

**ASSESSMENT OF THE APPLICATION UNDER SECTION 4.15 (1) OF THE EP& A ACT 1979****4.15 (1) (a) (i) - the provisions of any environmental planning instrument****Local Environmental Plans (LEPs)**

Relevant LEP	Applies YES/NO
Ballina Local Environmental Plan 2012	Yes
Ballina Local Environmental Plan 1987 (Note: BLEP 1987 only applies to land identified as "Deferred Matter" on the Land Application Map accompanying the BLEP 2012)	No

Ballina LEP 2012 – Zoning, Permissibility and Relevant Clauses	Comments/Is consistency with these provisions achieved?
Aims, objectives of BLEP (Clause 1.2)	The proposed application is generally consistent with the aims and objectives of the BLEP 2012.
Land use definition (Clause 1.4)	<p>Subdivision is not classified as a land use and is not defined in the BLEP 2012.</p> <p>Note: the subdivision of land is classified as a form of development and is defined under Section 4B of the Environmental Planning and Assessment Act 1979.</p> <p><b>4B Subdivision of land</b></p> <p>(1) For the purposes of this Act, <i>subdivision of land</i> means the division of land into two or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition. The division may (but need not) be effected:</p> <p>(a) by conveyance, transfer or partition, or</p> <p>(b) by any agreement, dealing, plan or instrument rendering different parts of the land available for separate occupation, use or disposition.</p> <p>(2) Without limiting subsection (1), subdivision of land includes the procuring of the registration in the office of the Registrar-General of:</p> <p>(a) a plan of subdivision within the meaning of section 195 of the <a href="#">Conveyancing Act 1919</a>, or</p> <p>(b) a strata plan or a strata plan of subdivision within the meaning of the <a href="#">Strata Schemes (Freehold Development) Act 1973</a> or the <a href="#">Strata Schemes (Leasehold Development) Act 1986</a>.</p> <p><b>Note.</b> The definition of <i>plan of subdivision</i> in section 195 of the <a href="#">Conveyancing Act 1919</a> extends to plans of subdivision for lease purposes (within the meaning of section 23H of that Act) and to various kinds of plan under the <a href="#">Community Land Development Act 1989</a>.</p>
Zoning under BLEP 2012, permissibility within zone	The subject land is zoned R2 Low Density Residential under the Ballina LEP 2012.

and regard for zone objectives (Clause 2.3)	<p>The subdivision of land, demolition of a building and vegetation management works are all permissible in the zone with consent.</p> <p>The objectives of the R2 Low Density Residential zone are:</p> <ul style="list-style-type: none"> <li>• <i>To provide for the housing needs of the community within a low density residential environment.</i></li> <li>• <i>To enable other land uses that provides facilities or services to meet the day to day needs of residents.</i></li> <li>• <i>To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.</i></li> <li>• <i>To provide for development that meets the social and cultural needs of the community.</i></li> <li>• <i>To encourage development that achieves the efficient use of resources such as energy and water.</i></li> </ul> <p>The proposed subdivision is considered to have had regard for and is generally consistent with the objectives of the R2 zone.</p> <p>Land directly to the east of the subject land, across Teven Road is a Deferred Matter under the BLEP 2012 and the BLEP 1987 is still in force. This land forms part of the urban buffer areas located to the west, north and east of Alstonville. These areas have retained their 7(i) Environmental Protection (Urban Buffer) zone under the provisions of BLEP 1987. Council considered preparing a planning proposal which would transition environmental zones, including the 7(i) Environmental Protection (Urban Buffer) zone, to suitable zones contained within BLEP 2012 at its meeting on 27 April 2017, however resolved to retain all as deferred areas.</p>
Subdivision – Consent Requirements (Clause 2.6)	<p>Clause 2.6 provides that prior consent of Council is required for the subdivision of any land.</p>
Minimum Subdivision Lot Size (Clause 4.1)	<p>Clause 4.1 provides that the size of any lot resulting from the subdivision of any land is not to be less than the minimum size shown on the Lot Size Map. The minimum lot size for the subject land is 600m<sup>2</sup>.</p> <p>The proposed lots range in size from 1023m<sup>2</sup> - 2367m<sup>2</sup> and as such all proposed lots are in excess of the minimum lot size.</p> <p>The proposal is generally consistent with the objectives of Clause 4.1. Teven Road is predominately comprised of battle-axe lots of mixed sizes. Recent development immediately to the south of the subject land has resulted in lots ranging in size from 801m<sup>2</sup> - 915m<sup>2</sup>.</p>
Essential Services (Clause 7.7)	<p>Clause 7.7 provides that all essential services including water, electricity, sewage, stormwater, vehicular access and telecommunications services.</p> <p>The proposed development will be serviced by reticulated water, sewerage, stormwater, electricity and telecommunication services.</p> <p>Vehicular access is currently restricted to Teven Road via a Restriction on Use. The application requests that this be varied by</p>

	<p>Council and is included in the report to Council. ....</p> <p>Council's Developments Engineers provides the following comments regarding access:</p> <p><i>Site Access, Internal Driveways and Parking Design</i>  <i>Lot one will access directly off Teven Road whilst lots two and three will utilise a battle--axe arrangement over lots 3 and 4 with associated rights of carriageway. Lot 4 will utilise an existing right of carriageway over the neighbouring property.</i></p> <p><i>Sight distances at proposed access locations are adequate to service the development.</i></p> <p><i>There is a restriction on use over the parent lot preventing further driveway accesses off Teven Rd. There is no historical documentation readily available that explains why the restriction was put in place. However, it is assumed that the restriction was to limit the number of access driveways off the collector road (Teven Road).</i></p> <p><i>Subsequent to the placement of the restriction, there have been a number of subdivisions along Teven Road and an increase in driveway crossovers. Teven Road now functions more akin to a residential street than a rural collector road in the location. If the restriction were to remain in place, the subdivision in the proposed configuration could not proceed.</i></p> <p><i>There is no benefit to the traffic network in the restriction remaining in place. Its recommended that Council release the 'Restrictions on Use' numbered 5 and 6 in the Section 88B created with DP 826348 to allow vehicular access to Teven Road as shown on lot 3 DP 826348 and to allow dwellings to be erected on the land designated within Lot 3 DP 826348.</i></p> <p>However, Council's Infrastructure Planning Manager has advised that Lots 1 and 2 should be restricted to one driveway each, so that if in future a DA is lodged for a dual occupancy they will need to be serviced by a single driveway. A new restriction to be placed on the consent to limit the number of new driveways for Lots 1 and 2 to a single access each.</p> <p>Council's Developments Engineers provides the following comments regarding stormwater:</p> <p><i>Stormwater Management</i></p> <p><i>The stormwater plan provided is generally acceptable (report Stormwater Management Plan by APP Dated October. This plan provides interallotment drainage and OSDs in lots 1 &amp; 2</i></p> <p><i>Note the stormwater system discharges to Councils street network however the subsequent discharge point is an open field on the northern side of Teven Road which doesn't have continuity to a 1<sup>st</sup> order stream.</i></p>
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	<p><i>Whilst this may not be considered a legal point of discharge, landowners consent has been provided that permits additional stormwater volume given the standard flow and pollutant targets are achieved in accordance with Councils DCP's.</i></p> <p><i>Therefore, continuity to a 1<sup>st</sup> order stream and hence a legal point of discharge has been attained.</i></p> <p>The legal point of discharge is provided on Lot 218 DP 837177 whose owners provided the following (CM 20/22021):</p> <p>I write to you as one of the owners of Lot 218 DP 837177, cnr Gap Road and Teven Road, Alstonville and hereby advise that I authorise the discharge of stormwater that will be generated by the proposed subdivision of Lot 4 DP 8797770 onto Lot 218. This authorisation is on the basis that such water is duly treated on the site and captured in roof-water tanks for future dwellings (to satisfy BASIX requirements).</p> <p>I am accepting of the above and do <u>not</u> require and do <u>not</u> intend for an easement registered over Lot 218 for such purpose.</p>
<p>Schedule 1 Additional permitted uses</p>	<p>The subject land is mapped within Area L of the Additional Permitted Uses Map.</p> <p>Clause 8 (1) provides that land at Alstonville identified on the map which has:</p> <p>(a) a lot that has an area of at least 900m, and (b) located within Zone R2 Low Density Residential.</p> <p>(2) Development for the purpose of dual occupancy (attached) is permitted with development consent.</p> <p>As such, there is the potential for the proposed lots to be able to be developed with attached dual occupancies.</p>

