone RU2. A detailed discussion concerning permissibility is provided at Section 5.1.1.

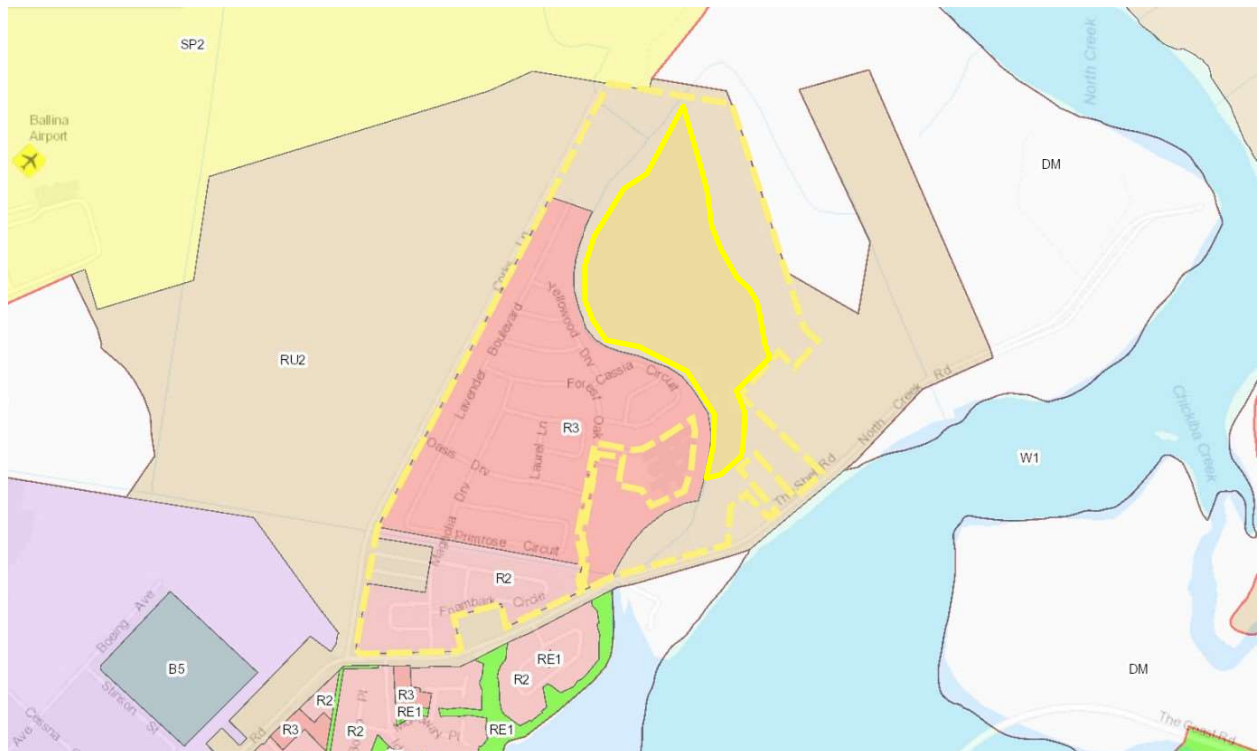


Figure 3 Zoning Map extract (Source: NSW Govt.)

5.4.2 Building Height

The maximum building height permitted at the site is 8.5m as illustrated in Figure 4 (SCC boundary in yellow).

Clause 4.3A operates to allow for the building height measurement to be taken from the minimum height on the Building Height Allowance Map to account for the need to respond to the flood constraint of the land. For the portion of the site upon which the seniors housing development is proposed, this height is 1.9m AHD.

The dwellings proposed by the seniors housing concept are single storey and designed to conform to the applicable building height development standard.



Figure 4 Height of Buildings Map extract (Source: NSW Govt.)

5.4.3 Acid Sulfate Soils

The site is identified as acid sulfate soils (ASS) Class 2.

Clause 7.9(3) states that development consent must not be granted for the carrying out of works unless an ASS management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.

This hazard is discussed at Section 5.6.3.3.

5.4.4 Flood Planning

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

Clause 7.3(3) states that development consent must not be granted to development on land within a flood planning area unless the consent authority is satisfied that the development is compatible with the flood hazard of the land, will not significantly adversely affect flood behaviour and incorporates appropriate measures to manage risk to life from flood.

This hazard is discussed at Section 5.6.3.5.

5.4.5 Aircraft noise

The Noise Exposure Forecast Contour Map for the Ballina Byron Gateway Airport indicates that the northern portion of the site is within an ANEF contour of 20 and therefore clause 7.6(3) applies to development proposed on that land.

