



Reservoir Hill

Environmental Assessment

and Planning Report

Prepared for Ballina Shire Council

by MikeSvikisPlanning (with input from Greg Alderson and Associates and Blackwood Ecology)

December 2015

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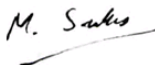
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Introduction

Ballina Shire Council resolved on 27 March 2014 that upon an affirmative Gateway Determination being received from the Department of Planning and Environment it would initiate a third party review and prepare an environmental study for Lot 1 DP 517111, North Creek Road, Lennox Head. This work will then be reviewed by Council before proceeding to public exhibition of the planning proposal.

Planning and Environment indicated on 17 April 2014 that it supported the planning proposal and that it could proceed to public exhibition. Council then engaged independent consultants for the third party review.

MikeSvikisPlanning (MSP) in conjunction with Greg Alderson and Associates and Blackwood Ecology were engaged to undertake the preparation of this Reservoir Hill Environmental Assessment and Planning Report as an independent third party review of the planning proposal.

The major objectives of the third party review are to:

- Review the existing information submitted by the planning proposal applicant
- Inspect the site and discuss key issues with Council staff
- Identify gaps or deficiencies in submitted documentation
- Identify technical information that may be required
- Prepare an environmental assessment and planning report that addresses the characteristics of the land, environmental and social considerations, SEPPs, s117 Directions, the Far North Coast Regional Strategy, and Council's local strategies and policies
- Document a draft recommended zone regime and relevant development standards that set a clear direction for the site.

The Documentation Review and Gap Analysis Report produced by MSP in October 2014 addressed the first four points (supplied under separate cover).

This report will take the findings from the Documentation Review and Gap Analysis Report, plus the additional technical information required, and address the final two points. Council can then:

- proceed to public exhibition with the original planning proposal and Gateway Determination,
- amend the planning proposal and seek a new Gateway Determination from the Department of Planning and Environment before proceeding to public exhibition, or
- choose to not proceed with the planning proposal.

Background

The key outcomes of the Documentation Review and Gap Analysis Report in relation to the 11 main issues are:

- Ecological attributes – information adequate (but additional information supplied anyway)
- Stormwater management – additional information supplied
- Public open space – information adequate
- Road infrastructure and traffic – additional information supplied about North Creek Road
- Noise impacts – information adequate (but re-alignment raises other issues)
- Scenic values and amenity – information adequate
- Obstacle limitation surfaces and aircraft noise – information adequate
- Land contamination – information adequate
- Aboriginal archaeology and non-Aboriginal heritage – information adequate
- Agricultural land – information adequate
- Coastal protection– information adequate.

Each of these issues is discussed in more detail in the following report.

Subject Land

This environmental assessment and planning report relates to Lot 1 DP 517111, North Creek Road, Lennox Head. The land is commonly known as the Water Tower or Water Reservoir site at Lennox Head and in this report is described as Reservoir Hill (Figure 1). In the applicant's latest reports the site is also referred to as Lennox Heights.

The land comprises a total area of 14.96 hectares and has frontages to Henderson Lane in the south, North Creek Road in the east and the Coast Road (and extension of Hutley Drive) in the north. It backs onto fully occupied residential land in the west (the Meadows Estate), the nearest part comprising a row of houses fronting Silkwood Road. The site surrounds an existing concrete reservoir structure that is located on the eastern boundary of the site, adjacent to North Creek Road.



Figure 1: Subject land

Planning Proposal

The original planning proposal as lodged by the land owner (proponent) involves the rezoning of the land from RU1 Primary Production to enable residential development on the site via a mix of R3 Medium Density Residential zone and R2 Low Density Residential zone along with an RE1 Public Recreation zone in the north-western part of the site. The current zoning of the land under Ballina LEP 2012 is shown in Figure 2. The proposed zone of the land (as suggested by the proponent), which is the subject of the April 2014 Gateway Determination, is shown in Figure 3. In association with the proposed zones, the proponent proposed a 600 m² minimum lot size standard for the R2 zoned land and a 450 m² minimum lot size standard for the R3 zoned land. Consistent with Council's LEP, there is no minimum lot size proposed for the RE1 zoned area. No building height change is suggested in the planning proposal. The current height limit under LEP 2012 is 8.5 metres and this is the same as the majority of the residential land around Lennox Head.

In response to a Council query the Department of Planning and Environment advised on 9 July 2014, that if further assessment indicates that the RE1 Public Recreation zone is removed from the Planning Proposal then an amended Gateway Determination will need to be issued. This should be obtained prior to public exhibition.

A subsequent request for extension of time to process the planning proposal (with the support of the proponent) was provided by the Department of Planning and Environment on 20 March 2015. This allows Council until 24 April 2016 to deal with the planning proposal. A further extension of time will be required if Council supports an amended Gateway Determination.

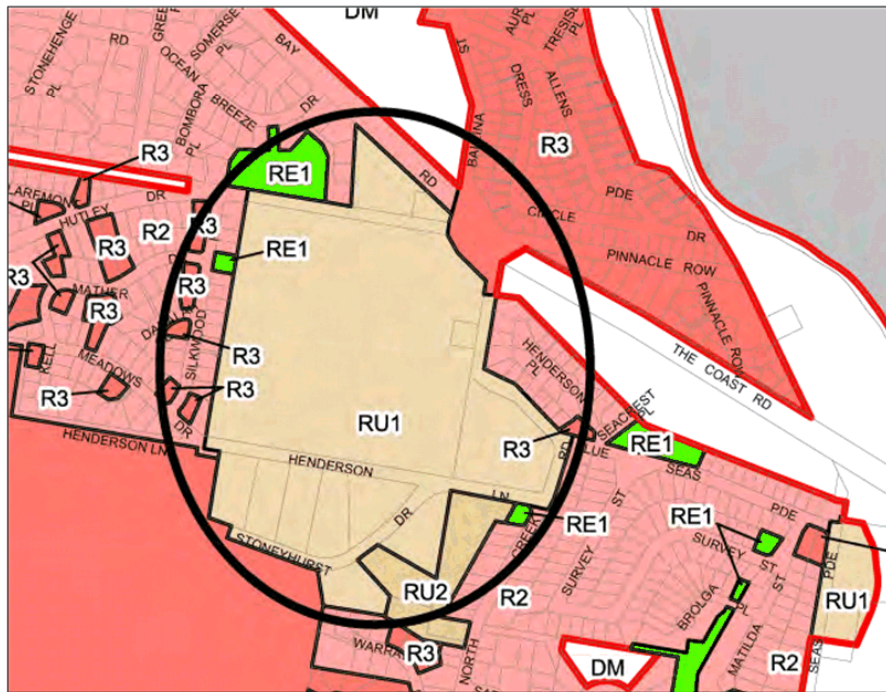


Figure 2: Current zones under Ballina LEP 2012

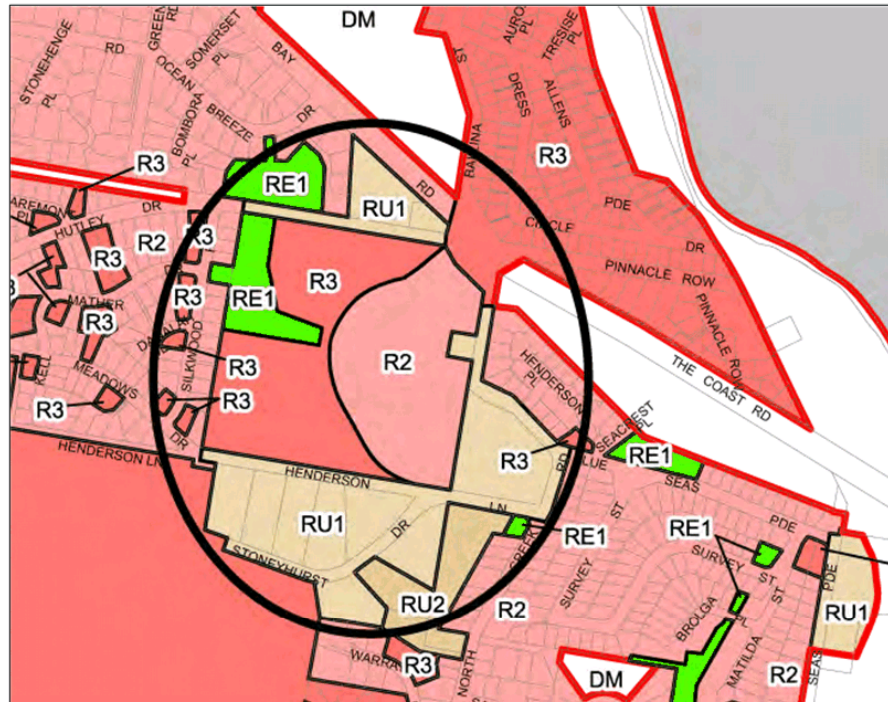


Figure 3: Distribution of zones as suggested by the proponent and subject to April 2014 Gateway Determination

As a result of the peer review and gap analysis process the proponent's ideas about the subject land have evolved. They currently envisage in the order of 93 residential lots of various sizes plus five areas scattered across the site designated for medium density development. They also envisage a reconfigured lot designated for public open space, two areas for stormwater control, a lot that contains a small waterway, and a wetland reserve lot.

