

8.1 DA 2003/413 - S96 Application Ballina Heights Estate (Stages 5 to 8)

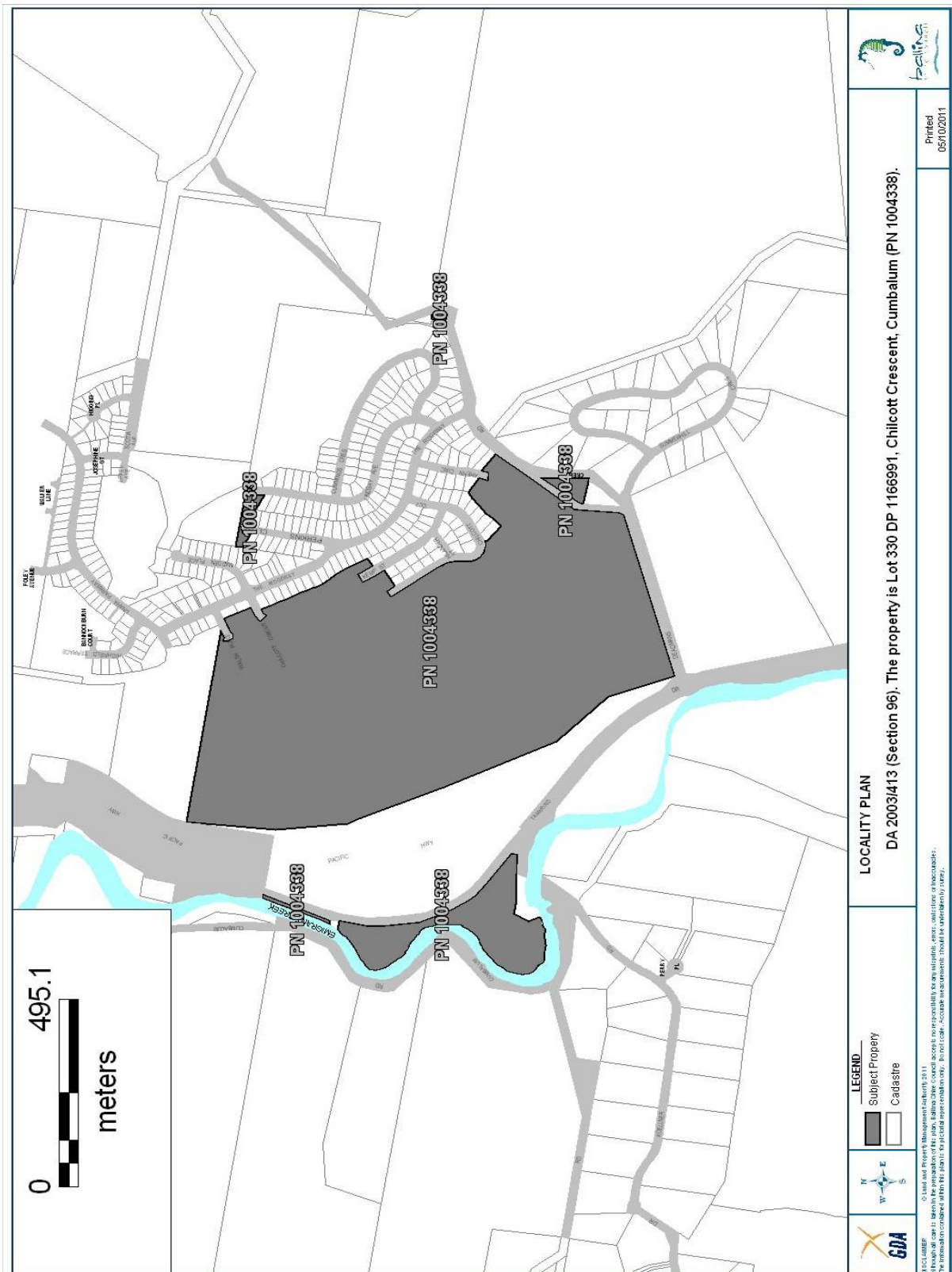
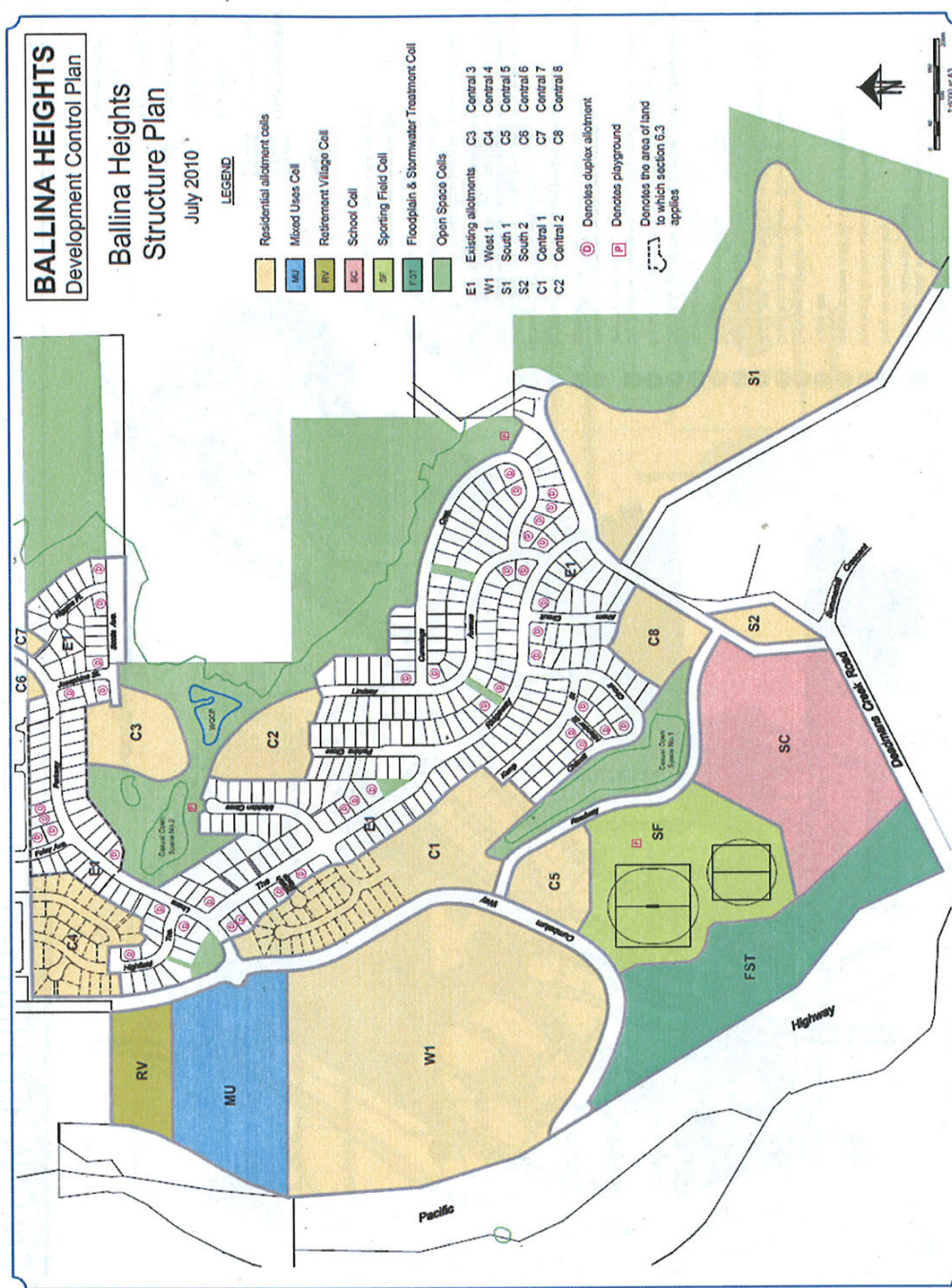