The dwellings proposed by the seniors housing concept will be located outside of the ANEF contour.

5.4.6 Strategic Growth Area

The site is mapped on the Strategic Growth Areas Map under BLEP as a 'strategic growth area'.

Clause 7.8 of BLEP applies to land identified in the map. The objective of cl. 7.8 is *'to ensure that strategic urban development opportunities in the Strategic Urban Growth Area are maintained'*.

Clause 7.8 of LEP 2012 seeks to limit development that may prejudice future urban or employment land uses on the land [our underline]:

"(3) Development consent must not be granted to development on land identified in subclause (2)(a) unless the consent authority has considered whether the development may preclude future urban or employment land uses on the land having regard to—

(a) the orderly and coordinated provision of infrastructure, and

(b) the maintenance of amenity and scenic values, and

(c) land use conflict impacts associated with stormwater or wastewater discharge and emissions, including noise, dust and odour, and

(d) site access, generation of traffic and the efficient functioning of transport infrastructure.

(4) Development consent must not be granted to development on land identified in subclause (2)(b) unless the consent authority has considered the implications that development may have on land identified in subclause (2)(a)."

The proposed seniors housing concept aligns with the strategic growth area designation of the land. This designation was recognised by the Department of Planning and Environment in making the decision to issue a SCC in respect of the land.

The Commissioner referred to this designation of the land stating that it is appropriate to give weight to the designation of the site as being part of a strategic growth area noting that whilst this designation is not the equivalent of a land use for the site, in conjunction with the other strategic documents, it is a relevant consideration (at [348]).

5.5 MATTERS FOR CONSIDERATION

5.5.1 Site suitability [cl. 24(2)(a)]

Clause 24(2)(a) of the Seniors SEPP states that a consent authority must not consent to a development application to which the clause applies unless the consent authority is satisfied that the relevant panel has certified in a current site compatibility certificate that the site is suitable for more intensive development.

The site is suitable for more intensive development because:

- It is within 3km of Ballina village which provides a full range of retail, commercial, recreational, health, welfare and educational services and facilities, and is adjacent to the established Palm Lake Resort which contains similarly scaled low density dwellings and complementary facilities.
- It is identified as "investigation area – urban land" on the urban growth area map for Ballina Local Government Area in the North Coast Regional Plan 2036, indicating that it is considered suitable for consideration for urban development.

- It is identified in Ballina Shire Council's Growth Management Strategy (GMS) as a strategic urban growth area. Furthermore, the site is mapped on the Strategic Growth Areas Map under BLEP as land within a 'strategic growth area'.

The SCC for the site dated 12 October 2017 certified that the site is suitable for more intensive development and this position was validated in *Palm Lake Works Pty Ltd v Ballina Shire Council* [2019] NSWLEC 1479 where the Commissioner ultimately found, as a factual matter, that the site was "suitable for the proposed development" (at [386]). The fact that this decision was successfully appealed by the Respondent on legal grounds does not change this fact. Matters of technical detail must necessarily be resolved through the Development Application process, which is common to all SCC requests. It is the applicant's position that all matters can be satisfactorily resolved.

The site remains suitable for more intensive development.

5.5.2 The natural environment [cl. 25(5)(b)(i)]

Pursuant to clause 25(5)(b)(i), the relevant panel must not issue a SCC unless it is of the opinion that the proposed development is compatible with surrounding land uses having regard to the natural environment including known significant environmental values, resources, or hazards.

Significant environmental values, resources, and hazards relevant to the site are discussed in the sections below.

5.5.2.1 Bushfire

The site is identified as bush fire prone land as illustrated and Figure 5 (SCC boundary in yellow).