It is still intended to realign North Creek Road and construct a new section of road between North Creek Road and the planned northern extension to Hutley Drive. The proposed alignment is still subject to negotiation.

Based on the information to date, the proponent has produced a concept plan that shows where they would prefer the R3 zone be applied, their preferred minimum lot size (a mix of 250 m² and 300 m² in the R3 zone and 600 m² in the R2 zone), the preferred new alignment for North Creek Road, and a draft lot layout and yield (Figure 4). In recent discussions the proponent confirmed they would prefer a 9 metre height limit across the whole site in all zones.

The concept plan (Figure 4) is not necessarily what Council will see in a future development application. It is the current owner's view of what the site may yield if the planning proposal is successful. It is useful to see what the site may yield and how lots might be configured. However the planning proposal is not an application for subdivision.



Figure 4: Proponent's suggested lot layout and yield

Other consequential mapping changes proposed (on the basis that a residential zone/s will be applied to the land) include alteration to the Strategic Urban Growth Area Map to remove the subject land from being identified as a strategic urban growth area; and a change to the Dwelling Opportunity Reinstatement Map to delete the dwelling entitlement recognised for the site on the map.



Key Issues and Outcomes

Ecological Attributes

The Documentation Review and Gap Analysis Report concluded that there is sufficient information for Council to make a decision on the issue of the ecological attributes of the subject land, and no further technical information or survey is required. Ecological survey work was undertaken between 2004 and 2013, and then more recently by Blackwood Ecological Services in 2014. Notwithstanding this position, the applicant commissioned another ecologist to produce an option for offsetting the loss of some areas of EEC and Hairy Joint Grass.

The important ecological attributes of this site are that it contains an irregular shaped area of Freshwater Wetland EEC in the north-western corner, a population of Hairy Joint Grass, a single mature small-leaved fig tree and a small waterway that runs down the southern edge of the site. All three ecologists agree on the mapping of these areas (with minor edge variations).

The question is how should these important ecological areas be dealt with in the current planning proposal? What should they be zoned?

The proponent's consultant (Melaleuca Group, September 2015) currently favours rezoning approximately 0.27 hectares of the EEC for residential purposes plus approximately 0.6 hectares of the Hairy Joint Grass for residential purposes. They suggest this loss could be compensated for by a 1.23 hectare wetland reserve (most of which exists already) and translocation of Hairy Joint Grass to the edges of the small waterway and the edges of proposed stormwater retention areas. Hairy Joint Grass that already occurs within the proposed wetland reserve is counted as EEC, even though it is not a wetland species and the reserve cannot be managed to be both a freshwater wetland and Hairy Joint Grass habitat. This proposition has not been offered as a Voluntary Planning Agreement. It has not been the subject of a biobanking assessment. Normally a biobanking process would be required to estimate the species credits required to remove Hairy Joint Grass and the ecosystem credits to remove the EEC. Without this assessment there is no scientific rigor to the offset amounts suggested and no long-term maintenance arrangement. The applicant is silent as to who will have to maintain the wetland or Hairy Joint Grass translocation areas.

In the absence of a biobanking assessment to address and offset the loss of EEC and Hairy Joint Grass, it should be retained on the site. The areas known to contain either should not be zoned for residential purposes. In the absence of an E2 Environmental Conservation zone (not yet available in Ballina LEP 2012), these areas should be left as RU1 Primary Production. If the proponent wants to offset the areas in accordance with a biobanking assessment in the future then Council can reconsider the zoning of these areas at that time.

An RE1 Public Recreation zone is not supported on this site because:

- the areas suggested for this purpose are still in private ownership (RE1 is an acquisition zone) and Council has not made a decision to acquire them or take them over for free
- the objectives and suite of uses permitted in the RE1 zone do not match the characteristics of the land
- the ecological characteristics of the area are better suited to an E zone when these are eventually reinstated into Ballina LEP 2012.

The small leaved fig can either be left in a rural zone or included in a residential zone as small parks are permitted in any case. Similarly, the small waterway can either be left in a rural zone or included in a residential zone for the same reason.

Recommendation:

It is recommended that the areas known to contain Freshwater Wetland EEC and Hairy Joint Grass be retained in the existing RU1 Primary Production zone and not zoned for residential purposes (Figure 5). The small waterway does not need to be retained in the RU1 Primary Production zone.

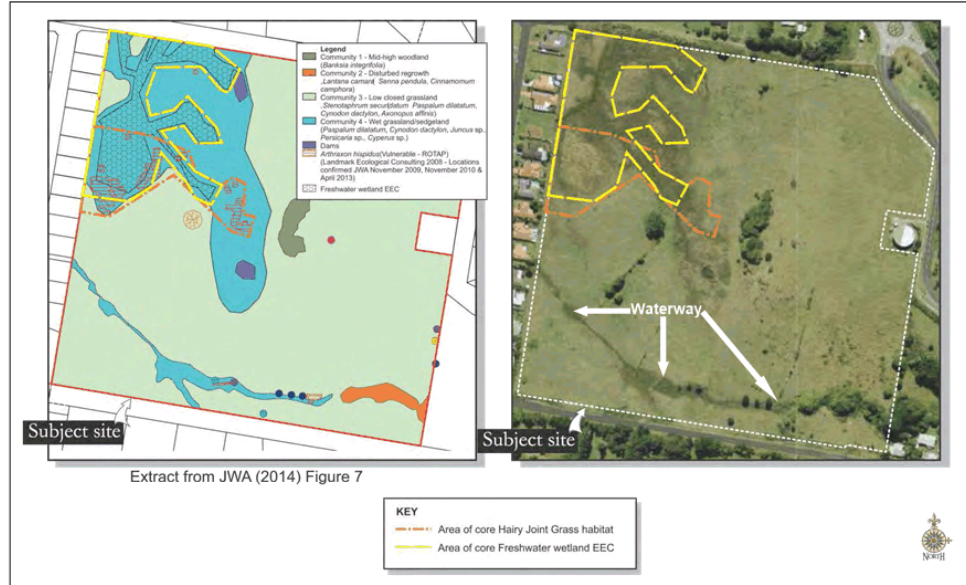


Figure 5: Freshwater Wetland EEC and Hairy Joint Grass to be retained in the existing RU1 Primary Production zone. Waterway to be zoned R2 Low Density Residential

Stormwater Management

The Documentation Review and Gap Analysis Report concluded that the proposed approach to the determination of stormwater quantity and quality put forward by the proponent is generally sound, however revised reporting from the proponent post-rezoning should address the information gaps and comments identified in the Alderson and Associates' report. It also recommended that land be set aside for stormwater detention (outside of HJG core habitat and wetland EEC boundaries) and that land be retained in the current RU1 zone on the subject site until such time as Council finally resolves the stormwater issues through the development application process. It is also considered that the existing southern watercourse should be retained to manage stormwater from existing upstream catchments. The watercourse can be zoned R2 or R3, but it should not be assumed that it can be filled and piped.

The proponent subsequently produced an additional report on stormwater treatment (Hammond and Associates, October 2015), which was again peer-reviewed by Alderson and Associates on behalf of Council. The proponent suggests that 8100 m² across three locations for stormwater quality and quantity management will be adequate for this site, and Alderson and Associates agree. Alderson and Associates also advise that the location of the bio-retention basins, parts of roads and lots clearly impacts on identified wetland EECs and threatened species.