**State Environmental Planning Policies (SEPPs)**

Relevant SEPPs	Comments/Is consistency with these provisions achieved?
SEPP (Vegetation in Non-Rural Areas) 2017	No vegetation is required to be removed for the proposed subdivision. No issues raised.
SEPP 33 – Hazardous and Offensive Development	<p>The proposed development is situated within 180m of the boundary of Lot 22 DP 1243105 on which the Tuckombil Quarry is located, and approximately 425m from the limit of quarry operations. The proposed development is situated within 270m of Lot 1 DP 1243105 on which the Boral Asphalt Plant is located.</p> <p>These industries are “potentially hazardous industry” and “potentially offensive industry” under Part 3 of SEPP 33.</p> <p>These existing land uses will be considered in the assessment of this application, however the proposed development does not constitute “potentially hazardous industry” and “potentially offensive industry” and therefore SEPP 33 is not applicable to this application.</p>

SEPP 55 – Remediation of Land	<p>The objective of this policy is to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.</p> <p>Clause 7 applies to the proposal to ensure that consent is not approved until assessment of the proposed land has been undertaken to identify if the site has been contaminated due to current and past land uses.</p> <p>The application included a preliminary contaminated site investigation (Section 4.5 of SEE) undertaken by Ardill Payne &amp; Partners which concluded that the subject site is suitable for the proposed development.</p> <p>Council's Environmental Health Officer provided the following comments:</p> <p><i>The site is currently zoned R2 Low Density Residential but given the location it possibly was previously zoned for rural/agricultural purposes. However the site is not impacted by a dip site or investigation area, on Council's Contaminated Land Register nor is there any records on the NSW EPA Contaminated Land Register, List of notified sites or Environment Protection licences, applications, notices, audits or pollution studies and reduction programs.</i></p> <p><i>An inspection of the site did not identify any concerns that indicate the site has been used for potentially contaminating activities, eg dead or dying vegetation or dumped waste material. Adjoining land uses do not pose a contamination risk.</i></p> <p><i>In addition, the development is not proposing a more sensitive or change to the current land use.</i></p> <p><i>Given the abovementioned information and that provided in the Statement of Environmental Effects prepared by Ardill Payne and Partners, dated October 2019 the site is considered suitable for the proposed use with minimal risk to human health or the environment.</i></p>
SEPP (Mining, Petroleum and Extractive Industries) 2007	<p><b>Clause 13 Compatibility of proposed development with mining, petroleum production or extractive industry</b></p> <p>(1) This clause applies to an application for consent for development on land that is, immediately before the application is determined:</p> <ul style="list-style-type: none"> <li>(a) in the vicinity of an existing mine, petroleum production facility or extractive industry, or</li> <li>(b) identified on a map (being a map that is approved and signed by the Minister and copies of which are deposited in the head office of the Department and publicly available on the Department's website) as being the location of State or regionally significant resources of minerals, petroleum or extractive materials, or</li> </ul> <p><b>Note.</b> At the commencement of this Policy, no land was identified as referred to in paragraph (b).</p>

	<p>(c) identified by an environmental planning instrument as being the location of significant resources of minerals, petroleum or extractive materials.</p> <p>Note. Sydney Regional Environmental Plan No 9—Extractive Industry (No 2—1995) is an example of an environmental planning instrument that identifies land as containing significant deposits of extractive materials.</p> <p>(2) Before determining an application to which this clause applies, the consent authority must:</p> <p>(a) consider:</p> <p>(i) the existing uses and approved uses of land in the vicinity of the development, and</p> <p>(ii) whether or not the development is likely to have a significant impact on current or future extraction or recovery of minerals, petroleum or extractive materials (including by limiting access to, or impeding assessment of, those resources), and</p> <p>(iii) any ways in which the development may be incompatible with any of those existing or approved uses or that current or future extraction or recovery, and</p> <p>(b) evaluate and compare the respective public benefits of the development and the uses, extraction and recovery referred to in paragraph (a) (i) and (ii), and</p> <p>(c) evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a) (iii).</p> <p>Clause 13 applies to this development and must be considered for the following reasons:</p> <p>The proposed development is situated within 180m of the boundary of Lot 22 DP 1243105 on which the Tuckombil Quarry is located. The proposed development is situated within 270m of Lot 21 DP 1243105 on which the Boral Asphalt Plant is located. The proposed development is situated within 530m of Lot 3 DP 1130300 on which Ron Southon's Blasting is located.</p> <p>The Tuckombil Quarry is identified in the Far North Coast Regional Strategy 2006-31 as an extractive resource of regional significance.</p> <p>In assessing this application, consideration must be given to the existing uses and approved uses of land in the vicinity of the development, which includes the Tuckombil Quarry, Boral Asphalt Plant and Ron Southon Blasting.</p> <p>Issues which may be of relevance to this development are discussed below:</p> <p><b>Tuckombil Quarry (Lot 22 DP 1243105):</b></p> <p>An approved hard rock quarry and associated crushing plant exists on the site. The quarry remains operational under its current consent (1995/276), however no extractive activities have occurred at the quarry since 2016.</p>
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	<p>A Section 96 approved by Council on 13 August 2013 updated the blasting methodologies utilised at the quarry to ensure that blasting undertaken is in accordance with contemporary practices and minimises impacts on residential receivers. The Environmental Management Plan (EMP) was also updated in 2013 to align with current environmental standards and community expectations. The EMP states that dust monitoring will be conducted on a three monthly basis.</p> <p><b>Boral Asphalt Plant (Lot 21 DP 1243105):</b></p> <p>This plant has been in existence since the late 1970s. In 1995, Designated Development Application 1995/127 approved the removal of the previous asphalt batching plant and replacement with a new higher capacity plant with various operating restrictions/conditions. Since the early 2000s there have been various live trial periods and modifications approved (by both Council and the Department of Environment and Climate Change NSW, now the NSW Environmental Protection Authority – NSW EPA as the Appropriate Regulatory Authority) to enable the asphalt plant to operate on a limited basis over a 24 hour work period.</p> <p>Council considered a Section 96 for the plant at an Extraordinary Meeting on 10 August 2016. Objections to the Section 96 application identified odour generated by the plant as an issue and the consent was conditioned to mitigate this issue. Noise from additional day-time truck movements to/from the asphalt plant were assessed as part of the Section 96 application and it was found unlikely that noise impacts of additional movements would be substantial. Carcinogenic emissions from the asphalt plant were discussed and considered as a separate matter by Council.</p> <p><b>Ron Southon Blasting (Lot 3 DP 1130300)</b></p> <p>Ron Southon Pty Ltd has approval (DA 1998/252) for use of the site as a depot for the storage and maintenance of drilling plant and equipment and the storage of hazardous materials. Approval exists for 24 tonnes of Ammonium Nitrate (AN) and 2 tonnes of blasting explosive to be stored on the site. A Section 96 was lodged in 2015 to increase the amount of materials stored, however the application was withdrawn.</p> <p>The existing dwelling house is located approximately 580m from this operation. The proposed subdivision and future dwelling houses will be located between approximately 530m – 580m from Ron Southon's operations.</p> <p>It is noted that dwelling houses on land zoned residential in the immediate vicinity are located closer to this industrial use including dwelling houses in Kris Place (approximately 420m – 480m) and dwelling houses in Tanamera Drive between Kris Place and Whipps Avenue (approximately 440m – 600m).</p> <p>The LUCRA submitted with the application (Tim Fitzroy &amp; Associates dated 24 October 2019) states that the subject site is:</p>
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	<ul style="list-style-type: none"> <li>• 425m from the Tuckombil quarry</li> <li>• 350m from Boral Asphalt plant</li> <li>• 530m from Ron Southon Blasting Contractor office and depot.</li> </ul> <p><i>"The Ron Southon Blasting Contracting Office and Depot is located some 530m north east of the proposed residential subdivision. No specific buffer applies to this use and therefore a LUCRA is not triggered, nor are any significant land use conflicts envisaged however to satisfy Council concerns the following information is provided:</i></p> <ul style="list-style-type: none"> <li>• <i>The Ron Southon Blasting Contractor Depot is subject to licence by Safe Work NSW and an annual inspection. Whilst the details of WorkCover's inspections have not been forthcoming, inherent in the licencing of the premises is the safe keeping of explosives in accordance with the relevant regulations and Australian Standards.</i></li> <li>• <i>Due to Safe Work NSW licencing requirement and annual inspection, that if there were any breaches identified, that the regulator would take prompt and officious regulatory action to remedy any breach.</i></li> <li>• <i>Therefore, Council's concerns with the potential risks ought to be off-set/allayed by the primary regulator of safety in the work-place, being Safe Work NSW.</i></li> <li>• <i>Tim Fitzroy made contact with the owner of Ron Southon Blasting, Geoff Chilcott on 20 March 2018. Mrs Chilcott advised that:</i> <ol style="list-style-type: none"> <li>a. <i>he has owned the Ron Southon Blasting business for approximately 15 years;</i></li> <li>b. <i>Ron Southon Blasting has Development Consent from Ballina Shire Council to operate the business on the subject site;</i></li> <li>c. <i>The business is licenced to store explosives with Safe Work NSW (former NSW Workcover Authority);</i></li> <li>d. <i>The business stores boosters, detonators, ammonium nitrate and a Water Gel product.</i> <ol style="list-style-type: none"> <li>i. <i>The boosters consist of explosives stored in 150 gram batches within a hard cylindrical case</i></li> <li>ii. <i>1 shed is used to store ammonium nitrate;</i></li> <li>iii. <i>2 small sheds are used to store boosters;</i></li> <li>iv. <i>2 small sheds are used to store detonators;</i></li> <li>v. <i>Water Gel is stored in 2 above ground steel tanks</i></li> </ol> </li> <li>e. <i>The volume of explosives stored onsite is commercial in confidence. According to Mr Chilcott this information was previously supplied to Council in the Development Application for Ron Southon Blasting</i></li> <li>f. <i>The business is in full compliance the Safe Work NSW licence conditions and AS2187.1 and AS2187.2;</i></li> <li>g. <i>Mr Joe Nosti, SafeWork NSW, Newcastle (ph. 43 215 091 or mobile 0422 008216) conducts regular inspections, usually 1 to 2 inspections per year of the subject premises. Last year 3 inspections were undertaken by</i></li> </ol> </li> </ul>
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	<p><i>Safe Work NSW. Additional inspections are undertaken where there is a request for changes in storage of materials;</i></p> <ul style="list-style-type: none"> <li><i>h. Safe work NSW as part of their regular assessment and licencing require strict adherence to safety requirements;</i></li> <li><i>i. The distances to residences from the depot are part of Safework NSW consideration for licencing. Safework NSW has considered the proximity of existing residences within closer proximity to the depot than the proposed development.</i></li> <li><i>j. Safework NSW are satisfied with the existing arrangements at the Ron Southon Depot.</i></li> </ul>
	<p>The application was referred to NSW Environment Protection Authority (EPA) who licence the Tuckombil Quarry (EPL 3856) and are the regulatory authority for the Boral Asphalt Plant. EPA provided a submission (CM 19/96351). An extract from that submission is provided:</p> <p><i>"In light of the proximity of the proposed subdivision to the quarry and asphalt plant it is apparent that, should development consent be granted, land use conflict is likely between any new sensitive receiver and the existing approved quarry and asphalt plant.</i></p> <p><i>Boral Asphalt Plan has been the subject of numerous noise and odour complaints and impacts and Council is aware of ongoing community concerns. The EPA emphasises that potential odours from the plant are likely to generate land use conflict with the residents of the proposed residential subdivision.</i></p> <p><i>Under certain operational and weather conditions, impacts from noise, blasting and asphalt odour are likely. It should be noted that compliance with EPA criteria will not necessarily mean that residents will not be affected by noise and/or blasting and asphalt odour emissions. Aspects of quarry and asphalt plant operations and traffic movements have the potential to cause noise impacts, but <b>further amelioration at the emissions source may not be reasonable or feasible.</b></i></p> <p><i>Should the EPA identify that the quarry regulated under EPL 3856 and the Boral Asphalt Plant are complying with licence conditions and are undertaking quarrying and asphalt plant operations, including blasting, in accordance with accepted industry practises, <b>further restrictions on the quarry and asphalt plant operations or compliant action would not be reasonable or feasible.</b></i></p> <p><i>With the separation distances identified between the proposed residential dwelling and the existing quarry and asphalt plant, it would appear that the two land uses are incompatible. Once a land use conflict has arisen; the EPA or <b>Council (depending on the scale of the activity) will be responsible</b> for investigating complaints and enforcing compliance or further regulating off-site emissions.</i></p>