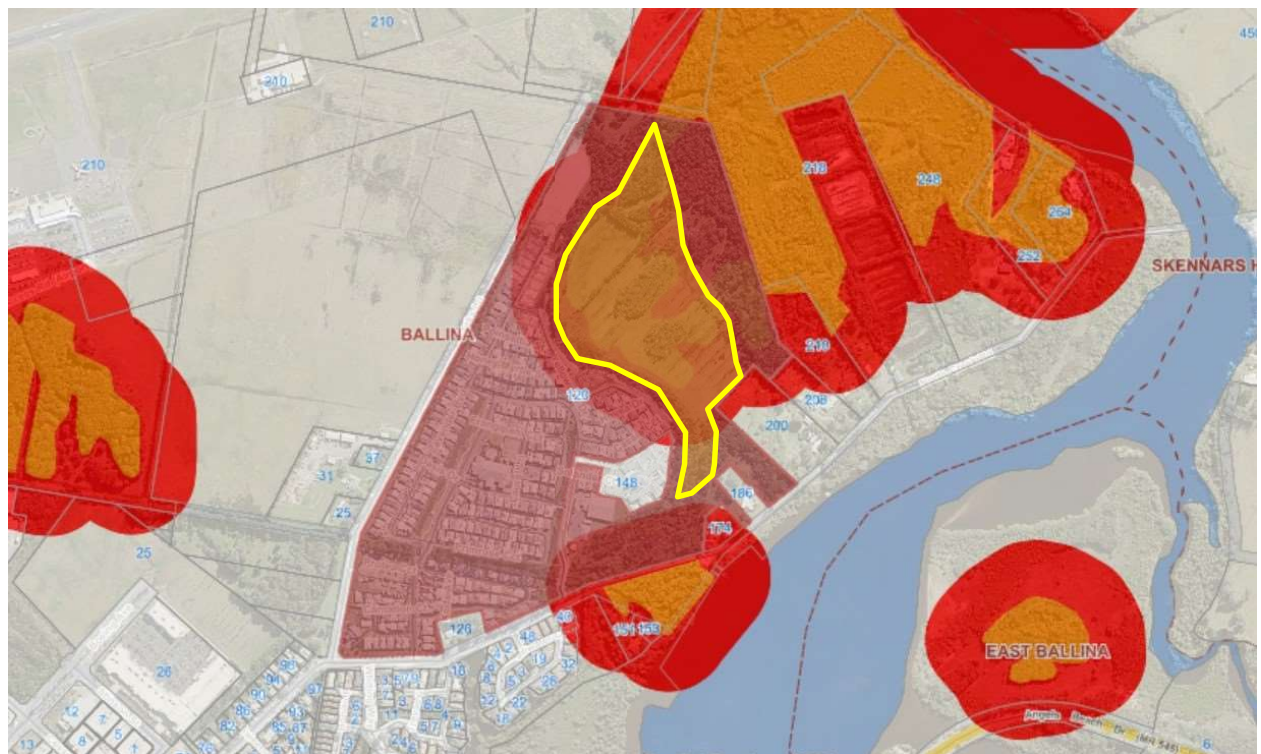


Figure 5 Bushfire prone land (Source: Ballina Shire Council)



The amended DA before the Court was found to be consistent with *Planning for Bushfire Protection (PBP) 2006*. Bushfire experts agreed that 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.

The expert witness evidence presented to the Court demonstrates that bushfire risk can be managed (i.e. APZ can be delivered) without prejudicing vegetation management outcomes described in the vegetation management plan (VMP) for the site.

The relevant panel can be satisfied that development of the site for the purpose of seniors housing is compatible with bushfire hazard.

5.5.2.2 Mosquito management

The site is identified on the BDCP Mosquito Management Map as an Area of High Mosquito Risk.

A Mosquito Impact Assessment (MIA) Report was produced in relation to DA2018/321 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.

The relevant panel can be satisfied that development of the site for the purpose of seniors housing is compatible with the mosquito risk hazard.

5.5.2.3 Acid sulfate soils

The site is identified as acid sulfate soils (ASS) class 2 as illustrated in Figure 6 (SCC boundary in yellow).

Clause 7.9(3) of BLEP states that development consent must not be granted for the carrying out of works unless an ASS management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.

An ASS Management Plan was produced in relation to DA2018/321 and a Revised ASS Management Plan accompanies the amended DA before the Court. The Revised ASS Management Plan explains how ASS at the site are to be managed so as not to cause environmental damage.

The Revised ASS Management Plan will be updated to capture management of ASS in relation to necessary stormwater management and vegetation management works in the Western Creek line and furnished with any future application.

The relevant panel can be satisfied that development of the site for the purpose of seniors housing is compatible with the ASS designation of the land.