They also suggest the following detail needs to be assessed as part of any future development application:

- The upstream street drainage system arrangement and catchment boundary needs to be confirmed
- The downstream hydraulic capacity, including the existing detention storage capacity of the Meadows Estate, needs to be considered as part of determining detention basin specifications within the subject site
- Consideration of road and allotment levels upstream of bio-retention basins and their outlet drainage levels to the existing wetland EEC
- Future modelling would need to ensure discharge to the wetland EEC occurs in a manner which mimics existing flow conditions as close as possible.

Stormwater management can take place in either the existing rural zone or in any residential zone. Clause 7.10 of LEP 2012 ensures that this can happen. It needs to be located at the western side of the subject land because that is the flow direction. It should not be in an EEC or area of Hairy Joint Grass unless a biobanking offset is proposed. The difficulty with zoning to residential the likely stormwater quality and quantity management areas is that it creates an expectation of residential lots and pushes the stormwater areas into the EEC and Hairy Joint Grass locations.

Recommendation:

It is recommended that an area sufficiently large to include 2700 m² in two locations (5400 m² in total) be retained in the existing RU1 Primary Production zone and not zoned for residential purposes (Figure 6). The third location for stormwater management is the small waterway and riparian area, and this can be zoned residential.



Figure 6: Approximate location of stormwater detention areas to be retained in RU1 zone

Public Open Space

The Documentation Review and Gap Analysis Report recommended that an area of not less than 0.13 hectares should be retained in the current RU1 zone on the subject land as a prospective local park. The preferred location is an area in the vicinity of the mature fig tree located in the central western part of the site. The land near the fig tree is relatively flat, well-drained, does not contain an EEC or Hairy Joint Grass. It can be easily linked by a path back to the park on Silkwood Road and is within 400 metres of all parts of the subject land.

Consistent with its adopted Section 94 Contribution Plan, Council would also expect a contribution the equivalent of a further 1 hectare of district and regional parks and facilities (in kind or in money) on locations (not on the subject land) to be negotiated with Council. This would be at subdivision stage.

The precise boundary of the "fig tree park" will not be known until a subdivision is approved in the future. There is no specific benefit in trying to identify it with an RE1 Public Recreation zone at this stage and then have to modify it later. If Council is offered a park that it wants to accept as part of a future subdivision then it can be rezoned in a later general planning proposal, after it has been transferred to Council. This will avoid any possibility of compulsory acquisition. It is also acceptable to have a small park in a residential zone until such time as its boundaries are finalised. In other LGAs, small parks are left in residential zones over the long term.

Recommendation:

It is recommended that an area of not less than 0.13 hectares in the vicinity of the mature small leaved fig tree be identified as suitable for a local park, but this should not limit the zoning of this site for residential purposes at this stage.

Road Infrastructure

The Documentation Review and Gap Analysis Report concluded that roads are permitted in all residential zones and Council typically keeps them in the predominant zone of the locality. However, the likely alignment of North Creek Road (and its roundabout intersection with Hutley Drive) is important in terms of its noise impacts (discussed below), and its impact on construction costs and land acquisition costs. Discussion on the likely alignment of North Creek Road has resulted in a preferred alignment now being agreed in principle (based on a 20 metre road reserve), subject to valuations and potential land swap arrangements. Amendments have been made to include the North Creek Road construction costs in Council's s94 contributions plan.

If the realigned road boundaries change, this may have an impact on the proposed R3/R2 boundary where the road is the dividing line. If this occurs before the planning proposal is finalised then a minor adjustment can generally be made post-exhibition. If it happens after the planning proposal is finalised then it may have to be dealt with in a future planning proposal. Since the planning proposal is time-limited, it is not appropriate to delay it while negotiations continue on road issues.

Recommendation:

It is recommended that all likely roads be zoned for residential purposes (R2 Low Density Residential). The approximate preferred alignment of North Creek Road that is under negotiation is shown in Figure 7.



Figure 7: Approximate preferred alignment of North Creek Road (to be zoned R2 Low Density Residential)

Noise Impacts

The Documentation Review and Gap Analysis Report concluded the noise assessment should be revised to account for the alternate alignment of North Creek Road. Following revision of the modelling and noise contour mapping, any noise-affected land identified by that mapping could be used as the basis for excluding land from a residential zone where that noise impact cannot be ameliorated in a reasonable manner.

Given that a new North Creek Road alignment has only recently been firmed up, this revised noise assessment has not been undertaken. It is an important issue but it should not be used to further delay this planning proposal. It would be better if the planning proposal proceeds to exhibition and this information is supplied before final consideration of the proposed land use zones (post-exhibition). Council would still be able to make decisions on zone boundaries at this stage. It should be noted that North Creek Road is being brought into this site because it is a better alignment from a road safety perspective. However, the land owner should not be worse off from a noise perspective as a result of allowing that realignment. Noise can be addressed to some extent with barriers and building treatment, depending on how severe the impact is and the topography of the site.

Recommendation:

It is recommended that noise should not limit the zoning of this site for residential purposes at this stage (Gateway and public exhibition). However, the proponent will need to revise their noise assessment using the new alignment of North Creek Road and submit this work to Council prior to Council giving consideration to submissions received in response to the public exhibition of the planning proposal.

Scenic Values and Amenity

The Documentation Review and Gap Analysis Report concluded that the subject site does not include significant public viewing locations, and is not a significant scenic landscape area or view corridor. It is not identified by Council in the Ballina Growth Management Strategy (2012) as being sensitive to change in relation to visual amenity. Development of the eastern-most 50 metres of the subject land will have some potential to impact on the skyline when viewed from certain locations and it is recommended that any application for buildings in this location be closely considered in relation to this issue.

Recommendation:

It is recommended that scenic values and amenity should not limit the zoning of this site for residential purposes at this stage.

Obstacle Limitation Surfaces and Aircraft Noise

The subject land is entirely within the Obstacle Limitation Surface (OLS) for Ballina Aerodrome. Both Manager of Airport Operations at Ballina Byron Gateway Airport, Air Services Australia and CASA were consulted. They indicated that the subject land is shielded by higher surrounding residential development and natural terrain to the immediate east, including the Lennox escarpment. The water reservoir is also a major structure on elevated land. OLS is not an issue that should affect the future zoning of the subject land. Although the initial consultation was based on an 8.5 metre predicted building height, it is not anticipated that a 9 metre height will create any concerns.

Future development of the subject land will still trigger clause 7.5 of Ballina LEP 2012 (Airspace Operations) and further consultation will be required. However, this is not of itself a reason to postpone the planning proposal to review the zone of this site.

Aircraft noise modelling for the Ballina Byron Gateway Airport shows that the site is not affected by any noise contours, and this is not an issue that will influence the zoning of the subject land.

Recommendation:

It is recommended that obstacle limitation surfaces and aircraft noise should not limit the zoning of this site for residential purposes at this stage.

Land Contamination

The subject land has been cleared and used for grazing in the past. Air photography showed it completely cleared in 1947. It is still used for beef cattle grazing to this day. A phase one site contamination assessment was undertaken by Coffey Geotechnics in May 2013. This included preliminary soil sampling. It updated a previous study from 2009. The assessment found there was no history of known contaminating uses on the site, it did not identify any areas of environmental concern, and soil samples were all below adopted soil investigation levels for contaminants. Council's Environmental Health Officer concluded in June 2013 that no further information would be required at the rezoning stage.

Recommendation:

It is recommended that land contamination should not limit the zoning of this site for residential purposes at this stage.

Aboriginal Archaeology and Non-Aboriginal Heritage

The planning proposal is supported by a Cultural Heritage Assessment Report undertaken by Everick Heritage Consultants in May 2013, which indicates that:

- No Aboriginal Objects or Places were identified within the Project Area
- No areas were identified that were considered reasonably likely to contain Potential Archaeological Deposits (PADs)
- Consultation with the Jali LALC identified no places of cultural (spiritual) significance
- No items of historic heritage significance were identified within the Project Area
- No relics or artefacts were found at the site inspection and no heritage constraint is anticipated.

OEH indicated in its response to Council dated 8 August 2014 that it considers the Everick report to be appropriate and that it is satisfied there are no known Aboriginal cultural heritage constraints to the planning proposal.