	<p><i>The planning system is the prime mechanism for preventing potential or new conflicts between land uses. Whilst environmental protection mechanisms can ameliorate land use conflicts, it is more effective to prevent impacts from occurring than to attempt to minimise the impacts of incompatible land uses post approval. At-house noise mitigation features, such as double glazing, insulation and structural design, should also be considered as part of this proposal.</i></p>
	<p>Boral Asphalt made a submission (CM 19/95760) which states the following:</p> <p><i>“Boral’s hot mix asphalt plant meets the description of “older technology” which requires a 1000m buffer to urban residential areas including the subject site.”</i></p> <p>Boral have provided Council with the Asphalt Plant Complaints Register for 2019, in which 26 complaints, which demonstrate actual conflict, were recorded. Complaints comprise odour, traffic and noise and arise from residents in the vicinity of the asphalt plant. During each complaint event the wind was recorded as coming from the north, north-north-east or north-east. The asphalt plant is directly to the north-east of the proposed subdivision. Furthermore, Boral disagree with the controlled rankings (of acceptable) provided in Table 3.4 of the LUCRA. Boral, when considering the operational “worst case” scenario including the night time operations, reach a controlled ranking of <b>unacceptable land use risk</b>.</p> <p>Boral states that:</p> <p><i>“Adding four residential lots close to Tuckombil Quarry and Alstonville Asphalt Plant has the potential to cause additional land use conflicts, threaten the longevity of these local industries associated the employment benefits they bring and impact on future inhabitants of the allotments through exposure to odour, dust and noise.”</i></p>

**4.15 (1) (a) (ii) – any proposed instrument that is or has been the subject of public consultation under the EP&A Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved)**

Draft EPI/Planning Proposal	Comments/Is consistency with these provisions achieved?
Draft Amendment to State Environmental Planning Policy 44 – Koala Habitat Protection.	Not applicable as no vegetation removal is required. It is noted that this SEPP commenced on 1 March 2020.
Draft State Environmental Planning Policy - Remediation of Land.	See previous comments regarding SEPP 55.

Draft Amendment to State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007.	See previous comments in relation to Mining SEPP Clause 13.
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**4.15 (1) (a) (iii) – any development control plan (DCP)**

DCPs currently in force:	
<b>Ballina Shire Development Control Plan 2012</b>	<input checked="" type="checkbox"/>

Ballina Shire DCP 2012	Comments/Assessment of proposal against provisions of DCP												
Chapter 2 – General and Environmental Considerations	<p><b>Part 2 Chapter Planning Objectives</b></p> <p><i>The overarching objectives of this Chapter are to:</i></p> <ul style="list-style-type: none"> <li>a. <i>Ensure that applicable considerations are taken into account in the siting and design of development;</i></li> <li>b. <i>Ensure that development is undertaken in a manner that is compatible with the physical and environmental characteristics of land;</i></li> <li>c. <i>Ensure that development is undertaken with regard for applicable public health standards; and</i></li> <li>d. <i>Minimise the potential for land use conflict.</i></li> </ul> <p>The objectives have been considered and the following sections of the DCP are addressed:</p>												
	<p><b>3.1 Land Use Conflict</b></p> <p>The proposed site is situated within close proximity to the existing Tuckombil Quarry, Boral Asphalt Plant and Ron Southon Blasting.</p> <p><b>3.1.2 Planning Objectives</b></p> <ul style="list-style-type: none"> <li>a. <i>Minimise conflicts between land uses (including from residential / urban expansion towards rural lands);</i></li> <li>b. <i>Provide for lawful agricultural and associated rural industry uses that take precedence over other land uses in rural zones; and</i></li> <li>c. <i>Protect significant environmental and natural resources.</i></li> </ul> <p>Table 2.1 of the DCP sets out minimum buffer distances between land uses and the minimum buffer for <b>Extractive industry or mining</b> is 500m for non-blasting and 1000m when blasting.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr style="background-color: #b8cce4;"> <th colspan="4">Table 2.1 Minimum buffer distances for specified land uses</th> </tr> <tr style="background-color: #d9d9d9;"> <th>Land Use</th> <th>Urban residential areas</th> <th>Dwelling-house, Dual occupancy or Rural workers dwelling</th> <th>Rural tourist facilities</th> </tr> </thead> <tbody> <tr> <td style="background-color: #d9d9d9;"><i>Extractive industry or mining</i><sup>1</sup></td> <td style="text-align: center;">500m 1000m</td> <td style="text-align: center;">500m 1000m</td> <td style="text-align: center;">500m 1000m</td> </tr> </tbody> </table>	Table 2.1 Minimum buffer distances for specified land uses				Land Use	Urban residential areas	Dwelling-house, Dual occupancy or Rural workers dwelling	Rural tourist facilities	<i>Extractive industry or mining</i> <sup>1</sup>	500m 1000m	500m 1000m	500m 1000m
Table 2.1 Minimum buffer distances for specified land uses													
Land Use	Urban residential areas	Dwelling-house, Dual occupancy or Rural workers dwelling	Rural tourist facilities										
<i>Extractive industry or mining</i> <sup>1</sup>	500m 1000m	500m 1000m	500m 1000m										