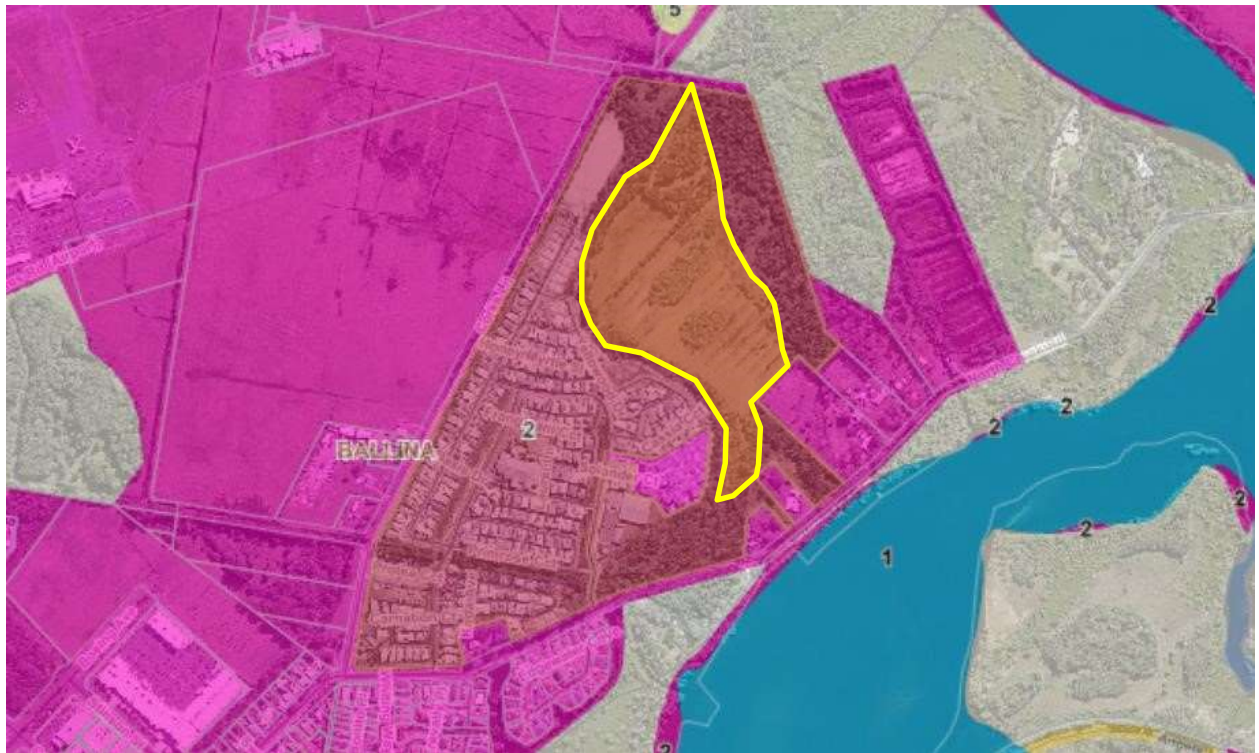


Figure 6 Acid sulfate soils (Source: Ballina Shire Council)

5.5.2.4 Contamination

A Preliminary Site Investigation (PSI) Report was produced in relation to DA2018/321. The PSI explained that agricultural uses had occurred at the site which prompted the collection and analysis of soils samples to determine extent of contamination. The analysis found that, from a chemical perspective, the site is suitable for the proposed seniors housing development.

The PSI Report is provided for information at **Annexure I**.

The relevant panel can be satisfied that the site is suitable for development for the purpose of seniors housing from a land contamination perspective.

5.5.2.5 Flooding

The site is located within a Flood Planning Area under BLEP as illustrated and Figure 7 (SCC boundary in yellow) and is identified by BDCP as land situated within a high to medium flood risk precinct.

The proposed seniors housing development will require filling of the site, with typical finished earthworks levels of 3.2m AHD across the proposed development footprint to raise the development above the designated flood level of 2.3 m AHD and provide sufficient fall and cover for drainage and services. The degree of site filling was accepted by the Court in *Palm Lake Works Pty Ltd v Ballina Shire Council* [2019] NSWLEC 1479.

A Hydraulic Impact Assessment (HIA) Report was produced in relation to DA2018/321 and further detailed work undertaken during Court proceedings.

The predicted post-development flood behaviour was modelled to determine off-site hydraulic impacts of the development. The flood modelling reported 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.



Figure 7 Flood Planning Area (Source: Ballina Shire Council)

Off-site hydraulic impacts of the development were dealt with by hydraulic experts in relation to the amended DA that was ultimately approved by the Court, noting that the amended proposal involved a reduced development footprint and consequent reduction in volume of fill material required to raise ground levels.

Having regard to the evidence provided by the hydraulic experts during the proceedings, the Commissioner found that the offsite hydraulic impacts arising from the development are acceptable (at [313]) and that the “shelter in place” approach adopted in the Flood Evacuation and Emergency Management Plan was an acceptable emergency response approach in the circumstances (at [352]).

The relevant panel can be satisfied that proposed seniors housing development is compatible with the surrounding land uses having regard to flood risk hazard.

5.5.2.6 Water quality

Stormwater runoff from the proposed seniors housing development will discharge to North Creek.

Land within and adjacent to North Creek is mapped as *coastal wetland* under the Coastal Management SEPP. Land mapped as *priority oyster aquaculture areas* and protected under *State Environmental Planning Policy (Primary Production and Rural Development) 2019* (Primary Production SEPP) are also located within North Creek in proximity to the site.



