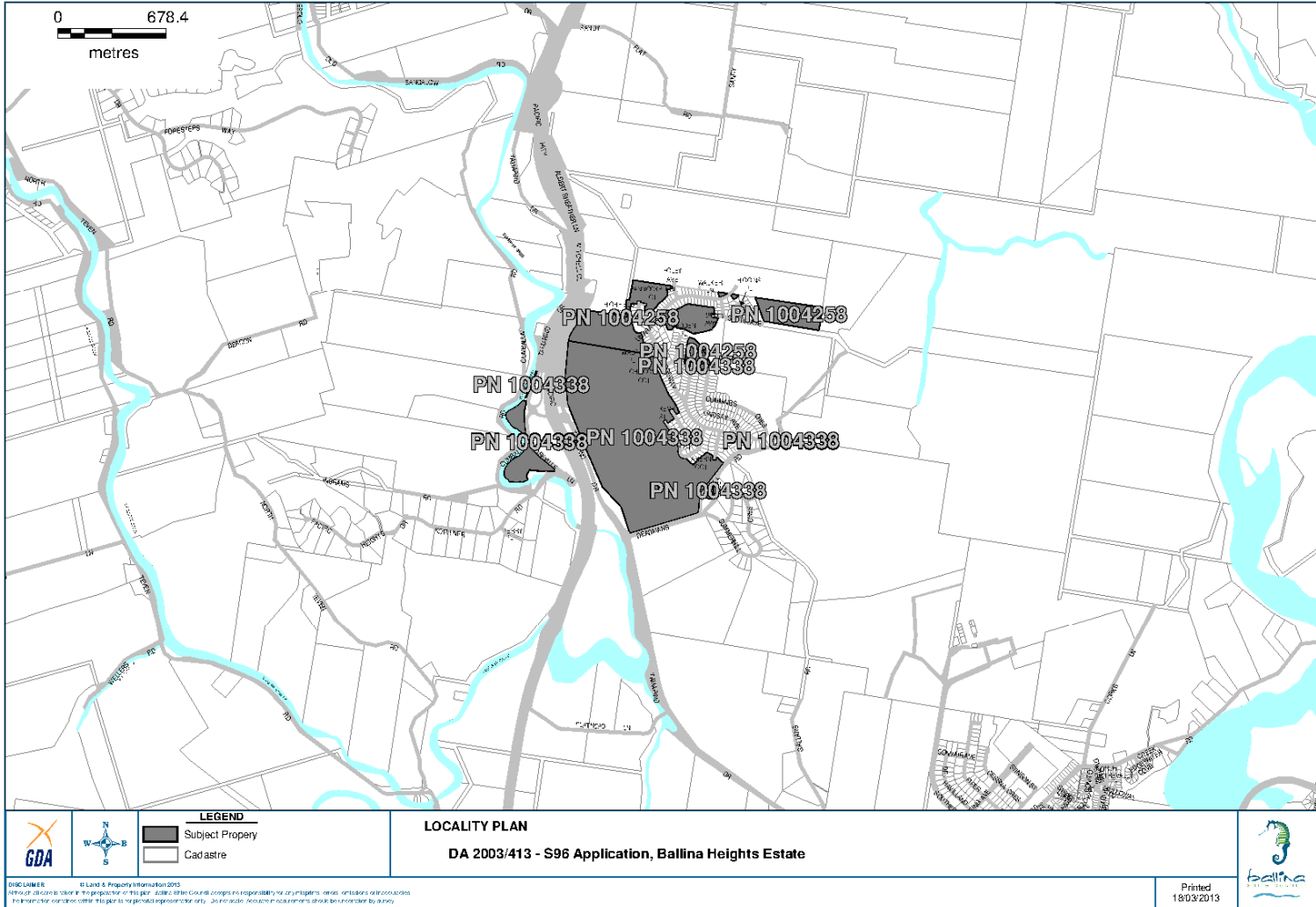
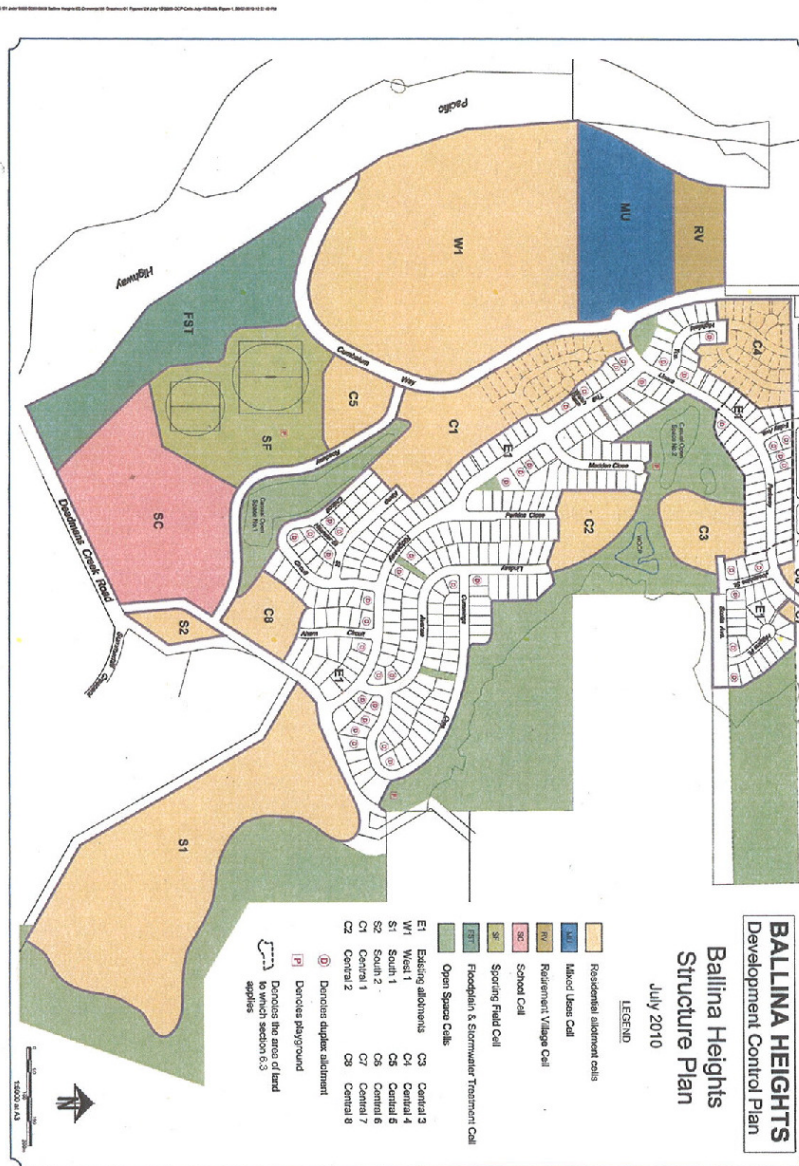