	<p><sup>1</sup> Extractive Industry or Mining - The larger minimum distance is required when blasting is involved.</p> <p><sup>2</sup> New technology - refers to asphalt / bitumen batch plants that provide a method of direct truck delivery and have gas reclaim systems to ensure odour emission rates are significantly lower than older plants.</p> <p>The site is located within close proximity to a quarry and asphalt plant, and a Land Use Conflict Risk Assessment (LUCRA) has been submitted on behalf of the applicant by Tim Fitzroy and Associates dated 24 October 2019. The LUCRA has concluded that the proposed site is suitable for a proposed residential subdivision, subject to the following recommendation:</p> <p><i>"Noise Mitigation:</i></p> <ul style="list-style-type: none"> <li>• <i>As a precautionary measure given the tonal impacts of asphalt plant operation resulting in a 6dB exceedance in the evening and night periods at noise monitoring location R1 on the northern perimeter of the Panorama Estate consideration should be given to the provision of acoustic treatment of windows and the provision of air conditioning in habitable rooms to allow windows to be closed in the night and evening for dwellings in the proposed subdivision.</i></li> </ul> <p><i>A number of factors have led to this conclusion including:</i></p> <ul style="list-style-type: none"> <li>• <i>distance attenuation of some 425 metres from the limit of quarry excavation to the proposed residential subdivision;</i></li> <li>• <i>distance attenuation of some 350 metres from the closest point of the Alstonville Asphalt Plant to the proposed residential subdivision;</i></li> <li>• <i>no direct line of sight between the quarry and asphalt plant and the proposed development;</i></li> <li>• <i>the ongoing implementation of the Environmental Management Plan for the Tuckombil Quarry,</i></li> <li>• <i>Boral's commitment to implement the recommendations of the Odour Impact Assessment of the Alstonville Asphalt Plant (Air Environment 2017)</i></li> <li>• <i>the evidence of air quality, noise and vibration monitoring, and</i></li> <li>• <i>the results of modelling on the effects of the asphalt plant on air quality.</i></li> </ul> <p><i>The type, nature, location, times of operation and recent record of the Tuckombil Quarry and Alstonville Asphalt Plant, coupled with the site specific environmental assessments and monitoring results have led me to the view that any potential future land use conflicts between the existing quarry and asphalt plant and the future occupants of the proposed residential subdivision are acceptable."</i></p> <p>Further updates were provided to the LUCRA by Tim Fitzroy &amp; Associates (4 February 2020) (CM 20/9046) in response to submissions from EPA and Boral Asphalt and the following conclusion was provided:</p> <p><i>Both submissions reaffirm that the proposed residential development is within Council's Buffer to Extractive Industries and to Hot mix asphalt/bitumen batch plant. Principal concerns relate to potential land use conflicts as a result of approved activities at Tuckombil Quarry and Alstonville Asphalt Plant. The key concerns relate to noise, blasting and air quality. Reference is made to complaints regarding the operation of the Asphalt Plant. In addition, there are concerns from Boral with regard to any restrictions on the current and future use of the Tuckombil Quarry resource under clause 13 of the State Environmental Planning Policy (SEPP) (Mining, Petroleum Production and</i></p>
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	<p><i>Extractive Industries (2007). It is noted that this matter has not been raised by Ballina Shire Council, the owner of the quarry, as TFA understand that the quarry has not been operational since 2016 and that BSC is considering the future of the quarry.</i></p> <p><i>The LUCRA acknowledges the potential land use conflicts between the existing Asphalt plant and quarry to future residents of No 81 Teven Road Alstonville. Clearly noise and air quality are the pre-eminent issues at play.</i></p> <p><i>Based on the data at hand it appears that the land use conflict risk with respect to noise generating activities between the existing asphalt plant and quarrying operations (should they recommence in the future) and future dwellings in the proposed subdivision to be low.</i></p> <p><i>Nevertheless, adopting the precautionary principle, it is recommended that future dwellings in Lots 1 to 3 (inclusive) be constructed of standard construction with acoustic seals to windows facing the quarry/asphalt plant and the provision of air conditioning in habitable rooms to allow residents with the opportunity to be closed windows to maintain internal acoustic amenity when required."</i></p> <p><i>TFA recommended a Restriction As-To-User in accordance with Section 88b be placed on the titles of Lots 1-3 to that effect.</i></p> <p><i>Council's Environmental Health Officer provided the following comments:</i></p> <p><i>The proposed residential subdivision is located approximately 425m from the Council owned Tuckombil Quarry (Lot 21 DP 1243105) and 350m from the Boral Asphalt Plant (Lot 22 DP 1243105) located at 540 Gap Road Alstonville. The proposal therefore does not meet the minimum 1000m buffer distance as outlined in Chapter 2 Part 3.1 of Council's Development Control Plan. 1000m is the applicable distance as the quarry is approved for blasting and the asphalt plant operates on old technology.</i></p> <p><i>A Land Use Conflict Risk Assessment (LUCRA) prepared by Tim Fitzroy and Associates, dated 24 October 2019 has been provided with the application.</i></p> <p><i>Although the LUCRA mentions Ron Southern Blasting Depot no blasting is carried out on site and no land use conflicts with the proposal are anticipated.</i></p> <p><i>The LUCRA assessed potential conflicts between the asphalt plant and quarry. The need for compliance with relevant conditions of consent and Environmental Protection Licence (EPL) conditions was discussed.</i></p> <p><i>Although the quarry is not currently operating conditions of the EPL and consent 1995/276 are still applicable if operations were to recommence unless an application was made to modify conditions. The same is applicable for the asphalt plant under consent 1995/127 along with the NSW Environment Protection Authority (EPA) requirements. Although an EPL is no longer required the EPA are still the appropriate regulatory authority under the Environment Protection Operations Act 1997.</i></p> <p><i>As outlined in the response from the EPA dated 4 December 2019 (CM 19/96351) compliance with these conditions does not necessarily mean all conflicts will be eliminated. If all reasonable and feasible measures have been</i></p>
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	<p><i>implemented by the quarry or asphalt plant EPA may take no further action. The condition and licence conditions were finalised at the time applications were made. Although licence conditions can be modified again if it is demonstrated all reasonable and feasible measures have been carried out modifications will not occur.</i></p> <p><i>The EPA often outline in their submissions to Council that approving uses with sensitive receivers close to industrial uses, especially within nominated buffer zones will likely cause conflicts between the two uses. Doing so makes it very difficult for industry operators, EPA and sensitive receivers to live and work together.</i></p> <p><i>It is agreed that preventing land use conflicts at the planning stage is the principal mechanism that should be used instead of trying to manage the conflicts once the use or activity is approved.</i></p> <p><i>The provided LUCRA and Revised Response to Submissions prepared by Tim Fitzroy and Associates dated 4 February 2020 assesses potential land use conflicts and concludes all will be at an acceptable level. However the precautionary principal has been applied to noise and Mr Fitzroy has recommended acoustic seals on windows facing the asphalt plant/quarry and the need for air conditioning in habitable rooms, as shown in the below extract.</i></p> <p><i>In April 2018 Council issued development approval 2017/697 for the adjoining lot to the south at 77 Teven Road to be subdivided into 10 residential lots. This consent included a similar condition as that recommended by Tim Fitzroy and Associates. Included as Condition 50 below.</i></p> <p><i>On 3 December 2014 development approval 2014/383 was given for a single dwelling at Lot 2 DP 800081 Teven Road, Alstonville. Although concerns were raised by the EPA as they did with development 2017/697 regarding potential land use conflicts consent was issued which included the below conditions to minimise potential noise from the quarry and asphalt plant.</i></p> <p><i>The site is also identified as containing large lots for residential subdivision in the Alstonville Planning and Environmental Study 06/2017.</i></p> <p><i>Given the similarities with both of the abovementioned applications and their subsequent approvals it would be very difficult to recommend refusal.</i></p>
	<p><b>3.3 Natural Areas and Habitat</b></p> <p>The subject site is mapped as being within the "50m Buffer – Natural Areas and Habitat". Land to the east of Teven Road and land to the north of the site is mapped as "Natural Areas &amp; Habitat" and remains zoned as 7(i) Environmental Protection (Urban Buffer) Zone under the BLEP 1987.</p> <p>The proposed subdivision is on land zoned residential and does not form part of the "urban buffer". The proposed subdivision will not encroach, impact or compromise the "urban buffer". The subject site is devoid of any vegetation and as such no vegetation requires removal to facilitate the proposed subdivision.</p>
	<p><b>3.4 Potentially Contaminated Land</b></p> <p>SEPP 55 – Remediation of Land has been addressed previously in this assessment.</p>