Recommendation:

It is recommended that Aboriginal archaeology and non-Aboriginal heritage should not limit the zoning of this site for residential purposes at this stage.

Agricultural Land

The subject land is identified as being regionally significant agricultural land according to the Northern Rivers Farmland Project. The mapping notes that the land is not contiguous with other agricultural areas. It is totally surrounded by residential and rural residential areas that are identified in the project as being committed urban areas. If the planning proposal is implemented then approximately 15 hectares will be lost from future agricultural production.

The land is not identified in the biophysical strategic agricultural land (BSAL) mapping for the Ballina Shire.

The best use of the land is no longer for agriculture and this issue should not affect the future zoning of the subject land.

Recommendation:

It is recommended that agricultural land should not limit the zoning of this site for residential purposes at this stage.

Coastal Protection

The subject land is less than 1 kilometre from the coast at Lennox Head and is within the coastal zone identified in the Coastal Protection SEPP. It is also subject to the NSW Coastal Policy 1997.

In preparing the planning proposal Council must consider a range of matters identified in clause 8 of the Coastal Protection SFPP. A brief response to those is as follows:

- residential development on this land will not affect public access to the foreshore nor generate the need to provide new access,
- the site is suited to its locality given surrounding land use and proximity to infrastructure, facilities and services,
- residential development will not affect the scenic amenity of the foreshore nor cause overshadowing or major view impacts,
- residential development will not affect threatened species or wildlife corridors (if appropriate protection of Hairy Joint Grass and Freshwater EEC proceeds),
- the site is not affected by coastal processes, nor is it predicted to be affected,
- residential development will not cause conflict with water- or land-based activities and is compatible with its neighbouring land uses (residential or proposed residential),
- residential development will not cause impacts on water bodies such as the Richmond River as long as appropriate on-site stormwater controls are implemented through the development application process, and
- residential development will not impact on cultural heritage of significance as the cultural heritage due diligence assessment found that there is no heritage constraint on the site.

Recommendation:

It is recommended that coastal land protection issues should not limit the zoning of this site for residential purposes at this stage.

Planning Assessment

State Environmental Planning Policies

The State Environmental Planning Policies relevant to the planning proposal are identified in Table 1 and discussed in the following section.

Table 1: State Environmental Planning Policies

State Environmental Planning Policy	Consistency
SEPP No 1 – Development Standards	N/A
SEPP No 4 – Development Without Consent and Miscellaneous Exempt and Complying Development	N/A
SEPP No 6 – Number of Storeys in a Building	N/A
SEPP No 10 – Retention of Low Cost Rental Accommodation	N/A
SEPP No 14 – Coastal Wetlands	N/A
SEPP No 15 – Rural Landsharing Communities	N/A
SEPP No 19 – Bushland in Urban Areas	N/A
SEPP No 21 – Caravan Parks	N/A
SEPP No 22 – Shops and Commercial Premises	N/A
SEPP No 26 – Littoral Rainforests	N/A (Nearest core area is 220 m to the east, below Henderson Place)
SEPP No 29 – Western Sydney Recreation Area	N/A
SEPP No 30 – Intensive Agriculture	N/A
SEPP No 32 – Urban Consolidation (Redevelopment of Urban Land)	N/A
SEPP No 33 – Hazardous and Offensive Development	N/A
SEPP No 36 – Manufactured Home Estates	N/A
SEPP No 39 – Spit Island Bird Habitat	N/A

State Environmental Planning Policy	Consistency
SEPP No 41 – Casino Entertainment Complex	N/A
SEPP No 44 – Koala Habitat Protection	N/A
SEPP No 47 – Moore Park Showground	N/A
SEPP No 50 – Canal Estate Development	N/A
SEPP No 52 – Farm Dams and Other Works in Land and Water Management Plan Areas	N/A
SEPP No 53 – Metropolitan Residential Development	N/A
SEPP No 55 – Remediation of Land	Consistent. See additional comments below
SEPP No 59 – Central Western Sydney Regional Open Space and Residential	N/A
SEPP No 60 – Exempt and Complying Development	N/A
SEPP No 62 – Sustainable Aquaculture	N/A
SEPP No 64 – Advertising and Signage	N/A
SEPP No 65 – Design Quality of Residential Flat Development	N/A
SEPP No 70 – Affordable Housing (Revised Schemes)	N/A
SEPP No 71 – Coastal Protection	Consistent. See additional comments below
SEPP (Affordable Rental Housing) 2009	N/A
SEPP (Building Sustainability Index: BASIX) 2004	N/A
SEPP (Exempt and Complying Development Codes) 2008	N/A
SEPP (Housing for Seniors or People with a Disability) 2004	N/A
SEPP (Infrastructure) 2007	N/A
SEPP (Kosciuszko National Park – Alpine Resorts) 2007	N/A

State Environmental Planning Policy	Consistency
SEPP (Major Development) 2005	N/A
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	Consistent. See additional comments below
SEPP (Rural Lands) 2008	Consistent. See additional comments below
SEPP (Sydney Region Growth Centres) 2006	N/A
SEPP (Temporary Structures) 2007	N/A
SEPP (Western Sydney Employment Area) 2009	N/A
SEPP (Western Sydney Parklands) 2009	N/A

SEPP No 55 – Remediation of Land

The subject land has been cleared and used for grazing in the past. Air photography showed it completely cleared in 1947. It is still used for beef cattle grazing to this day. A phase one site contamination assessment was undertaken by Coffey Geotechnics in May 2013. This included preliminary soil sampling. The assessment found there is no history of known contaminating uses on the site, it did not identify any areas of environmental concern, and soil samples were all below adopted soil investigation levels for contaminants. Council's Environmental Health Officer concluded in June 2013 that no further information would be required at the rezoning stage.

SEPP 55 (Remediation of Land) recognises that land which is known to be contaminated by past land uses can still be zoned for development as long as:

- "(a) the planning authority has considered whether the land is contaminated, and*
- (b) if the land is contaminated, the planning authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and*
- (c) if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning authority is satisfied that the land will be so remediated before the land is used for that purpose."*

On balance, land contamination from past uses is not likely to be a significant concern and the planning proposal is consistent with the SEPP.

SEPP No 71 – Coastal Protection

The subject land is less than 1 kilometre from the coast at Lennox Head and is within the coastal zone identified in this SEPP.

In preparing the planning proposal Council must consider a range of matters identified in clause 8 of the SEPP. A brief response to those is as follows:

The planning proposal will not affect public access to the foreshore or generate the need to provide new access; the site is suited to its locality given surrounding land use and proximity to infrastructure, facilities and services; the proposal will not affect the scenic amenity of the foreshore or cause overshadowing or major view impacts; the proposal will not affect threatened species or wildlife corridors (if appropriate protection of Hairy Joint Grass proceeds); the site will not be affected by coastal processes; the proposal will not cause conflict with water- or land-based activities and is compatible with its neighbouring land uses (residential or proposed residential); the proposal will not cause impacts on waterbodies such as the Richmond River as long as appropriate on-site stormwater controls are implemented through the DA process; and the proposal will not impact on cultural heritage of significance as the cultural heritage due diligence assessment found that there is no heritage constraint on the site.

The planning proposal is consistent with the SEPP.

SEPP (Rural Lands) 2008

The subject land is identified as being regionally significant agricultural land according to the Northern Rivers Farmland Project. The mapping notes that the land is not contiguous with other agricultural areas. It is totally surrounded by residential and rural residential areas that are identified in the project as being committed urban areas. If the planning proposal is implemented then approximately 15 hectares will be lost from future agricultural production.

Despite this, the planning proposal is consistent with the Rural Planning Principles in clause 7 of the Rural Lands SEPP because:

- the proposed use is of benefit to the Ballina LGA as it will not reduce significantly the current and potential productive and sustainable economic activities in rural areas,
- it balances the social, economic and environmental interests of the community, and
- it is consistent with the Far North Coast Regional Strategy as well as the Ballina Shire Growth Management Strategy.

The land is not identified in the biophysical strategic agricultural land (BSAL) mapping for the Ballina Shire.

The planning proposal is consistent with the SEPP.