8.1 **DA 2003/413 - Section 96 Application Ballina Heights Estate.DOC**





Appendix B - Ballina Heights Estate Structure Plan & Landscaping Plans



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

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

| | |
|--------------------------------------|--|
| File Reference | DA 2003/413 |
| Applicant | Ardill Payne & Partners (on behalf of Vixsun Pty Ltd and Catholic Church – St Francis Xavier's Parish) |
| Property | Lot 330 DP 1166991, Chilcott Crescent and Lot 319 DP 1167397, Unara Parkway, Cumbaium |
| 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(i) – 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 13 October 2011, 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 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.

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 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 2013.

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

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 16 December 2010, Council received a report to the December 2010 Ordinary Meeting in relation to extending the timeframe for the provision of the Structured Open Space Area. This report related to a Section 96 Application to Modify Development Consent 2003/413 that had been lodged by the applicant in July 2010. Refer to Attachment 3 – copy of Council report December 2010.

Council granted consent to the Section 96 Application to Modify Development Consent 2003/413 on 17 December 2010.

It should be noted that a number of other conditions reference and directly relate to Condition 1.3A, being:

- 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

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

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:

- Delays had been experienced in the spreading and seeding of the topsoil due to inclement weather and the award of the tender, design and installation of sub-surface irrigation (Spreading of top soil was undertaken in September 2010, irrigation was installed by March 2011 and seeding was completed in March-April 2011).
- The uptake/strike of the seeding was slower than originally expected due to the less than favourable seasonable planting time (during winter). However, the grass coverage is now well advanced due to the on-set of spring/summer.
- The grass surface will not have been established for two growing seasons (as is required by Council's Open Spaces and Reserves Section) in order for dedication to be accepted by Council by the date contained within the existing Condition 1.3A (31 March 2012).
- A development application for the construction of a public road to service the playing fields and school site (to be known as "Power Drive") has been lodged with Council (on 31 August 2011).
- The sub-surface irrigation has been installed and is operational.
- The playing fields have been and will be subject of on-going works and maintenance (to ensure appropriate playing field surface) including weed control, top-dressing, fertilising and mowing.
- Construction Certificate approval has been granted for the Stage 1 landscaping of the western periphery of the playing fields and drainage swales.
- The final design of the built improvements associated with the playing fields (i.e. car parking areas, amenities and club-house) and Stage 2

Page 3

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

landscaping has been held in abeyance pending Council making a decision in respect of the ultimate location of the Ballina Regional Indoor Sports Facility.