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.

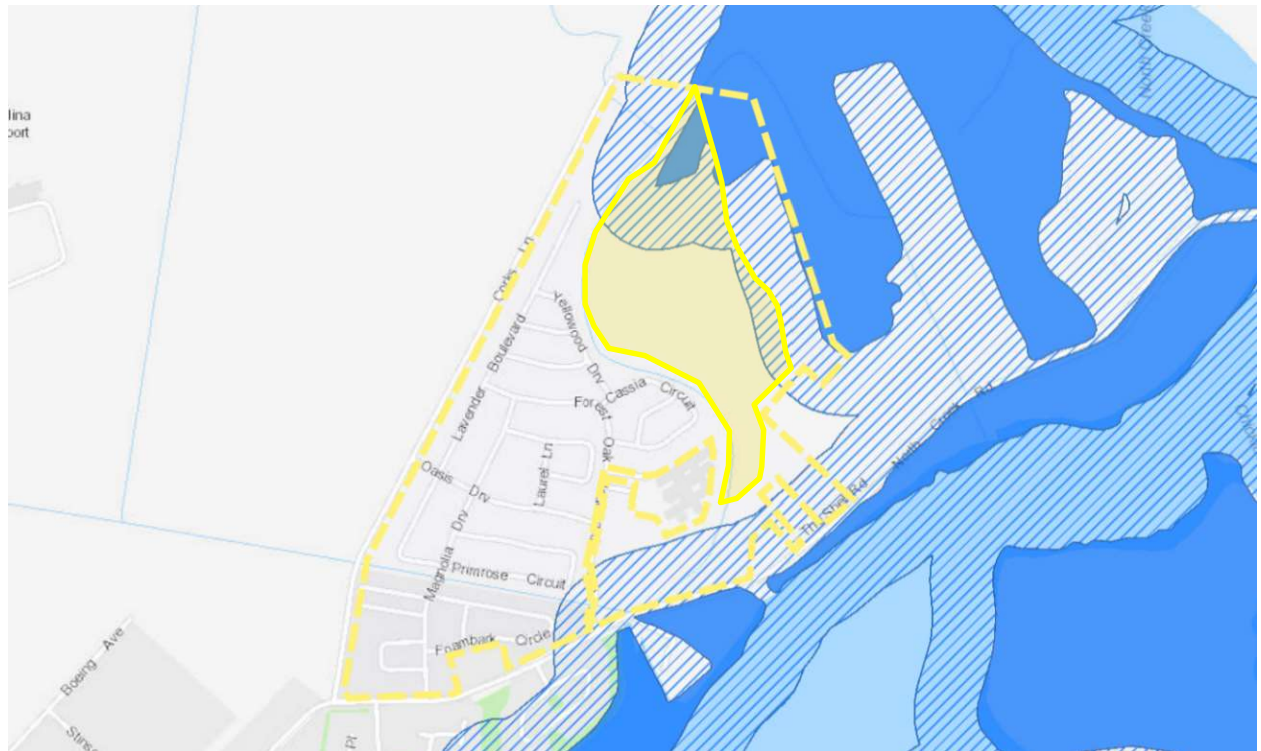


Figure 8 Coastal wetland and buffer zone (Source: NSW Govt.)

Having regard to the evidence provided by the experts during the proceedings, the Commissioner ultimately found that there are no hydrological matters that would warrant the refusal of the application (at [157]) and that there were no detrimental downstream impacts on ecology that warrant the refusal of the development application (at [238]).

We note that these matters were raised in the successful appeal by the Respondent in relation to the original decision. Notwithstanding, it is acknowledged that the granting of a SCC does not absolve the applicant from needing to undertake further detailed technical work in relation to a series of environmental matters and it is the applicant's position that these technical matters can be addressed and would not warrant a different decision to the granting of a new SCC from that reached in relation to the original SCC.

The relevant panel can be satisfied that proposed seniors housing development is compatible with the surrounding land uses having regard to the environmental sensitivity of receiving waters including coastal wetland and priority oyster aquaculture areas.