SEPP (Mining, Petroleum Production and Extractive Industries) 2007

The residential zone/s that result from this planning proposal will not be suitable for mining, petroleum production or extractive industries and these uses would be prohibited by LEP 2012. Given the site is already totally surrounded by similar zones and is in close proximity to Lennox Head and its outlying residential areas, this is a reasonable outcome.

The site is not known to contain any significant mining, petroleum or extractive resources. Therefore the planning proposal is consistent with the aims of the SEPP to provide for the proper management of these resources, and to facilitate the economic use and development of these resources.

The planning proposal is consistent with the SEPP.

Section 117 Directions

Consistency with the s117 Directions is assessed in the following Table 2.

Table 2: Consistency with the s117 Directions

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
1 Employment and Resources			
1.1 Business and Industrial Zones	Applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed business or industrial zone (including the alteration of any existing business or industrial zone boundary).	Does not affect business or industrial zones.	N/A
1.2 Rural Zones	<p>Applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary).</p> <p>Under this direction a planning proposal must:</p> <p>(a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone</p> <p>(b) not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).</p>	<p>The subject land is currently zoned RU1 under LEP 2012. It would have been in a future urban zone if the Standard LEP permitted Council to use this option because it has been identified as a future urban area for many years.</p> <p>The proponent has requested that the majority of the site be included in a residential zone if this planning proposal proceeds.</p>	<p>Justifiably inconsistent.</p> <p>DPE advised in its Gateway Determination that the inconsistency is minor and no further assessment is required.</p> <p>The subject land is identified as a future urban area in the Far North Coast Regional Strategy, the Ballina Growth Management Strategy and the Lennox Head Structure Plan.</p> <p>The inconsistency is justified under clause 5(c) of this Direction because the planning proposal is in accordance with the Far North Coast Regional Strategy.</p> <p>In the wider context of rural zoned land in Ballina Shire, it is</p>

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
			also a minor matter as provided under clause 5(d) of this Direction.
1.3 Mining, Petroleum Production and Extractive Industries	<p>Applies when a relevant planning authority prepares a planning proposal that would have the effect of:</p> <p>(a) prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or</p> <p>(b) restricting the potential development of resources of coal, other minerals, petroleum or extractive materials which are of State or regional significance by permitting a land use that is likely to be incompatible with such development.</p>	<p>The zoning of the site predominantly for residential purposes will not prohibit mining and extractive industries as they are permitted uses in these zones. Use of the site for residential purposes after it is rezoned may restrict any exploitation of resources. However the site is not known to contain resources, and being surrounded by residential and rural residential development it is not likely to be suitable for mining or extractive industries whether it is rezoned or not.</p>	Consistent.
1.4 Oyster Aquaculture	<p>Applies when a relevant planning authority prepares any planning proposal that proposes a change in land use which could result in:</p> <p>(a) adverse impacts on a Priority Oyster Aquaculture Area or a "current oyster aquaculture lease in the national parks estate", or</p> <p>(b) incompatible use of land between oyster aquaculture in a Priority Oyster Aquaculture Area or a "current oyster aquaculture lease in the national parks estate" and other land uses.</p>	<p>This planning proposal affects land that drains into North Creek. There are Priority Oyster Aquaculture Areas located on North Creek.</p>	<p>Consistent.</p> <p>The subject land is approximately 1.2 km from the banks of North Creek. The land in between includes substantial areas of residential development. The subject land will include stormwater quality and quantity control areas that are large enough to deal with the urban runoff anticipated. Reticulated sewerage will be supplied to all dwellings.</p>
1.5 Rural Lands	<p>Applies when:</p> <p>(a) a relevant planning authority prepares a planning proposal</p>	<p>This planning proposal will amend Ballina LEP 2012 to change the current RU1 zone to a residential zone. It will also alter the</p>	<p>Justifiably inconsistent.</p> <p>DPE advised in its</p>

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	<p>that will affect land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary), or</p> <p>(b) a relevant planning authority prepares a planning proposal that changes the existing minimum lot size on land within a rural or environment protection zone.</p> <p>A planning proposal to which clauses (a) and (b) apply must be consistent with the Rural Planning Principles listed in <i>State Environmental Planning Policy (Rural Lands) 2008</i>.</p> <p>A planning proposal to which clause (b) applies must be consistent with the Rural Subdivision Principles listed in <i>State Environmental Planning Policy (Rural Lands) 2008</i>.</p>	<p>Minimum Lot Size Map in LEP 2012 to permit residential size subdivision on the subject land.</p> <p>The planning proposal is consistent with the Planning Principles in clause 7 of the Rural Lands SEPP because it does not reduce significantly the current and potential productive and sustainable economic activities in rural areas in the locality generally, and balances the social, economic and environmental interests of the community by providing urban development in a serviced and accessible location that is consistent both with the Ballina Growth Management Strategy and the Far North Coast Regional Strategy.</p>	<p>Gateway Determination that the inconsistency is minor and no further assessment is required.</p> <p>The inconsistency is justified under clause 6(a) of this Direction because the planning proposal is in accordance with the Far North Coast Regional Strategy.</p> <p>In the wider context of rural zoned land in Ballina Shire, it is also a minor matter as provided under clause 6(b) of this Direction.</p>
2 Environment and Heritage			
2.1 Environment Protection Zones	<p>(4) A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.</p> <p>(5) A planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 "Rural Lands".</p>	<p>The planning proposal does not alter or remove any environment protection zone. The ecologically significant vegetation that is on the site (it is well documented) will be protected by retaining it in a rural zone. Council is yet to introduce E zones into LEP 2012 as the Department of Planning and Environment only agreed in October 2015 to permit Councils to do so.</p>	<p>Consistent</p>

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
2.2 Coastal Protection	Direction applies when a relevant planning authority prepares a planning proposal that applies to land in the coastal zone.	This proposal is located within the coastal zone. However it will not affect public access to the coastal foreshore or generate the need to provide new access; the site is suited to its locality given surrounding land use and proximity to transport links; the proposal will not affect the scenic amenity of the Lennox Head foreshore or cause overshadowing or major view impacts; the proposal will not significantly affect threatened species or wildlife corridors; the site will not be affected by coastal processes and is not flood prone; the proposal will not cause conflict with water- or land-based activities and is compatible with its neighbouring land uses (residential or proposed residential); the proposal will not cause impacts on waterbodies such as the Richmond River as long as appropriate on-site stormwater controls are implemented through the DA process; and the proposal will not impact on cultural heritage of significance as the cultural heritage due diligence assessment found that there is no heritage constraint on the site.	Consistent
2.3 Heritage Conservation	A planning proposal must contain provisions that facilitate the conservation of: (a) items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area, (b) Aboriginal objects or Aboriginal places that are	The site contains no identified heritage items under Ballina LEP 2012. The proposal is supported by an Aboriginal Cultural Heritage Due Diligence report which indicates that no relics or artefacts were found at the site inspection and no heritage constraint is anticipated. The Jali LALC has not raised any concerns about the site.	Consistent



S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	<p>protected under the <i>National Parks and Wildlife Act 1974</i>, and</p> <p>(c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.</p>		
<p>2.4 Recreation Vehicle Areas</p>	<p>A planning proposal must not enable land to be developed for the purpose of a recreation vehicle area (within the meaning of the <i>Recreation Vehicles Act 1983</i>):</p> <p>(a) where the land is within an environment protection zone,</p> <p>(b) where the land comprises a beach or a dune adjacent to or adjoining a beach,</p> <p>(c) where the land is not within an area or zone referred to in paragraphs 4(a) or 4(b) unless the relevant planning authority has taken into consideration:</p> <p>(i) the provisions of the guidelines entitled <i>Guidelines for Selection, Establishment and Maintenance of Recreation Vehicle Areas, Soil Conservation Service of New South Wales, September, 1985</i>, and</p> <p>(ii) the provisions of the guidelines entitled <i>Recreation Vehicles Act, 1983, Guidelines for Selection, Design, and Operation of Recreation Vehicle Areas, State Pollution Control</i></p>	<p>The planning proposal does not enable land to be developed for the purpose of a recreation vehicle area.</p>	<p>N/A</p>