	Council's Environmental Health Officer is satisfied that the site is suitable for the proposed use.
	<p><b>3.6 Mosquito Management</b></p> <p>The subject land is mapped as "Elevated Land" on the BDCP Mosquito Management Map.</p> <p>The proposed site is not mapped as being in close proximity to any wetland or other significant vegetation that would comprise a mosquito hazard or breeding site.</p>
	<p><b>3.7 Waste Management</b></p> <p>No significant waste stream will be generated by the proposed subdivision works.</p>
	<p><b>3.9 Stormwater Management</b></p> <p>A Stormwater Management Plan prepared by Ardill Payne &amp; Partners dated October provides for interallotment drainage and on-site detention in proposed Lots 1 and 2. The stormwater system discharges to Council's street network with the increase of total volume of runoff being to a discharge point provided onto Lot 218 DP 837177, a property located to the east of Teven Road. The property owner has provided written permission to discharge onto this land. Council's Development Engineers are satisfied with the stormwater management proposed for the subdivision.</p>
	<p><b>3.10 Sediment and Erosion Control</b></p> <p>The consent will be conditioned to ensure erosion and sediment control is implemented during construction.</p>
	<p><b>3.11 Provision of Services</b></p> <p>Proposed lots will be connected to all required services.</p> <p>Council's Development Engineer provided the following comments in regard to services:</p> <p><b>WATER SUPPLY SERVICING</b></p> <p>Water supply servicing can be provided by connection to the existing system on Teven Road.</p> <p><b>SEWER SERVICING</b></p> <p>Sewer servicing can be provided by connection to the existing system that runs along the southern boundary of the proposed development.</p> <p><b>EXISTING SERVICES</b></p> <p>The development does not encroach on any easement or the zone of influence of any existing water, sewer or drainage mains.</p>

	<p><b>3.19 Car Parking and Access</b></p> <p>Council's Development Engineer provided the following comments:</p> <p><i>External Roads and Traffic</i> The existing external road network of Teven Road is constructed to a suitable standard to service the proposed development.</p> <p><i>Pedestrian and Cyclist Requirements</i> There is a 2m wide shared path fronting the neighbouring subdivision to the south and in a piecemeal fashion along Teven Road. There is an opportunity to make a connection to the pedestrian network through to Whipps Avenue. Therefore a 2m shared path along the developments frontage will be required.</p> <p><i>Internal Roads and Traffic</i> NA</p> <p><i>Site Access, Internal Driveways and Parking Design</i> Lot one will access directly off Teven Road whilst lots two and three will utilise a battleaxe arrangement over lots 3 and 4 with associated rights of carriageway. Lot 4 will utilise an existing right of carriageway over the neighbouring property.</p> <p>Sight distances at proposed access locations are adequate to service the development.</p> <p>There is a restriction on use over the parent lot preventing further driveway accesses of Teven Rd. There is no historical documentation readily available that explains why the restriction was put in place. However it is assumed that the restriction was to limit the number of access driveways off the collector road (Teven Road).</p> <p>Subsequent to the placement of the restriction, there have been a number of subdivisions along Teven Road and an increase in driveway crossovers. Teven Road now functions more akin to a residential street than a rural collector road in the location. If the restriction were to remain in place, the subdivision in the proposed configuration could not proceed.</p> <p>There is no benefit to the traffic network in the restriction remaining in place. Its recommended that Council release the 'Restrictions on Use' numbered 5 and 6 in the Section 88B created with DP 826348 to allow vehicular access to Teven Road as shown on lot 3 DP 826348 and to allow dwellings to be erected on the land designated within Lot 3 DP 826348.</p> <p>Council's Infrastructure Planning Manager has advised that Lots 1 and 2 should be restricted to one driveway each, so that if in future a DA is lodged for a dual occupancy they will need to be serviced by a single driveway. A new restriction to be placed on the consent to limit the number of new driveways for Lots 1 and 2 to a single access each.</p>
<p><b>Chapter 3 Urban Subdivision</b></p>	<p>The proposed four lot subdivision is considered to be minor subdivision (i.e. 10 lots or less) for the purposes of Chapter 3.</p> <p>The proposed subdivision generally complies with the planning objectives of Section 3.1 Minor Subdivision General Controls as indicated in the below table:</p>



<b>Modification of landform</b>	
Development applications for subdivision of urban land to be accompanied by geotechnical report.	The subject land comprises one developed urban residential lot (containing a dwelling house and pool). The proposed new lots will be created from the existing lot. The proposed new lots are not steep and are not constrained by slope. There have not been any geotechnical issues with the existing lot/dwelling house or any adjoining land.
Proposed lots with slopes >15% to be nominated at subdivision stage.	There are no lots that will have slopes of >15%.
Proposed lots with slopes >20% to nominate 10x 15m building envelope to demonstrate that a building can be suitably accommodated on the lot. There are no proposed lots that have slopes >20%. Notwithstanding such, an indicative/concept 12m x 15m building envelope has been shown on each proposed lot.	There are no proposed lots that have slopes >20%. The proposed lots are sized such that building envelopes of 12m x 15m are easily accommodated.
Where subdivision works include site modification of individual lots for building pads and the like, earthworks restricted to maximum cut/fill of 1500mm from natural round for single cut/fill or maximum cut/fill of 1100mm where more than one cut/fill is proposed for the lot. There are no bulk earthworks in excess of 1100mm height/depth required or proposed to facilitate the proposed subdivision.	There are no bulk earthworks in excess of 1100mm height/depth required or proposed to facilitate the proposed subdivision.
Each lot to be designed so that vehicular access can achieve the desirable maximum gradient of 1:6.	The driveway grades for the future lots are able to comply with such gradient.
<b>Road Layout. Infrastructure Internal to Development Site</b>	
New roads to be designed to: Provide clear and legible hierarchy. Provide network based on grid pattern where applicable. Minimise the use of cul-de-sacs. Facilitate the use of public transport. Enable convenient pedestrian and cycle movement. Provide legal and practical access to lots.	No new road.
Where land slopes at a grade of $\geq 6\%$ , predominant road alignment to be perpendicular to the slope.	No new road.
All new roads to be designed in accordance with the Northern Rivers Design Manual (NRDM).	No new road
<b>Solar Access</b>	
Street and lot layout to be designed to optimise solar access to dwellings including: Streets to run generally north-south and east-west pattern. Lots should generally be regular (rectangular)	The lots are rectangular in shape and are sized and shaped such that reasonable solar access will be available to any future dwelling houses.