Figure 3 - Ballina Heights Structure Plan



Ballina Shire Combined DCP 2006
Chapter 1 Urban Land - Policy Statement 14, Ballina Heights Estate

Section 96 - DA 2003/413 - Ballina Heights Estate (Stages 5 to 8)

File Reference	DA 2003/413
Applicant	Ardill Payne & Partners
Property	Lot 316 DP 1148856, Unara Parkway and Lot 302 DP 1147087, Pacific Highway, Cumbalum
Proposal	To seek a modification to DA 2003/413 – 189 urban (residential) allotments, being Stages 5 to 8 of the Ballina Heights Estate (amend consent condition 1.3A – provision of Structured Open Space Area)
Effect of Planning Instrument	The land is zoned part 1(b) – Rural (Secondary Agricultural Land), part 1(d) – Rural (Urban Investigation), part 2(b) – Village Area and part 7(l) – Environmental Protection (Habitat) under the provisions of the Ballina LEP. The Structured Open Space Area is to be located entirely within the 2(b) – Village Area zone.
Locality Plan	The subject land is depicted on the locality plan attached

Introduction

On 27 July 2010, Council received a Section 96 Application to Modify Development Consent 2003/413 [189 urban (residential) allotments, being Stages 5 to 8 of the Ballina Heights Estate] to amend condition 1.3A.

Condition 1.3A currently states:

- 1.3A *The proposed Structured Open Space area (as defined in Policy Statement No. 14 – Ballina Heights of Chapter 1 – Urban Land within the Ballina Shire Combined Development Control Plan) shall be completed and dedicated to Council prior to the issue of the Subdivision Certificate for the 375th residential lot.*

In the event that co-location of the ovals is unable to be achieved:

- (i) At least one full-sized oval (inclusive of 2 full size senior winter playing fields) must be completed and dedicated to Council, prior to the issue of the Subdivision Certificate for the 320th residential lot.*
- (ii) The proposed second oval (inclusive of 2 full size senior winter playing fields) is to be constructed and dedicated to Council prior to the issue of the Subdivision Certificate for the 550th residential lot.*

Note: In the event that co-location is unable to be achieved, an amenities building, pro-rata car parking spaces, sports field lighting and provision of suitable public all weather access will need to be provided to each full sized oval, in accordance with the construction plans approved by Council. One set of playground equipment is to be

provided within the curtilage of Oval No. 1 (being the oval in the western catchment).

The applicant has proposed modifications to condition 1.3A, such that condition 1.3A is to read as follows:

- 1.3A *The proposed Structured Open Space area (as defined in Policy Statement No. 14 – Ballina Heights of Chapter 1 – Urban Land within the Ballina Shire Combined Development Control Plan) shall be completed and dedicated to Council prior to the issue of the Subdivision Certificate for the 399th residential lot or no later than 31 March 2012.*

Refer to attachment 2 – extract from Policy Statement No. 14 – Ballina Heights Estate (Ballina Heights Structure Plan, July 2010) which shows the location of the Structured Open Space area (sporting field cell).

Background

On 26 June 2003, Council granted development consent to DA 2003/413 – 189 urban (residential) allotments, being Stages 5 to 8 of the Ballina Heights Estate. As part of the proposal and consent, the Estate was to be provided with a Structured Open Space area.

In relation to the timing of the provision of the Structured Open Space area, consent condition 1.3 of the original consent stated:

- 1.3 In accordance with Section 3.2.6.1 of Policy Statement No. 14 of DCP No. 1 – Urban Land, one full sized oval (inclusive of two full size winter fields) shall be constructed and dedicated to Council prior to the issue of the Construction Certificate for Stage 5(b) of the Ballina Heights Estate.