S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	<i>Commission, September 1985.</i>		
3 Housing, Infrastructure and Urban Development			
3.1 Residential Zones	<p>(3) This direction applies when a relevant planning authority prepares a planning proposal that will affect land within:</p> <p>(a) an existing or proposed residential zone (including the alteration of any existing residential zone boundary),</p> <p>(b) any other zone in which significant residential development is permitted or proposed to be permitted.</p> <p>(4) A planning proposal must include provisions that encourage the provision of housing that will:</p> <p>(a) broaden the choice of building types and locations available in the housing market, and</p> <p>(b) make more efficient use of existing infrastructure and services, and</p> <p>(c) reduce the consumption of land for housing and associated urban development on the urban fringe, and</p> <p>(d) be of good design.</p> <p>(5) A planning proposal must, in relation to land to which this direction applies:</p> <p>(a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and</p> <p>(b) not contain provisions which will reduce the permissible residential</p>	<p>The planning proposal outlines that the majority of the site be zoned residential (R2 or R3) in order to facilitate residential development.</p> <p>Although R2 is a relatively restrictive residential zone, R3 allows a broad range of residential densities and building types.</p> <p>The subject land is adequately serviced and is well located to support residential development.</p> <p>Any areas not suitable for residential will be retained in the RU1 zone until their final use and ownership is determined.</p>	Consistent



S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	density of land.		
3.2 Caravan Parks and Manufactured Home Estates	<p>Applies when a relevant planning authority prepares a planning proposal.</p> <p>In identifying suitable zones, locations and provisions for caravan parks in a planning proposal, the relevant planning authority must:</p> <ul style="list-style-type: none"> (a) retain provisions that permit development for the purposes of a caravan park to be carried out on land, and (b) retain the zonings of existing caravan parks, or in the case of a new principal LEP zone the land in accordance with an appropriate zone under the <i>Standard Instrument (Local Environmental Plans) Order 2006</i> that would facilitate the retention of the existing caravan park. <p>In identifying suitable zones, locations and provisions for manufactured home estates (MHEs) in a planning proposal, the relevant planning authority must:</p> <ul style="list-style-type: none"> (a) take into account the categories of land set out in Schedule 2 of SEPP 36 as to where MHEs should not be located, (b) take into account the principles listed in clause 9 of SEPP 36 (which relevant planning authorities are required to consider when assessing and determining the development and subdivision proposals), and (c) include provisions that the subdivision of MHEs by long term lease of up to 20 years or under the <i>Community Land Development Act 1989</i> be permissible with consent. 	<p>This proposal would permit development for a caravan park (or manufactured home estate) on land proposed to be zoned R2 or R3.</p> <p>Given the aspirations of the current owner it is unlikely that this is a use that will be carried out.</p>	Consistent



S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
3.3 Home Occupations	Planning proposals must permit home occupations to be carried out in dwelling houses without the need for development consent.	This proposal will permit home occupations to be carried out on land proposed to be zoned R2 or R3.	Consistent
3.4 Integrating Land Use and Transport	<p>Applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.</p> <p>A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of:</p> <p>(a) <i>Improving Transport Choice – Guidelines for planning and development</i> (DUAP 2001), and</p> <p>(b) <i>The Right Place for Business and Services – Planning Policy</i> (DUAP 2001).</p>	<p>The planning proposal is a traffic generating development and will result in increased resident population for Lennox Head.</p> <p>Adequate transport services exist within the locality. In particular, the access to North Creek Road and the Coast Road as well as the future Hutley Drive. General public transport services will also be available.</p> <p>The subject land is within walking distance to the beach and the Lennox Head shopping centre which provide basic facilities and services. Ballina is 10 minutes away by bus or car.</p>	Consistent
3.5 Development Near Licensed Aerodrome	<p>Applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to land in the vicinity of a licensed aerodrome.</p> <p>The relevant planning authority must:</p> <p>(a) consult with the Department of the Commonwealth responsible for aerodromes and the lessee of the aerodrome,</p> <p>(b) take into consideration the Obstacle Limitation Surface (OLS) as defined by that Department of the Commonwealth,</p> <p>(c) for land affected by the OLS:</p> <p>(i) prepare appropriate development standards, such as height, and</p> <p>(ii) allow as permissible with consent development types that are compatible</p>	<p>This proposal does not create or alter a zone in the vicinity of Ballina airport, which is located approximately 3.3 km to the south-west of the subject land.</p> <p>Council has consulted with Air Services Australia, the local airport manager and CASA. Although the site will impact on the OLS, these authorities have no concerns because higher land exists adjacent to the site (east of North Creek Road). They also advise that “the housing development will not affect any sector or circling altitude, nor any instrument approach or departure procedure at Ballina aerodrome.</p> <p>Aircraft noise modelling for the Ballina Byron Gateway Airport shows that the site is not affected by any noise contours and this is not an issue that will influence the zoning of the subject land.</p>	Consistent

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	<p>with the operation of an aerodrome</p> <p>(d) obtain permission from that Department of the Commonwealth, or their delegate, where a planning proposal proposes to allow, as permissible with consent, development that encroaches above the OLS. This permission must be obtained prior to undertaking community consultation in satisfaction of section 57 of the Act.</p> <p>A planning proposal must not rezone land:</p> <p>(a) for residential purposes, nor increase residential densities in areas where the ANEF, as from time to time advised by that Department of the Commonwealth, exceeds 25.</p>		
3.6 Shooting Ranges	Applies when a relevant planning authority prepares a planning proposal that will affect, create, alter or remove a zone or a provision relating to land adjacent to and/or adjoining an existing shooting range.	<p>A planning proposal must not seek to rezone land adjacent to and/or adjoining an existing shooting range that has the effect of permitting more intensive land uses in the area.</p> <p>There are no shooting ranges in the vicinity of this planning proposal.</p>	N/A
4 Hazard and Risk			
4.1 Acid Sulfate Soils	Applies when a relevant planning authority prepares a planning proposal that will apply to land having a probability of containing acid sulfate soils as shown on the Acid Sulfate Soils Planning Maps.	The site is not identified on the Ballina LEP 2012 Acid Sulfate Soils Map as containing acid sulfate soils.	N/A
4.2 Mine Subsidence and Unstable Land	Applies when a relevant planning authority prepares a planning proposal that permits development on land that: <ul style="list-style-type: none"> (a) is within a mine subsidence district, or (b) has been identified as unstable in a study, strategy or other assessment 	<p>This proposal does not impact on any mine subsidence area.</p> <p>The preliminary geotechnical assessment identified two small areas that may have a history of surface movement. It rated the risk for these areas as low to moderate, with the majority of the site as low risk.</p>	Consistent

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	undertaken: (i) by or on behalf of the relevant planning authority, or (ii) by or on behalf of a public authority and provided to the relevant planning authority.	The small size of these areas of potential unstable land suggest that they should be dealt with at the subdivision stage and zoned consistent with the surrounding land.	
4.3 Flood Prone Land	Applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.	The subject land is not flood prone.	N/A
4.4 Planning for Bushfire Protection	Applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.	The proposal contains no areas of land identified as being bushfire prone.	N/A
5 Regional Planning			
5.1 Implementation of Regional Strategies	Planning proposals must be consistent with a regional strategy released by the Minister for Planning.	The residential development of the site is consistent with the Far North Coast Regional Strategy as it is identified on the Town and Village Growth Boundary Map (Sheet 3 – Ballina) as a proposed future urban release area.	Consistent
5.2 Sydney Drinking Water Catchments	Applies when a relevant planning authority prepares a planning proposal that applies to the hydrological catchment.	The planning proposal is not within this catchment.	N/A
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Applies when a relevant planning authority prepares a planning proposal for land mapped as: (a) State significant farmland, or (b) regionally significant farmland, or (c) significant non-contiguous farmland, on the set of four maps held in the Department of Planning and marked "Northern Rivers Farmland Protection Project, Final Map 2005 (Section 117(2) Direction)". A planning proposal must not:	The site is regionally significant farmland. The inconsistency is justified because the land is identified as a proposed future urban release area in the Far North Coast Regional Strategy. It can also be justified against Section 4 of the report titled <i>Northern Rivers Farmland Protection Project – Final Recommendations, February 2005</i> as follows: The final recommendations state that urban development could be considered on regionally	Justifiably inconsistent. The inconsistency is justified under clauses 5(a) and 5(b) of this Direction because the planning proposal is in accordance with the Far North Coast Regional Strategy and the report on regional farmland.