in shape. Lots to be generally orientated to provide long axis that maximises potential solar access. Highest densities to be on land that is north facing close to shops, gently sloping. Lowest densities to be on land that is south facing, remote from shops, more steeply sloping.	
<b>Engineering Design and Construction Requirements</b>	
Development must meet the requirements of the Northern Rivers Local Government Design and Development Manual and the Northern Rivers Local Government Construction Manual.	The proposed subdivision satisfies the requirements of the Northern Rivers Local Government Design and Development Manual and the Northern Rivers Local Government Construction Manual.
<b>Services and Infrastructure</b>	
Subdivisions to be fully serviced with water, sewer, roads, drainage, underground electricity and communications services.	All required public infrastructure services are to be installed to service each lot
Where lots have frontage only to a lane, adequate infrastructure servicing, including formalised vehicular access, waste collection and postal services must be available.	No lots have lane frontage.
All service infrastructure to be designed and constructed in accordance with the Northern Rivers Local Government Design and Development Manual.	All service infrastructure will be designed and constructed in accordance with the Northern Rivers Local Government Design and Development Manual and the Construction Manual.
Service infrastructure internal to the development site shall be provided by the developer at no cost to Council.	Service infrastructure internal to the development site will be funded by the developers.
Dual reticulation water supply for non-potable water to be provided.	If required by Council, provision will be made for dual water supply reticulation.
A restriction as to user to be included on the title of all lots requiring all dwellings and buildings with plumbing to make provision for non-potable water service plumbing.	If required, an appropriate restriction as to user will be provided on the title of each of the proposed lots with details of such being provided with the Subdivision Certificate application.
Sewerage mains and pump station to be constructed to convey sewage from the site to Council's reticulation network.	The subject land is connected to and serviced by a reticulated sewerage system, with the proposed new lots to be connected to such. No new pump stations are required.
Development is to provide connecting infrastructure to Council's drinking water distribution network.	The subject land is connected to and serviced by a reticulated water supply system, with the proposed new lots to be connected to such.
<b>Retention of Significant Vegetation</b>	
Environmentally and culturally significant vegetation to be retained where practicable.	The site is devoid of vegetation.
Lots on which trees are to be retained to nominate a "no build zone" around the trees proposed for retention.	Not applicable.
<b>Minimum Lot Size and Shape</b>	
Subdivision to meet minimum lot sizes and specifications in Table 3.1.	Each of the proposed lots has: An area of >450m <sup>2</sup> and >550m <sup>2</sup> for corner lots – the minimum lot size proposed is 801m <sup>2</sup> . The regular shaped lots have a minimum effective width of 21m which exceeds the required 12m width. There are no irregular shaped lots.

		Each lot is suitably sized and shaped to contain a 12m x 15m rectangular building envelope.
	Subdivision proposing 300-450m <sup>2</sup> lots to include future details of dwelling houses as part of the DA.	Not applicable – no lots within that size range.
	<b>Battle-axe lots</b>	
	Minimum width of access handles to be 4m with minimum carriageway width of 3m.	Proposed Lots 2 and 3 are effectively battle-axe shaped lot which have a handle width of 2m. A request for variation to development control has been lodged with this application.
	No more than two Torrens Title battle-axe lots to be served by access corridor.	No more than two lots serviced by access corridor.
	Maximum length of handle (access corridor) to be 50m with passing bays provided in accordance with Australian Standards.	The access handle for Proposed Lot 4 (existing dwelling house is 64m. A request for variation to development control has been lodged with this application.
	Battle-axe lots to be designed so that vehicle can enter and leave in a forward direction.	Proposed Lots 3 and 4 are of sufficient size (1127m <sup>2</sup> and 2367m <sup>2</sup> respectively) and shape to enable vehicles to enter/exit in a forward direction. The existing access arrangement for the dwelling house on Proposed Lot 4 will not change.

**4.15 (1) (a) (iiia) – any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4**

<b>Planning Agreement (or draft)</b>	<b>Comments</b>
	Not applicable.

	<b>Comments/Is consistency with these provisions achieved?</b>
If the DA is for the demolition of a building, consider the provisions of <b>AS 2601-1991: The demolition of structures</b> (as in force 1 July 1993):	Not applicable.
If the DA is only for a change of use or the use of an existing building as a place of public entertainment, is the <b>fire protection and structural capacity of the building appropriate to the building's proposed use?</b>	Not applicable.
If the DA involves the rebuilding/alteration/enlargement/extension of an existing building, is the <b>existing building required to be brought into total or partial conformity with the Building Code of Australia (BCA)?</b>	Not applicable.
If the DA is for the erection of a temporary structure, is the <b>fire protection and structural capacity of the structure appropriate to the proposed use of the structure?, and is the ground or other surface, on which the structure is to be erected, sufficiently firm and level to sustain the structure while in use?</b>	Not applicable.

**4.15 (1) (b) – the likely impacts of that development**

<b>Urban and Building Design</b>	<b>Discuss whether or not the impact is acceptable or not? If not, then describe the adverse impacts and the steps taken to mitigate the impacts</b>
i) Context and Settings	<p>The proposed subdivision fits within the strategic planning framework and generally within the character of development for this part of Alstonville. The current application will facilitate the release of vacant land within the village.</p> <p>Council's Strategic Services Manager provides the following comments: <i>"The subject land is zoned R2 Low Density residential zone under the 2012 LEP. The land has been zoned residential at least since the early 1980's (think it was rezoned in 1981 from rural to residential).</i></p> <p><i>The Alstonville Planning and Environmental Study (section 6.3.1) looked at the development potential of existing zoned areas and the capacity for additional lots dwellings. It did this to make the point that even if there were no new planning initiatives implemented there was still some limited development potential within the existing Alstonville urban area."</i></p> <p>It is noted that the recent approval of Planning Proposal 18/002 will potentially, with consent, allow attached dual occupancies to be built on all four lots, which effectively could provide seven new dwelling houses.</p> <p>The subject land is within close proximity to the Tuckombil Quarry, Boral Asphalt Quarry and Ron Southon Blasting industries. The lands upon which these industries are located are surrounded by earthen mounds and vegetation and are not visible from the subject land, apart from the entry to the quarry on Gap Road.</p> <p>Consideration has been given to potential adverse impacts as a result of the distance to these industries. Noise, odour and dust impacts are of the greatest concern.</p> <p>Council's Environmental Health Officers have considered the potential impacts and conditioned the consent to mitigate impacts.</p>
ii) Site Design and Internal Design	<p>The proposed lot layout has been designed with a proposed reciprocal Right of Carriageway providing access to the existing dwelling house on proposed Lot</p>

	<p>4 and to proposed Lots 2 and 3, and with proposed Lot 1 to have direct driveway access off Teven Road.</p> <p>There are currently two Restrictions on Use over the subject land being:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> restriction on use (DP 826348) on the eastern two-thirds (approx.) of the subject land – no dwelling house shall be erected upon that part of the lot so burdened</li> <li><input type="checkbox"/> restriction on use (DP 826348) along the eastern front boundary of the subject land - no vehicular access shall be permitted to Teven Road along that part of the lot.</li> </ul> <p>Council is empowered to vary, release or modify the above two restrictions on use, both of which are being formally requested as part of this DA/SEE to facilitate the proposed subdivision.</p> <p>Council's Infrastructure Planning Manager agreed to Lots 1 and 2 each having a single access only off Teven Road.</p> <p>Lots 1 and 2 which front Teven Road are 1023m<sup>2</sup>, Lot 3 is 1127m<sup>2</sup> and Lot 4 which contains the existing dwelling house is 2367m<sup>2</sup>.</p> <p>The proposed lot layout is considered appropriate for the subject land and is compatible with surrounding development.</p>
iii) Ecologically Sustainable Building Design	Not applicable.
iv) Access, Transport and Traffic	<p>Should Council agree to vary the Restriction on Use, access will be provided to the existing dwelling house (proposed Lot 4) and proposed Lot 3 via a reciprocal Right of Carriageway. Proposed Lots 1 and 2 will be accessed directly off Teven Road. The consent will be conditioned such that Lots 1 and 2 will be restricted to one driveway each should they be developed for dual occupancies.</p> <p>The existing external road network of Teven Road is constructed to a suitable standard to service the proposed development.</p>
v) Public Domain	<p>There are few public areas within close proximity to the proposed development. Rossmore Park is located on the eastern side of Teven Road and the addition of a 2m shared path would allow easier access to this park.</p> <p>The consent will be conditioned to extend the footpath for the extent of the development along Teven Road.</p>