Other conditions placed on the consent in relation to the provision of facilities associated with the Structured Open Space area included:

- 1.63 An amenities building shall be required that provides a minimum of:
- Male and female ablution facilities.
 - Two designated lockable storage rooms of nominal dimensions 4m x 4m.
 - An awning/verandah for the perimeter of the building.
- 1.64 The playing fields shall be serviced by a sealed access road.
- 1.66 The playing field's parking area shall provide for a minimum of 110 all weather car parking spaces.
- 1.67 The playing fields shall be constructed to the approval of Council's Open Spaces and Reserves Manager such that:
- The size of the fields can accommodate a full sized turf pitch cricked oval in summer and two rectangular full sized fields for winter sports (i.e. rugby league, union, soccer).
 - The orientation of the fields is to be between true north and 15 degrees east of north.

- c. The playing fields shall be domed with an optimum surface slope of 1 in 70.
- d. The playing surface shall consist of a free draining topsoil on nominal 150mm depth and within a pH range of 6.0-7.0. The free draining topsoil shall be laid upon a further 150mm of free draining sand medium.
- e. A fully automated pop-up sprinkler irrigation system, associated controller unit and quick coupling valves shall be installed.
- f. The grass cover shall be of species suitable for the site.

At the time of the approval of DA 2003/413, Policy Statement No. 14 – Ballina Heights (specifically Section 3.2.6.1) of DCP No. 1 – Urban Land stated that the Structured Open Space area was to be provided in the following manner:

- One oval including Stage 1 amenities and Stage 1 car park to be constructed and dedicated to Council on release of 250 lots.
- On release of a further 300 lots the balance of the playing field development shall be completed.

In June 2007, Ardill Payne and Partners (on behalf of the developers of the Ballina Heights Estate) lodged a Section 96 Application to Modify Development Consent 2003/413 to amend the timing of the provision of the Structured Open Space area. The application was lodged for a range of reasons, including geotechnical and settlement issues experienced by the developers in the south-western portion of the Estate. It must also be noted that during the assessment of the modification, Council raised concerns relating to the provision and siting of the second sports oval, which required flood modelling to be undertaken.

This application was negotiated with the applicant over a period of 10 months. As part of the negotiations, the developers offered to provide the entire Structured Open Space area at one time, rather than in a staged manner.

On 21 April 2008, Council approved (under delegation) a Section 96 Modification to Development Consent 2003/413, which amended the timing and provision of the Structured Open Space area. Specifically, conditions 1.3, 1.63, 1.64 and 1.67 were modified, with two new conditions (1.3A and 1.62A) inserted. The modified and new conditions are provided below.

- 1.3 Construction shall have commenced on one full sized oval (inclusive of 2 full size senior winter playing fields) required under the provisions of Policy Statement 14 – Ballina Heights of Chapter 1 – Urban Land within the Ballina Shire Combined Development Control Plan in accordance with construction plans approved by Council, to the satisfaction of Council's Developments Engineer on or before the release of the Subdivision Certificate for 250 residential lots within the Ballina Heights Estate. This will entail, as a minimum, commencement of bulk filling and draining works for the oval.
- 1.3A The proposed Structured Open Space area (as defined in Policy Statement No. 14 – Ballina Heights of Chapter 1 – Urban Land within the Ballina Shire Combined Development Control Plan) shall be completed and dedicated to Council prior to the issue of the Subdivision Certificate for the 375th residential lot.

In the event that co-location of the ovals is unable to be achieved:

- (iii) At least one full-sized oval (inclusive of 2 full size senior winter playing fields) must be completed and dedicated to Council, prior to the issue of the Subdivision Certificate for the 320th residential lot.
- (iv) The proposed second oval (inclusive of 2 full size senior winter playing fields) is to be constructed and dedicated to Council prior to the issue of the Subdivision Certificate for the 550th residential lot.