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	<p>(a) rezone land identified as "State Significant Farmland" for urban or rural residential purposes,</p> <p>(b) rezone land identified as "Regionally Significant Farmland" for urban or rural residential purposes,</p> <p>(c) rezone land identified as "Significant Non-Contiguous Farmland" for urban or rural residential purposes.</p>	<p>significant farmland if all seven of the following criteria apply:</p> <ol style="list-style-type: none"> 1 The proposal is for an infill urban area that will be part of Lennox Head and is not a disjointed suburb. Council has consistently included this land as a future urban area, and it is surrounded by existing zoned and mostly developed residential land. 2 The subject land is located in close proximity to the Lennox Head urban area and is well serviced with roads, water and sewerage services. 3 It will not be a wedge into regionally significant farmland because it is surrounded on all sides by roads and existing or approved residential development. The 15 ha of land to be lost from production is already isolated. Allowing urban development on this site will not disrupt the use of other farmland. 4 The subject 15 ha is currently used for beef cattle grazing and is not used for sugar cane production. This land is not critical to the viability of either the sugar industry or the beef industry. No agricultural infrastructure or transport routes will be affected by this site being used for residential development. 5 No impacts arising from the development of this site will compromise sugar cane production or grazing being carried out on other significant farmland in the general area. 6 The land surrounding the subject land is not subject to existing land use conflicts relating to agriculture. The location of the residential area will not exacerbate any known agricultural conflicts. 7 The land is not flood affected 	

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
		<p>or subject to any other significant hazard.</p> <p>In this case, all seven of the criteria can be met by the planning proposal.</p>	
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Applies when a relevant planning authority prepares a planning proposal for land in the vicinity of the existing and/or proposed alignment of the Pacific Highway.	This planning proposal will not affect land in the vicinity of the Pacific Highway or its proposed realignment.	N/A
6 Local Plan Making			
6.1 Approval and Referral Requirements	<p>A planning proposal must:</p> <p>(a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and</p> <p>(b) not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of:</p> <p>(ii) the appropriate Minister or public authority, and</p> <p>(iii) the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General),</p> <p>prior to undertaking community consultation in satisfaction of section 57 of the Act, and</p> <p>(c) not identify development as designated development unless the relevant planning authority:</p> <p>(i) can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that</p>	The planning proposal will not include provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority.	N/A



S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	<p>the class of development is likely to have a significant impact on the environment, and</p> <p>(ii) has obtained the approval of the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in satisfaction of section 57 of the Act.</p>		
6.2 Reserving Land for Public Purposes	(4) A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General).	The planning proposal does not create, alter or reduce land reserved for a public purpose other than for Ballina Shire Council if it chooses to apply the RE1 zone to some of the land. It is recommended that Council not proceed with applying the RE1 zone on the subject land.	Consistent
6.3 Site Specific Provisions	Applies when a relevant planning authority prepares a planning proposal that will allow a particular development to be carried out.	<p>The planning proposal seeks to include the subject land predominantly in one or more residential zones that exist in Ballina LEP 2012. It is not proposed to permit a particular development on this land.</p> <p>The planning proposal does not contain schematic drawings.</p>	Consistent

Far North Coast Regional Strategy

The Far North Coast Regional Strategy identifies Ballina as a developing major regional centre that will be supported by new land releases in Lennox Head and Cumbalum (page 12). It contains a series of maps that identify areas as proposed future urban release areas, and this includes the subject land on sheet 3 – Ballina on page 50. The strategy recognises that Ballina (together with Tweed Heads and Lismore) will contain 35% of the region's additional housing and be the major service and population centres (page 25). It nominates an additional 8,400 dwellings as a target for Ballina by 2031 (page 27).

Rezoning this land for predominantly residential use is consistent with the Far North Coast Regional Strategy.

Ballina Council Strategies and Policies

The Ballina Growth Management Strategy (2012) nominates Lennox Head, Wollongbar and Cumbalum as the main growth areas for the Shire over the life of the strategy (page 15). The Lennox Head Urban Growth Area is defined in a map on page 44 of the strategy as a strategic urban growth area surrounded by existing or proposed residential development.

On the issue of development density the Strategy states (page 16) *"With respect to achieving a greater dwelling mix in new release areas, this strategy requires future release areas to achieve a density target (gross neighbourhood dwelling density) of 15 dwellings per hectare"*. The strategy gives no advice on building heights.

The Lennox Head Structure Plan (2004) outlines a blueprint for growth and development in and around Lennox Head. The subject land is described as Area I and is noted as generally suitable for residential development subject to a site-specific assessment. The preferred site outcomes area:

- residential development comprising a range of low and medium density housing,
- rezoning is to occur on an integrated basis and should involve all land holdings within the area;
- the development will need to make provision for the construction of the northern extension of Hutley Drive to the satisfaction of Council,
- no vehicular access is to be obtained from North Creek Road, with all access either by way of either Henderson Lane or Hutley Drive. Vehicular access from Hutley Drive is to be via an integrated road access. No direct vehicular access to individual allotments from Hutley Drive will be permitted. At such time as the Hutley Drive extension is constructed, opportunities for direct access from Henderson Lane will be considered,
- stormwater management will need to address both the retention and quality of stormwater generated on the site. It is envisaged that this will require the construction of on-site detention ponds on the lower portion of the site,
- the subdivision design should seek to minimise cut and fill on the steeper portions of the site, and
- mature native vegetation on the site is to be retained as part of the development of the land.

Rezoning this land for predominantly residential use is consistent with Ballina Council strategies and policies.

Recommendations

Zones

The residential zones available in Ballina LEP 2012 are R2 Low Density Residential and R3 Medium Density Residential. The Gateway Determination issued by the Department of Planning and Environment on 17 April 2014 allowed for both these zones to be used on the site. It also permitted Council to apply the RE1 Public Recreation zone to parts of the site being considered for environment protection and drainage, etc.

The RE1 Public Recreation zone is now not recommended for use on this site. The areas suggested by the proponent are either required for drainage and stormwater retention or are ecologically important. They are not in Council ownership and the RE1 zone does not reflect the likely future use of these areas. It is recommended that these areas be retained in the existing RU1 Primary Production zone until the E2 and E3 zones are included in Ballina LEP 2012. Figure 8 identifies the land that is recommended to be retained as RU1 Primary Production.

Council suggested in a letter to the Department of Planning and Environment on 26 June 2014 that it may not be going to use the RE1 zone, and was advised that applying an alternative zone would require an amended Gateway Determination. Recent discussion with the Department of Planning and Environment (7 December 2015) confirmed that removing the RE1 zone will still require an amended Gateway Determination prior to public exhibition.

The other issue with zone boundaries on this site is which parts of the site should be zoned R2 Low Density Residential and which parts should be R3 Medium Density Residential. The Gateway Determination in April 2014 indicated about half the site would be R3 and about half would be R2. The divide between the two zones was to be the realigned North Creek Road. The most recent request from the applicant (plan dated 24 September 2015) indicates they would prefer five smaller areas of R3 scattered around the edges of the site with a combined area of 2.33 hectares. These areas are located on three areas of elevated land near the water tower and two areas on Henderson Lane. In combination with height limits and minimum lot sizes, the five locations chosen will add to the variety of housing on the site. They will also allow master planning of some of the elevated land as well as limiting the access to the realigned North Creek Road and Hutley Drive.





Figure 8: Recommended land use zones under Ballina LEP 2012

Minimum Lot Size

The options for minimum lot size in Ballina LEP 2012 for residential zoned land are currently 450 m², 600 m² and 800 m². The planning proposal subject to the current Gateway Determination indicated 600 m² for the R2 zone and 450 m² for the R3 zone. The most recent request from the applicant (plan dated 24 September 2015 and confirmed by email 10 December 2015) indicates they would prefer 600 m² for the R2 zone and a mix of 250 m² and 300 m² for the R3 zone.

Minimum lot size is not the sole determinant of development density. It is only one factor, which in conjunction with building height, setbacks, landscaping and parking requirements will influence yield. Strata subdivision can be used to create lots less than the minimum lot size in any case (subject to the above requirements). Council has in the past nominated minimum lot size down to 450 m² with greater density being achieved through the DCP provisions rather than Torrens Title subdivision. Ballina LEP 2012 (clause 4.1A) also permits lots down to 300 m² in the R3 zone as an exception to the prevailing minimum lot size.