		This will provide also provide connection to the existing pathway to the north of the development which connects with a pedestrian network through to Whipps Avenue.
vi)	Utilities	All utilities are available to the proposed lots.
vii)	Heritage	A recent AHIMS search was carried out in relation to the subject property and it did not identify that the property was listed on the register. No issues raised.
viii)	Construction	There will be civil construction impacts resulting from the proposal, including noise and air pollution. All impacts are envisaged to be short term and are able to be addressed via conditions of consent (hours of construction activity, erosion and sediment control plans, dust control etc.)
<b>Environmental Impacts</b>		
ix)	Other Land Resources	The subject land has been zoned residential since the early 1980s and contains an existing dwelling house and is not using valuable agricultural land, impacting water supply catchments or using valuable mineral and extractive resources. Any resources used are considered acceptable.
x)	Water	A reticulated town water supply is available to the proposed lots.  Stormwater storage is proposed to be managed by the installation of Atlantis Cells on proposed Lots 1 and 2 in addition to rainwater tanks required by BASIX for rainwater harvesting. A combination of rainwater re-use, grassed buffers, swales and detention/infiltration treatment nodes will improve stormwater quality. The legal point of discharge is provided on the eastern side of Teven Road.
xi)	Soils	A sediment and erosion control plan will be implemented as part of the construction of the proposed subdivision. The consent will be conditioned to ensure potential impacts are minimised.
xii)	Air and Microclimate	The potential for adverse impacts from dust emissions and odour from the Tuckombil Quarry, Boral Asphalt Plant and Ron Southon Blasting industries have been considered in this assessment. Council's Environmental Health Officer has conditioned the consent to mitigate such impacts.
xiii)	Flora and Fauna	No vegetation is required to be removed. No further impacts.
xiv)	Waste	Council's Environmental Health Officer considered waste and determined that there is sufficient room for waste collection bins along the Teven Road frontage. This however, may be an issue should all lots be developed with attached dual occupancies.

xv) Energy	The proposed development has been designed to allow any future dwelling houses to have a northerly orientation.
<b>Hazards</b>	
xvi) Noise and Vibration	<p>Due to the close proximity of the proposed development to the Tuckombil Quarry, Boral Asphalt Plant and Ron Southon Blasting industries, there will potentially be impacts from noise and/or vibration. A LUCRA and further information was submitted and assessed by Council's Environmental Health Officer. Reservations are held by Council's EHO, however given the recent approval of a ten lot subdivision (DA 2017/679) immediately adjacent to the subject land, a refusal would be difficult.</p> <p>The LUCRA recommended the consent be conditioned similar to the consent for DA 2017/679:</p> <p>(1) <i>A Restriction As-To-User in accordance with Section 88b of the Conveyancing Act 1919, is to be placed on the title of Lots 1 to 3 inclusive stating that any proposed dwelling located on Lots 1 to 3 inclusive must be constructed so as to achieve the internal noise levels for bedrooms (LAeq) of 35 dBA during night periods (10pm to 7am) and 40dBA for other habitable rooms as specified in AS/NZ 2107:2000 Acoustics – Recommended design sound levels and reverberation times for building interiors.</i></p> <p><i>Reference is made to the Land Use Conflict Risk Assessment submitted by Tim Fitzroy &amp; Associates 27 October 2019 which identifies Lots 1 to 3 as potentially noise affected. Acoustic certification from a suitably qualified and experienced person is to be provided to the Principal Certifying Authority prior to the release of the Construction Certificate or Complying Development Certificate for any dwelling house on those lots to certify that the dwelling construction plans and specifications will achieve the internal noise levels for bedrooms (LAeq) of 35 dBA during night periods (10pm to 7am) and 40dBA for other habitable rooms as specified in AS/NZ 2107:2000 Acoustics – Recommended design sound levels and reverberation times for building interiors.</i></p> <p><i>A copy of the section 88b instrument shall be provided to and approved by Council prior to the issue of the subdivision certificate.</i></p>

xvii)	Natural Hazards	No issues raised.
xviii)	Technological Hazards	<p>The proposed development is situated within 180m of the boundary of Lot 3 DP 1130300 on which the Tuckombil Quarry is located. The proposed development is situated within 290m of Lot 1 DP 880416 on which the Boral Asphalt Plant is located.</p> <p>These industries are "potentially hazardous industry" and "potentially offensive industry" under Part 3 of SEPP 33.</p> <p>These existing land uses have been considered in the assessment of this application. Noise, odour and dust are likely adverse impacts which will likely impact residents of the proposed development. The consent will be conditioned to mitigate potential adverse impacts.</p>
xix)	Safety, Security and Crime Prevention (CPTED)	The proposal is considered to have minimal issues with respect to safety, security and crime prevention.
<b>Social and Economic Impacts</b>		
xx)	Social Impacts in the Locality	The proposed application will facilitate the release of vacant building allotments within Alstonville village and it is considered that will result in positive social and economic benefits to the wider community. However, should the proposed subdivision ultimately sterilise the industry in the vicinity there is a potential negative economic impact for the locality and the wider community.
xxi)	Economic Impact in the Locality	
<b>Cumulative Impacts</b>		
xxii)	Cumulative Impacts	<p>It is considered that there is potential for negative cumulative impacts resulting from the proposed subdivision. It is acknowledged that the land is suitably zoned for residential development, however while this proposal is creating only three new allotments, it effectively allows for seven new dwelling houses within close proximity to the existing industries.</p> <p>It is acknowledged that there has been changes to the DCP in relation to buffers from this industry since Council approved the subdivision (DA 2017/679) which created 10 lots in Willie Wagtail Place.</p>

**4.15 (1) (c) – The suitability of the site for the development**

		Comments
i)	Does the proposal fit in the locality?	The proposal is generally consistent with the objectives of the BLEP 2012, however there are some issues with with the development including:



	<p>The proximity to the industrial land uses to the north east of the subject land, including the Tuckombil Quarry, Boral Asphalt and Ron Southon's Blasting. There is the potential for future residents to suffer adverse impacts (dust, noise and odour) from these industries.</p> <p>Potential impacts have been assessed as part of this application and the consent will be conditioned to mitigate possible impacts.</p>
ii) Are the site attributes conducive to development?	The site is considered suitable for the proposed development as it is relatively flat site with no known natural hazards.

**4.15 (1) (d) Any submission made in accordance with this Act or the Regulations?**

Is advertising required because the development is designated or "advertised" development?	No
If YES, how many submissions were received?	N/A
Is advertising required in accordance with established Council policy and practice?	Yes
If YES, how many submissions were received?	3 Submissions

Document general terms of issues raised in any submission and how they are being considered/assessed:

<b>Main issues raised:</b>	<b>Comments:</b>
<p><b>Development within buffer</b> One submission addressed:</p> <ul style="list-style-type: none"> <li>- the fact that the proposed development is within the buffer to the industry; and</li> <li>- impact on health and amenity of future residents.</li> </ul>	<p>Chapter 2 of the DCP addresses land use conflict and the requirement for buffers to ameliorate or mitigate potential conflict. Since the approval of the ten lot subdivision of the adjoining land at 77 Teven Road (DA 2017/679), Council adopted a change to the DCP (at its Ordinary Meeting of 26 September 2019) which specifies the buffer distance required between sensitive development (i.e. residential development) and hot mix asphalt/bitumen batch plants. There is a buffer distance of 500m where "new technology" is in place and 1000m where "old technology" is in place for the industry.</p> <p>Boral Asphalt Plant has "old technology" and as such requires a buffer of 1000m.</p> <p>Similarly, where extractive industries use blasting, as in the case of Tuckombil Quarry, a buffer distance of 1000m is required.</p> <p>In the additional information addressing submissions Tim Fitzroy &amp; Associates (TFA) provided the following table outlining distances between the asphalt plant, the quarry and future residences:</p>

Distance from the closest façade (north east) of closest Dwelling in proposed residential subdivision plan at 81 Teven Road to the quarry related activities				
Activity	Lot 1	Lot 2	Lot 3	Lot 4
Asphalt Stockpiles	300m	280m	310m	Existing NA
Asphalt Plant	360m	360m	395m	Existing NA
Current Quarry Operations	600 +m	600 +m	600 +m	Existing NA
Quarry Stockpiles	480m	465m	535m	Existing NA
Quarry Boundary	230m	225m	300m	Existing NA

It is acknowledged that the proposed development is within the 1000m buffer. See below aerial image:

<p><b>Land use conflict</b> Two submissions, including a submission from Boral, addressed the increased potential for land use conflict between the industry and future residents</p>	<p>A Land Use Conflict Risk Assessment (LUCRA) undertaken by Tim Fitzroy &amp; Associates (TFA), Dated 24 October 2019 was submitted with the application. TFA's conclusion stated:</p> <p><i>"This LUCRA has concluded that the proposed site is suitable for a proposed residential subdivision as described in the Site Plan (Illustration 1.2) subject to the following recommendations:</i></p> <ul style="list-style-type: none"> <li>• <i>Noise Mitigation</i> <ul style="list-style-type: none"> <li>○ <i>As a precautionary measure given the tonal impacts of asphalt plant operation resulting in a 6dB exceedance in the evening and night periods at noise monitoring location R1 on the northern perimeter of the Panorama Estate consideration should be given to the provision of acoustic treatment of windows and the provision of air conditioning in habitable rooms to allow windows to be closed in the night and evening for dwellings in the proposed subdivision.</i></li> </ul> </li> </ul>
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	<p><i>A number of factors have led to this conclusion including:</i></p> <ul style="list-style-type: none"> <li>• <i>Distance attenuation of some 425 metres from the limit of quarry excavation to the proposed residential subdivision;</i></li> <li>• <i>Distance attenuation of some 350 metres from the closest point of the Alstonville Asphalt Plant to the proposed residential subdivision;</i></li> <li>• <i>No direct line of sight between the quarry and asphalt plant and the proposed development;</i></li> <li>• <i>The ongoing implementation of the Environmental Management Plan for the Tuckombil Quarry;</i></li> <li>• <i>Boral's commitment to implement the recommendations of the Odour Impact Assessment of the Alstonville Asphalt Plant (Air Environment 2017);</i></li> <li>• <i>The evidence of air quality, noise and vibration monitoring; and</i></li> <li>• <i>The results of modelling on the effects of the asphalt plant on air quality.</i></li> </ul> <p><i>The type, nature, location, times of operation and recent record of the Tuckombil Quarry, Alstonville Asphalt Plant and Ron Southon Blasting Depot, coupled with the site specific environmental assessments and monitoring results have led me to the view that any potential future land use conflicts between the existing quarry, asphalt plant and Blasting Depot and the future occupants of the proposed residential subdivision are acceptable."</i></p> <p>Further additional information was submitted by TFA which directly addressed the submissions and provided the following comments in relation to <b>noise</b>:</p> <p><i>"Based on the data at hand it appears that the land use conflict risk with respect to noise generating activities between the existing asphalt plant and quarrying operations (should they recommence in the future) and future dwellings in the proposed subdivision to be low.</i></p> <p><i>Nevertheless, adopting the <b>precautionary principle</b>, it is recommended that future dwellings in Lots 1 to 3 (inclusive) be constructed of standard construction with acoustic seals to windows facing the quarry/asphalt plant and the provision of air conditioning in habitable rooms to allow residents with the opportunity to be closed windows to maintain internal acoustic amenity when required</i></p> <p><i>TFA offer the following condition to be applied to the development prior to the issue of subdivision certificate:</i></p> <p><i>A Restriction As-To-User in accordance with Section 88b of the Conveyancing Act 1919, is to be placed on the title of Lots 1 to 3 inclusive stating that any proposed dwelling located on Lots 1 to 3 inclusive must be constructed so as to achieve the internal noise levels for bedrooms (LAeq) of 35 dBA during night periods (10pm to 7am) and 40dBA for other habitable rooms as specified in AS/NZ 2107:2000 Acoustics – Recommended design sound levels</i></p>
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	<p><i>and reverberation times for building interiors.</i></p> <p><i>Reference is made to the Land Use Conflict Risk Assessment submitted by Tim Fitzroy &amp; Associates 27 October 2019 which identifies Lots 1 to 3 as potentially noise affected.</i></p> <p><i>Acoustic certification from a suitably qualified and experienced person is to be provided to the Principal Certifying Authority prior to the release of the Construction Certificate or Complying Development Certificate for any dwelling house on those lots to certify that the dwelling construction plans and specifications will achieve the internal noise levels for bedrooms (LAeq) of 35 dBA during night periods (10pm to 7am) and 40dBA for other habitable rooms as specified in AS/NZ 2107:2000 Acoustics – Recommended design sound levels and reverberation times for building interiors.</i></p> <p><i>A copy of the section 88b instrument shall be provided to and approved by Council prior to the issue of the subdivision certificate.”</i></p> <p><b>TFA provided the following comments in relation to air quality and odour from the Boral Asphalt plant and the Tuckombil Quarry:</b></p> <p><i>“As discussed in the LUCRA it is our view that the risk from air quality impacts from the Alstonville Asphalt Plant (principally odour) and Tuckombil Quarry (particulate matter, when operating) at the proposed residential subdivision are <b>acceptable</b> due to a combination of:</i></p> <ul style="list-style-type: none"> <li><i>• Distance attenuation;</i></li> <li><i>• Topographical shielding;</i></li> <li><i>• The implementation of Air Quality Management Plan (AQMP) by Boral</i></li> <li><i>• The implementation of the Tuckombil Quarry Environmental Management Plan.</i></li> </ul> <p>The AQMP was implemented by Boral in 2014 following complaints from the local community regarding odour. The AQMP included the installation of an activated carbon filtration system which treats odour emissions from the bitumen kettles/holding tanks during the loading of tankers. It was reported by Air Environment Consulting in 2017 that the odour control system installed was highly effective, however 26 complaints were recorded in the Boral Complaints Register provided to Council on 25 November 2019.</p> <p>Boral also disagrees with the “controlled ranking”, of acceptable, as is deduced in the LUCRA. Boral’s determination of the “controlled ranking”, is an <b>unacceptable land use risk</b>. Boral maintains that these industries have inherent adverse impacts (noise, dust and odour) and require planning buffers even if the industry has on-site mitigation measures in place. Furthermore, Boral suggests that there is a threat to the longevity of these industries and the associated employment benefits.</p>
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<p><b>Support</b> One submission requested dwelling houses are restricted to one storey in height</p>	<p>A restriction on use was imposed on the subdivision at 77 Teven Road which restricted any future dwelling houses to single storey construction. It is considered reasonable to impose a similar condition given that the locality is predominantly single storey dwelling houses.</p>
<p><b>Environmental Protection Authority (EPA)</b></p>	<p>A submission was received from EPA who provided the following comments (CM 19/96351):</p> <p><i>"In light of the proximity of the proposed subdivision to the quarry and asphalt plant it is apparent that, should development consent be granted, land use conflict is likely between any new sensitive receiver and the existing approved quarry and asphalt plant.</i></p> <p><i>Boral Asphalt Plant has been the subject of numerous noise and odour complaints and impacts and Council is aware of ongoing community concerns. The EPA emphasises that potential odours from the plant are likely to generate land use conflict with the residents of the proposed residential subdivision.</i></p> <p><i>Under certain operational and weather conditions, impacts from noise, blasting and asphalt odour are likely. It should be noted that compliance with EPA criteria will not necessarily mean that residents will not be affected by noise and/or blasting and asphalt odour emissions. Aspects of quarry and asphalt plant operations and traffic movements have the potential to cause noise impacts, but further amelioration at the emission source may not be reasonable or feasible.</i></p> <p><i>Should the EPA identify that the quarry regulated under EPL 3856 and the Boral Asphalt Plant are complying with licence conditions and are undertaking quarrying and asphalt plant operations, including blasting, in accordance with accepted industry practises, further restrictions on the quarry and asphalt plant operations or compliance action would not be reasonable or feasible.</i></p> <p><i>With the separation distances identified between the proposed residential dwelling and the existing quarry and asphalt plant, it would appear that the two land uses are incompatible. Once a land use conflict has arisen; the EPA or Council (depending on the scale of the activity) will be responsible for investigating complaints and enforcing compliance or further regulating off-site emissions.</i></p> <p><i>The planning system is the prime mechanism for preventing potential or new conflicts between land uses. Whilst environmental protection mechanisms can ameliorate land use conflicts, it is more effective to prevent impacts from occurring than to attempt to minimise the impacts of incompatible land uses post approval. At-house noise mitigation features, such as double glazing, insulation and structural design, should also be considered as part of this proposal."</i></p>

Public Submissions:	<b>Two submissions</b>
Public Authority Submissions:	<b>Environmental Protection Authority</b>

**4.15 (1) (e) The public interest**

Federal, State & Local Government interests and Community interests	<p>No Federal Government agency was notified of the proposal.</p> <p>A submission was received from NSW State Environmental Protection Authority (as per above).</p> <p>Ballina Shire Council was notified, as land owner of the quarry site, however no response was received.</p> <p>Only two public submissions were received.</p> <p>Notwithstanding that the proposed development is within the buffer to the industries, the subject land has been zoned for residential development since the 1980s and provided much needed vacant land within the village of Alstonville. It is therefore considered to be in the community interest.</p>
Section 64 Contributions and Section 7.4 Contributions	See Schedule 1 of the consent.

DO NOT PRINT