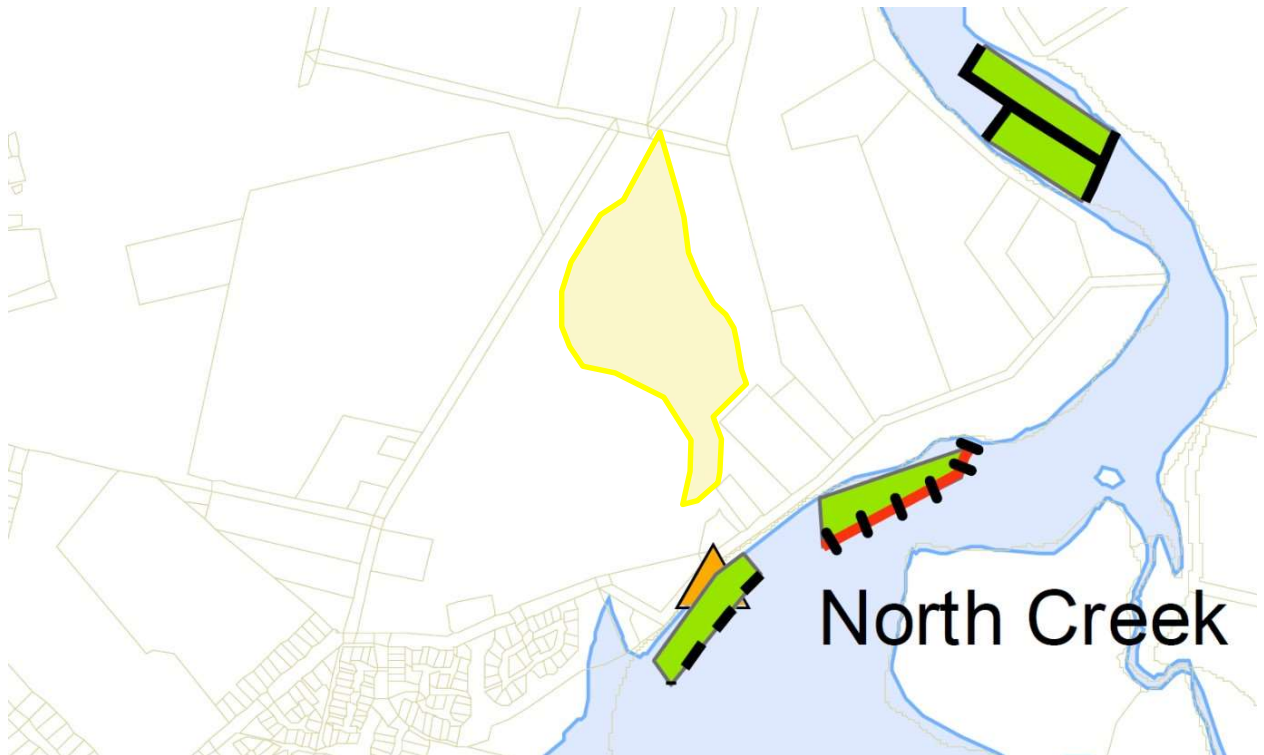


Figure 9 Priority oyster aquaculture areas (Source: NSW Govt.)

5.5.2.7 Flora and fauna [cl. 25(5)(b)(vi)]

Native vegetation occurring at the site includes:

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

An area of planted native and landscaped vegetation is also present at the site, however the ecological value associated with this vegetation is found to be low. Mapped Coastal Wetlands occur in the eastern, north eastern, and southern portions of the subject land.

A Biodiversity Development Assessment Report (BDAR) was produced in relation to DA2018/321 and was later updated to address impacts associated with works in North Creek Road and to reflect the amended DA now before the Court. The updated BDAR is provided at **Annexure E**.

The proposed development will predominantly avoid TEC vegetation, and will not remove any areas of *coastal wetlands*. The proposal will necessitate the removal of some areas of native vegetation and the BDAR explains that offsets are required in the form of ecosystem credits.

The proposed development will also involve the retention and restoration of riparian habitats within the North Creek tributary under a vegetation management plan (VPM).



The BDAR concludes that, with the implementation of mitigation measures in conjunction with ecosystem credits, impacts of the development on biodiversity can be appropriately managed. The BDAR states that improved water quality will service to restore wetland habitats over time.

The relevant panel can be satisfied that proposed seniors housing development is compatible with the surrounding land uses having regard to the flora and fauna.

5.5.3 Existing and approved uses in the vicinity [cl. 25(5)(b)(i)]

Pursuant to clause 25(5)(b)(i), the relevant panel must not issue a SCC unless it is of the opinion that the proposed development is compatible with surrounding land uses having regard to the existing uses and approved uses of land in the vicinity of the proposed development

The site adjoins vacant rural land and the Ballina Byron Gateway Airport to the west and north and residential properties to the west and south and rural residential properties to the south and east.

The Australian Noise Exposure Forecast (ANEF) Contour Map for the Ballina Byron Gateway Airport indicates that the northern portion of the site is within ANEF "Contour 20". The dwellings proposed by seniors housing concept will be located outside of the ANEF contour.