Note: In the event that co-location is unable to be achieved, an amenities building, pro-rata car parking spaces, sports field lighting and provision of suitable public all weather access will need to be provided to each full sized oval, in accordance with the construction plans approved by Council. One set of playground equipment is to be provided within the curtilage of Oval No. 1 (being the oval in the western catchment).

- 1.62A The amenities building, car parking spaces, sports field lighting and the installation of playground equipment required for the proposed Structured Open Space area by the provisions of Policy Statement 14 – Ballina Heights of Chapter 1 – Urban Land within the Ballina Shire Combined Development Control Plan shall be constructed and completed in accordance with the provisions of Condition No. 1.3A, in accordance with the construction plans approved by Council prior to Council accepting dedication of the land.
- 1.63 An amenities building shall be required that provides a minimum of:
 - Male and female ablution facilities (WC's and showers).
 - Two designated lockable storage rooms of nominal dimensions of 4m x 4m.
 - An awning/verandah for the perimeter of the building.
 - A canteen.
 - The building being constructed such that a second storey is capable of being erected thereon.
- 1.64 Suitable public all weather access shall be provided to the proposed Structured Open Space area as required by condition 1.3A.
- 1.67 The playing fields shall be constructed in accordance with the consent conditions such that:
 - a. The size of the fields can accommodate a full sized turf pitch cricket oval in summer and two rectangular full sized fields for winter sports (i.e. rugby league, union, soccer).
 - b. The orientation of the fields is to be between true north and 15 degrees east of north.
 - c. The playing fields shall be graded with cross fall with an optimum surface slope of 1 in 70.
 - d. The playing surface shall consist of a clean topsoil or nominal 150mm depth and within a pH range of 6.0-7.0, which is to be sourced, if possible, from another area of the development. The clean topsoil shall be laid upon a further 150mm of free draining sand medium. The mixing of topsoil with sand will depend on the quality of the soil (subsequent to an inspection between Council staff and the developers).

- e. Sports field lighting shall be installed in accordance with the relevant Australian Standards to the main cricket/2 football fields.
- f. The playing fields, curtilage and site on which facilities are to be located, shall be developed and filled to a level of 1 in 10 year ARI for stormwater (as per Council's resolution dated March 2004), with the only filling to occur above this level, being for field design and drainage purposes (i.e. shaping of the fields).

The developer shall actively maintain, mow, water and further embellish the playing field surface in the period between commencement of construction and dedication. A bond shall be lodged with Council at the time of dedication, which may be used to maintain, repair or rectify works that are failing. The bond will be refunded after a 12 month period, should no rectification works be required.

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil

Report

General comments on modification

In summary, the applicant has provided the following points in support of the proposed modification:

- The original time period determined by the 375th lot has been subject to a number of delays which have occurred as a consequence of inclement weather conditions and approval processes.
- As a contingency and based on recent weather constraints, a further 24 lot buffer is sought should the delivery of the playing fields continue to be further delayed. This buffer will enable the release of additional lots in the event that there is a significant up-turn in the market and an increase in demand for land within Ballina Heights.
- The developers submit that they are extremely committed to completing the playing fields and having them ready for use as soon as possible. The developers are constructing and will dedicate all of the required playing fields at the same time.
- The playing fields have now been co-located.
- Works on the construction of the playing fields have advanced such that there is a definite delivery date for the use and dedication of the fields, being 31 March 2012.
- The water park around the water quality control pond has been completed which provides an integrated open space/public reserve area containing a mix of active and passive open space areas and facilities (platforms, shelters, pathways, seating, exercise equipment/course, BBQ's etc.).

At the time of the preparation of this report, the current status of the development of the Structured Open Space area is as follows:

- Top soil has been spread and levelled over both oval surfaces.
- Subsoil drainage has been installed.