- Should the Structured Open Space Area be completed prior to the 31 March 2013, then the developers undertake to dedicate such as soon as possible after completion.

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 has advanced since the determination of the previous Section 96 application (December 2010). As stated by the applicant, two growing seasons are typically required to establish the ovals to a suitable standard, prior to use by the general public, which will result in an extended delivery date, beyond that stated within the existing condition 1.3A. The extension of the delivery date for a further 12 months, will ensure the ovals are presented in an acceptable standard for Council to accept their dedication. Council's Supervisor for Sports Fields Maintenance has inspected the subject ovals and has advised that the grass is not sufficiently established to enable dedication by 31 March 2012. If the grass cover is suitably managed and maintained, there is potential for the ovals to be dedicated to Council earlier than the proposed 31 March 2013 timeframe, possibly for use during the 2012/2013 summer cricket season. Negotiations could be entered into with the developer to enable this to occur, given the current demand for cricket facilities within the Shire.

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 12 month extension to the current timeframe within Condition 1.3A would provide sufficient time for the works required via Condition 1.62A (construction of the access road, amenities building car parking spaces, sports field lighting and playground equipment) to be completed, if the applicant dedicates suitable resources to the project.

In relation to the comments made by the applicant regarding the Regional Sports Facility, it is unknown at this stage whether this facility is to be located within the Ballina Heights Estate. In this regard, it is considered appropriate to deal with the current Section 96 without consideration for this possibility. Should this change in the future, reconsideration can be made at that time.

The applicant's comments regarding the lodgement of a development application for the construction of a public road (Power Drive) to service the playing fields and school site are noted. DA 2011/383 was lodged on 31 August 2011 and is currently being assessed by Council's Technical Officers. At the time of the preparation of this report, further information had been requested from the developers in relation to noise impacts of the proposed road upon nearby proposed and existing landuses (via letter dated 5 October 2011). This information is yet to be received, however it is considered that the proposed road is reasonably able to be constructed within the additional 12 month timeframe for the completion of the sports fields (by 31 March 2013).

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

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

At the time of preparation of this report, a total of 322 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. It is noted that one additional stage, comprising 14 residential allotments (Stage 6a-2), has been registered and is able to be released for sale.

It is noted that Construction Certificates have been issued by Council for subdivision works associated with Stages 7a and 8b-1 (total of 58 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).

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

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 2011.
- 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 2011 and the Ballina Shire Combined Development Control Plan.

The construction and development of the ovals has advanced since the determination of the previous Section 96 application (December 2010). Two growing seasons are typically required to establish the ovals to a suitable standard, prior to use by the general public, which will result in an extended delivery date, beyond that stated within the existing condition 1.3A. The extension of the delivery date for a further 12 months, will ensure the ovals are presented in an acceptable standard for Council to accept their dedication. Council's Supervisor for Sports Fields Maintenance has inspected the subject ovals and has advised that if the grass cover is suitably managed and maintained, there is potential for the ovals to be dedicated to Council earlier than the proposed 31 March 2013 timeframe, possibly for use during the 2012/2013 summer cricket season. Negotiations could be entered into with the developer to enable this to occur, given the current demand for cricket facilities within the Shire.

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 12 month extension to the current timeframe within Condition 1.3A would provide sufficient time for the works required via Condition 1.62A (construction of the access road, amenities building car parking spaces, sports field lighting and playground equipment) to be completed, if the applicant dedicates suitable resources to the project.

If Council is mindful to grant consent to the proposed modification, it is considered appropriate that the developers be reminded and encouraged to adhere to the 31 March 2013 timeframe, as the continued delay of the provision of these facilities will further disadvantage the Shire and is considered to be contrary to the original Master Plan approval for the Ballina Heights Estate (as issued via DA 2001/128).

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

RECOMMENDATIONS

1. 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 330 DP 1166991, Chilcott Crescent and Lot 319 DP 1167397, Unara Parkway, Cumbalum;
2. The amended consent condition 1.3A is to read as follows:

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

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

completed and dedicated to Council prior to the issue of the Subdivision Certificate for the 399th residential lot or no later than 31 March 2013.

Attachment(s)

1. Locality Plan
2. Structure Plan – Policy Statement No. 14 – Ballina Heights Estate
3. Report to Council's Ordinary December 2010 Meeting