The proposed seniors housing concept is designed as an expansion of Palm Lake Resort and is inherently compatible with the established seniors housing development. Moreover, the density, scale and arrangement of proposed dwellings reflect the density, scale and arrangement of dwellings within Palm Lake Resort. An internal connection between the sites will be delivered so that residents of the expansion site have access to the services and facilities available within Palm Lake Resort.

The seniors housing concept proposes that vehicular access to the site from North Creek Road will pass between rural residential properties to the south. Appropriate acoustic barriers will be delivered at the interface between the vehicular access road and these properties to mitigate adverse acoustic impacts associated with vehicular movements. This matter was dealt with in *Palm Lake Works Pty Ltd v Ballina Shire Council* [2019] NSWLEC 1479 and the Commissioner found that the amenity impacts associated with the access from North Creek Road would be acceptable.

The relevant panel can be satisfied that the proposed seniors housing development is compatible with surrounding land uses.

5.5.4 Impact on likely future uses [cl. 25(5)(b)(ii)]

Pursuant to clause 25(5)(b)(ii), the relevant panel must not issue a SCC unless it is of the opinion that the proposed development is compatible with surrounding land uses having regard to the impact that the proposed development is likely to have on the uses that are likely to be the future uses of that land.

The land is within Zone RU2 Rural Landscape under BLEP and a wide range of uses are permitted with consent as detailed at Section 5.4.1.

Notwithstanding the range of uses permitted under the current land use zone, the designation of the site as an "investigation area" of urban growth under the NCRP and a "strategic growth area" under both the Ballina Shire GMS and BLEP, suggests the likely future use of the site is residential to cater for the housing needs of the region.

The use of the site for the purpose of seniors housing delivers on the strategic growth designation of the site and is consistent with the likely future residential use of the land.



5.5.5 Services and infrastructure [cl. 25(5)(b)(iii)]

Pursuant to clause 25(5)(b)(iii), the relevant panel must not issue a SCC unless it is of the opinion that the proposed development is compatible with surrounding land uses having regard to the services and infrastructure that are or will be available to meet the demands arising from the proposed development.

Service and infrastructure provision is discussed in the sections below.

5.5.5.1 Services

The site has water, sewer, electricity, and telecommunications connections available because of its proximity to existing residential development.

Service layout plans were prepared in relation to the amended DA before the Court and involve delivery of works within the North Creek Road reserve which will be dealt with under a separate application under the *Local Government Act 1993*.

The relevant panel can be satisfied that the proposed development is compatible with surrounding land uses having regard to service provision.

5.5.5.2 Location and access to facilities

Clause 26(1) of the Seniors SEPP requires that residents of development for the purpose of seniors housing 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.

Under clause 26(2)(c), access complies if there is a transport service located within 400m from the site of the proposed development that will take residents to a place that is located within 400m of the abovementioned facilities and services and is available both to and from the development during daylight hours.

The distance between the site and the transport service, and the transport service and the facilities and services must constitute a suitable access pathway and satisfy the gradient requirements described at clause 26(3).

A bus service operated by Palm Lake Resort will be made available transport residents of the development from the site to the facilities and services identified under clause 26(1). The bus service will be available to transport residents from the site to Ballina Fair and Ballina Central Shopping Centre at least once between 8am and 12pm each day and at least once between 12pm and 6pm each day.

Several services will be made available to residents on site such as caretaker and emergency services, registered nurse, personal care, meal services, and housekeeping services.

Detailed operational information concerning on provision of site services and the proposed private transport service was produced in relation to DA2018/321 and has been provided at **Annexure F**.

These access arrangements were considered acceptable in the granting of the original SCC and by the Court in *Palm Lake Works Pty Ltd v Ballina Shire Council* [2019] NSWLEC 1479.

The relevant panel can be satisfied that the site is suitable for development for the purpose of seniors housing with respect to location and access to facilities and services referred to in clause 26(1) of the Seniors SEPP.

5.5.5.3 Access and Traffic

An Amended Traffic Impact Assessment (TIA) Report was produced to support the amended DA before the Court and is provided at **Annexure C**.

Access to the proposed seniors housing development onto the wider road network is proposed via a new access driveway with North Creek Road and the existing “Bupa Aged Care” access i.e. an internal link with the existing Palm Lake Resort. Internal roads will be delivered as a shared space and designed to allow a heavy rigid vehicle to service the site.

Integrated parking will be delivered in conjunction with each dwelling for resident use and visitor parking will be provided on-street and within perpendicular parking bays uniformly spread throughout the site.

The TIA Report explains that the anticipated increase in traffic volume along North Creek Road between the existing “Bupa intersection” and the proposed new access driveway requires that the road be upgraded to “collector street standard” involving the delivery of half the collector road width standard along the site frontage.