- The sub-surface piping under the oval's surface (as part of the irrigation system) has been installed on Council's behalf by contractors.
- The final laser levelling of the finished surface of Oval 1 has been completed. Weather conditions have interrupted the levelling of Oval 2, which is planned to be completed by 3 December 2010 (weather permitting).
- Grass seeding has been delayed until all components of the irrigation system have been completed and the system is operational.
NB: The irrigation system needs to be operational to enable watering of the surface should hot dry weather occur, to ensure successful seeding and establishment of grass. It is planned for the irrigation system to be operational before Christmas. The grass seeding program will commence shortly after and should ensure that the required 2 year growing season is achieved, resulting in the ovals being available for use by the end of March 2012.
- Detailed landscape planning has commenced for the curtilage of the ovals. A rural type fence has been installed around the perimeter of the ovals to provide security to the continued works and establishment of the playing surface of the ovals.
- Concept designs of the amenities building have been developed (as per consent condition 1.63). The design process involves consultation with Council's Manager Open Spaces and Reserves.
- The construction of the public all weather access to the ovals has commenced (road has been graded to near sub-grade level).

Council's Technical Officers have undertaken an assessment of the proposal, with consideration given to the current status of the development of the Structured Open Space area.

It is evident from the information submitted to Council, and from inspection of the subject site, that the construction and development of the ovals is significantly advanced. Upon completion of the seeding, two growing seasons will be required to establish the ovals to a suitable standard, prior to use by the general public, which will result in a delivery date of 31 March 2012. In this regard, there is no physical way in which the ovals can be delivered at an acceptable standard any earlier than that which is proposed as part of the Section 96. Council's Open Spaces and Reserves Manager has advised that the 31 March 2012 is a reasonable time frame for the provision of the ovals and that Council would not be willing to accept the ovals before this time.

In relation to the remainder of works to be undertaken as part of the Structured Open Space area, Council's Civil Services Group have advised that the detailed designs for the entry road, landscaping, club house, sports field lighting and cycleways/pedestrian footpaths have not yet been submitted to Council. Given the 31 March 2012 deadline for the completion and dedication of the Structured Open Space area, as proposed by the applicant, the detailed designs for the subject works will need to be finalised and approval sought for such in the near future.

The introduction of a definite delivery date (31 March 2012) for the Structured Open Space area is considered to be of benefit to Council and to the current and future owners/occupiers of land within the Ballina Heights Estate. Should the property market continue to decline or even remain stagnant, the lot number trigger of 375 lots (as specified within the requirements of the current

condition 1.3A) for the provision of the Structured Open Space area may not be able to be achieved (for financial/market reasons) for another 18+ months, which would delay the provision of these facilities to an unknown date.

Current status of lot/land release in the Ballina Heights Estate

At the time of preparation of this report, a total of 308 residential allotments have been registered as part of DA 2001/128 (Stages 1 to 4) and DA 2003/413 (Stages 5 to 8) for the Ballina Heights Estate. In this regard, a further 66 allotments (total of then 374 allotments) may be registered prior to the current condition 1.3A being required to be satisfied. Therefore, the release of land is still able to occur until such time as the Structured Open Space area is completed and able to be dedicated to Council.

Under the proposed modification (being an additional buffer of 24 lots), a further 90 allotments may be registered prior to condition 1.3A (as proposed to be amended) being satisfied – total of 398 lots (notwithstanding the date limitation of 31 March 2012).

It is noted that Construction Certificates have been issued by Council for subdivision works associated with Stages 6a-2, 7a and 8b-1 (total of 72 lots). However, construction works for these stages have not yet commenced. Construction Certificates are yet to be lodged with Council for subdivision works associated with Stages 8a and 8b-2 (remainder of 19 lots).

Should there be a significant up-turn in the market and an increase in demand for land within Ballina Heights, the applicant has approval to construct/develop the 72 lots (for which Construction Certificates have been issued). Should this occur, construction works are reasonably able to be completed within the next 12 months. In the event that all 72 lots are constructed, the current requirements of condition 1.3A, would only enable the release and registration of 66 lots.

Matters of consideration –Section 96 of the Environmental Planning & Assessment Act 1979 (EP&A Act)

Under the provisions of Section 96(3) of the EP&A Act, the following points are made in relation to the assessment of the application:

- The proposed modification is permitted with development consent and is consistent with the provisions of the Ballina Local Environmental Plan 1987 (BLEP) and the Environmental Planning and Assessment Model Provisions 1980 (as adopted by Clause 6 the BLEP).
- The proposed modification is considered to be consistent with the provisions of the draft Ballina Local Environmental Plan 2010.
- The proposed modification is considered to be consistent with the provisions of the North Coast Regional Environmental Plan 1988 (deemed State Environmental Planning Policy).
- The proposed modification is considered to be consistent with the provisions of the Ballina Shire Combined Development Control Plan (DCP).

In terms of Policy Statement No. 14 – Ballina Heights Estate, the proposed modifications are not contrary to the provisions contained therein. Section 3.2.2 xiii states:

“The developer shall provide a minimum of 8.6 hectares of embellished active open space within precinct SF. The construction and embellishment of the active open space is to be in accordance with the conditions of consent documented in DA No. 2003/413 and 2001/128. These are reproduced in Appendix D”.

Note - the proposed modifications will not result in the requirement for a formal amendment to PS 14. Should the proposed modification be granted approval, Appendix D will need to be updated.

- The proposed modification should not impact on any feature, process, quality etc of the natural coastal environment. The proposal is consistent with the provisions of the NSW Coastal Policy.
- It is considered that the proposed modification will have minimal impact, upon both the natural and built environments.
- The proposed modification is considered suitable for the subject site.

Conclusion

The proposed modification to consent condition 1.3A is considered to be consistent with the provisions of the Ballina Local Environmental Plan 1987, draft Ballina Local Environmental Plan 2010 and Ballina Shire Combined DCP.

As discussed above, the introduction of a definite date (31 March 2012) for the delivery of the Structured Open Space area is considered to be of benefit to Council and to the current and future owners/occupiers of land within the Ballina Heights Estate. The construction and development of the ovals is significantly advanced. Given Council's requirement for two growing seasons to establish the ovals to a suitable standard, prior to use by the general public, there is no physical way in which the ovals can be delivered at an acceptable standard any earlier than that which is proposed as part of the Section 96 application (31 March 2012).

A total of 308 residential allotments have been registered as part of DA 2001/128 (Stages 1 to 4) and DA 2003/413 (Stages 5 to 8) for the Ballina Heights Estate. The current condition 1.3A enables the registration of a further 66 allotments (total of then 374 allotments) prior to the provision of the Structured Open Space area. Under the proposed modification (being an additional buffer of 24 lots), a further 90 allotments may be registered prior to the provision of the Structured Open Space area (notwithstanding the delivery date requirement of 31 March 2012).

In view of the matters discussed above, it is recommended that the proposed modifications to consent condition 1.3A to be granted consent.

RECOMMENDATIONS

That Council grant consent to the proposed modification to consent condition 1.3A of Development Consent 2003/413 (To undertake a Torrens Title Subdivision to create 189 urban (residential) allotments, being Stages 5-8 of the Ballina Heights Estate at Lot 302 DP 1147087, Pacific Highway and Lot 316 DP 1148856, Unara Parkway, Cumbalum:

To amend consent condition 1.3A to read as follows:

- 1.3A The proposed Structured Open Space Area (as defined in Policy Statement No. 14 – Ballina Heights Estate of Chapter 1 – Urban Land within the Ballina Shire Combined Development Control Plan) shall be completed and dedicated to Council prior to the issue of the Subdivision Certificate for the 399th residential lot or no later than 31 March 2012.

Attachment(s)

1. Locality Plan
2. Structure Plan - Policy Statement 14 – Ballina Heights Estate.