The TIA Report found that the anticipated trip generation associated with development of the land for the purposes of seniors housing is not expected to significantly impact on the operation of the local road network, subject to the delivery of documented road upgrades. Road upgrades will be dealt with by a separate *Roads Act* approval.

The relevant panel can be satisfied that the proposed development is compatible with surrounding land uses having regard to the capacity of road infrastructure to meet the traffic, access and servicing demands of development.

5.5.6 Bulk, scale, built form and character [cl. 25(5)(b)(v)]

Pursuant to clause 25(5)(b)(v), the relevant panel must not issue a SCC unless it is of the opinion that the proposed development is compatible with surrounding land uses having regard to the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing, approved and future uses of land in the vicinity of the development.

Surrounding land use consists of low-density residential development and the predominant built form is single storey dwellings.

Pursuant to clause 4.3 of BLEP, the maximum building height permitted at the site and on land in the vicinity of the development is 8.5m. This dimension is taken from 1.9m AHD accounting for the need to respond to the flood constraint of the land. The dwellings proposed to be delivered are designed to conform to the maximum building height development standard and the resultant building scale will be compatible with that of existing and future uses.

No floor space ratio (FSR) development standard applies to the site or land in the vicinity of the development.

The proposed seniors housing concept is an expansion of the established Palm Lake Resort and will consist of 77 similarly scaled and arranged self-care dwellings with integrated garaging. The proposed bulk, scale, built form and character of the proposed dwellings will be compatible with existing dwellings within Palm Lake Resort and potential future development on adjoining land.

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 has reduced the potential development to 77 dwellings. The Court was satisfied with this built form (75 dwellings, two being omitted due to a minor height exceedance) in *Palm Lake Works Pty Ltd v Ballina Shire Council* [2019] NSWLEC 1479. It is expected that a similar conclusion would be reached in relation to this new SSC application.



The relevant panel can be satisfied that the bulk, scale, built form and character of the proposed seniors housing development is compatible with the bulk, scale, built form and character of existing and potential future uses of land in the vicinity of the development.





6. Conclusion

This report accompanies an application to the DPIE for a site compatibility certificate (SCC) under clause 24 of Seniors SEPP in relation to part of the land at 120 North Creek Road, Ballina

The SSC is intended to facilitate a proposed seniors housing concept that will involve vegetation removal and land modification works and the staged delivery of 77 serviced self-care dwellings, an internal road network including connections to the external road network, stormwater management, vegetation and environmental protection works.

From a strategic land use perspective, the site is recognised as having potential for more intensive development given its designation as “investigation area – urban land” in the North Coast Regional Plan 2036. The land is also identified in Council’s Growth Management Strategy and on the Strategic Growth Areas Map under BLEP as a “strategic urban growth area”.

The factual findings by the Land and Environment Court in *Palm Lake Works Pty Ltd v Ballina Shire Council* [2019] NSWLEC 1479 supported the strategic planning merits of development of the subject site for the purpose sought in this SCC.

An analysis of the locality demonstrates that the site is within 3km of Ballina village which provides a full range of retail, commercial, recreational, health, welfare and educational services and facilities, and is adjacent to the established Palm Lake Resort which contains similarly scaled low density dwellings and complementary facilities.

Detailed assessment finds that development for the purpose of seniors housing is compatible with the surrounding land having regard to the criteria provided at clause 25(b) of the Seniors SEPP.

Based on the documentation provided, the relevant panel can be satisfied that there are no constraints, hazards or limitations associated with the site that would preclude the delivery of an appropriately scaled and well-designed seniors housing development.

Our assessment is consistent with the previous decision of the DPE to issue a SCC for the site and is further validated by the fact that a subsequent DA for a seniors housing development was determined by way of granting development consent by the Court (acknowledging that the consent was later set aside on questions of law).

Given the circumstances, the relevant panel is requested to expedite its determination of this SCC application.

ANNEXURE A

Survey (Andrews and Hansen Surveyors)

ANNEXURE B

Site Analysis (SMEC)

ANNEXURE C

Civil Works Plan (Martens and Associates)

ANNEXURE D

Shadow Diagrams (Martens and Associates)

ANNEXURE E

Biodiversity Development Application Report (Cumberland Ecology)

ANNEXURE F

Traffic Impact Assessment Report (Burchills Engineering Solutions)

ANNEXURE G

Management Operational Detail (Palm Lake Resort)

ANNEXURE H

Previous SCC (and Assessment Report) - DPIE

ANNEXURE I

Preliminary Site Investigation (Environmental Engineering Solutions)