It is important that high value residential land that is (partly) within 500 metres of the Lennox Head commercial centre is used to its highest capability. If all of the 2.33 hectares of proposed R3 land was subdivided down to either 250 m² or 300 m² lots (highly unlikely), it would yield 82 lots. In combination with a maximum yield of 95 low density (600 m²) lots from the R2 land, the whole site would yield 177 lots from 250 m² to 600 m² in size. Based on the parent lot size of 14.96 hectares, this gives the whole site a net density yield of 12 lots per hectare. Assuming most lots will contain only one dwelling, this is still quite low density overall. Landcom suggests that net residential density can be converted to gross neighbourhood dwelling density by multiplying it by 0.87. On this basis, the site will have a gross neighbourhood dwelling density (the term used in Council's Ballina Growth Management Strategy) of 10.44 lots per hectare. Therefore, even with minimum lot sizes in some locations of either 250 m² or 300 m², the development will fail to meet Council's density target of 15 dwellings per hectare.

Applying the 450 m² minimum lot size to the R3 zones would yield 51 lots. This would change the site yield to 146 lots and bring the site net density yield down to 9.6 lots per hectare (gross neighbourhood dwelling density of 8.3 dwellings per hectare). Any net density less than 10 lots (or dwellings) per hectare is widely regarded as very low density for a fully serviced residential neighborhood.

In order to meet the Ballina Growth Management Strategy gross neighbourhood dwelling density of 15 dwellings per hectare, the typical lot size would have to be 450 m² or less. Applying the R2 zone to most of the site means it will be more like 600 m². This has to be tempered against the aspirations of the land owner and buyer attraction to larger size lots.

On balance, Council should be trying to maximise the density of development on R3 land on this site. A mix of 250 m² and 300 m² is recommended for the minimum lot size in the R3 zone, and 600 m² for the R2 zone (Figure 9).

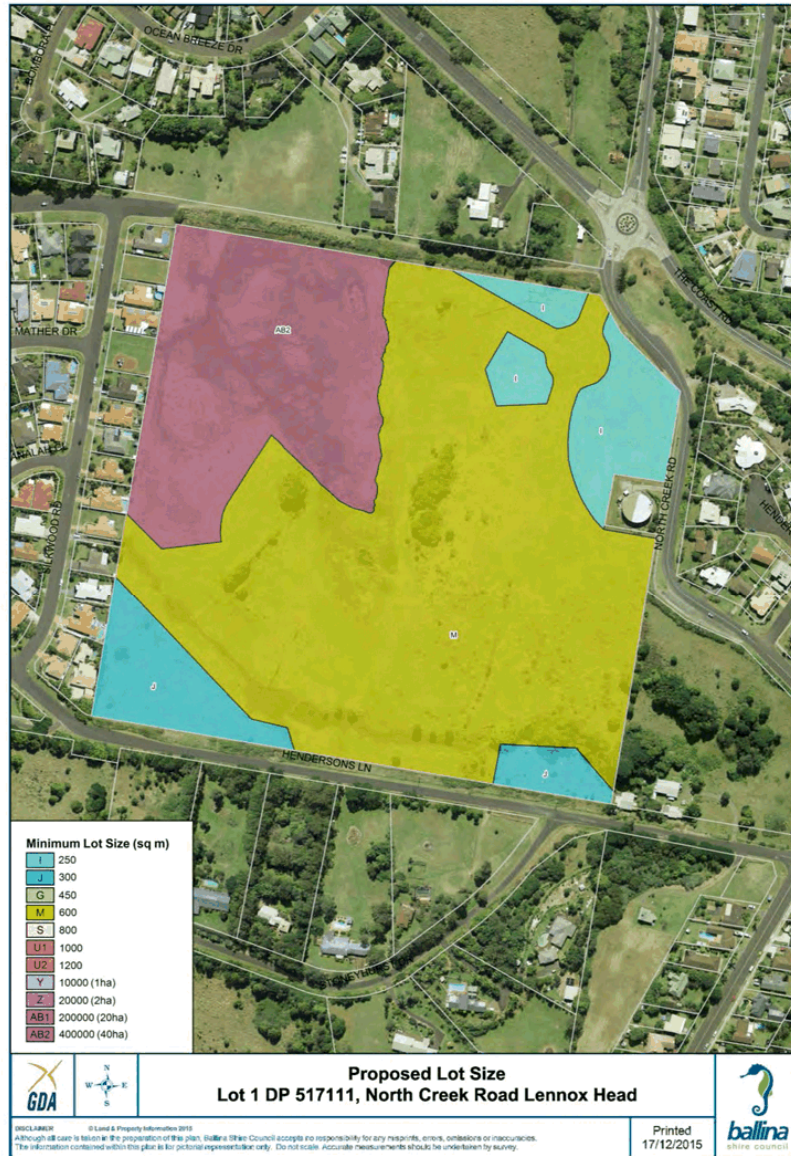


Figure 9: Recommended minimum lot sizes under Ballina LEP 2012

Height of Buildings

The options for height of buildings in Ballina LEP 2012 for residential zoned land are currently limited to 8.5 metres in the R2 zone and R3 zone. The planning proposal subject to the current Gateway Determination did not propose to alter the Height of Building limit and it therefore remains at 8.5 metres across the entire site (regardless of zone).

Height is a factor that allows design flexibility with sloping sites that may reduce the amount of cut and fill required. It will also enable some elevated lots to maximise ocean or hinterland views. The proponent has requested a 9.0 metre height limit across the whole site. It will not be possible to achieve three storeys with an 8.5 metre height limit, but may be possible with a 9.0 metre height limit. However, in reality only a very flat site is capable of yielding a three storey dwelling within a 9.0 metre height limit. Neither height poses any problems with obstacle surface limitations.

There is an expectation with a R2 Low Density Residential zone that development will be at a lower scale. This corresponds with a 8.5 metre height limit that will allow one- and two-storey dwellings. However, limiting building height in the R3 Medium Density Residential zone is not consistent with the objectives of the zone and the suite of permitted uses. A key objective of the R3 zone is to provide "a variety of housing types within a medium density residential environment". The R3 zone permits residential flat buildings and multi-dwelling housing. Allowing development to 9 metres will give flexibility to achieve this objective, particularly on sloping sites, and provide for the preferred residential development types.

It is important when dealing with a limited supply of new residential land which is close to existing centres that Council does not impose controls that constrain that land from achieving a variety of housing types and its maximum housing yield.

It is recommended that the 9.0 metre height limit be applied in the R3 zone and 8.5 metres in the R2 zone (Figure 10).



Figure 10: Recommended building height limits

Floor Space Ratio

Most residential land in Ballina Shire is not subject to a floor space ratio. It was not addressed in the planning proposal subject to the current Gateway Determination. It is not proposed to apply a floor space ratio for this site.



Conclusion

Lot 1 DP 517111, North Creek Road, Lennox Head, is land that is well located and serviced, has excellent potential for residential development and has been identified in Ballina strategic documents for many years. The constraints and issues that relate to the site are documented sufficiently that the planning proposal should proceed with most of the site zoned a mix of R2 Low Density Residential and R3 Medium Density Residential. This can be matched with a mix of building heights (8.5 metres in R2 and 9.0 metres in R3). It can also be matched with a mix of minimum lot sizes (600 m² in R2 and 250 m² or 300 m² in R3). In this way Council is setting the basis for the site to be developed to a reasonable dwelling density that is approaching its own target in the Ballina Growth Management Strategy.

Other consequential mapping changes proposed (on the basis that a residential zone/s will be applied to the land) include alteration to the Ballina Strategic Urban Growth Area Map to remove the subject land from being identified as a strategic urban growth area; and a change to the Dwelling Opportunity Reinstatement Map to delete the dwelling entitlement recognised for the site on that map.

A potential new alignment for both North Creek Road and Hutley Drive is being finalised and this will allow an internal road pattern that can give good access to the site.

The planning proposal (as amended) is generally consistent with SEPPs, s117 Directions, the Far North Coast Regional Strategy and Council's local strategies and policies.

The only outstanding issues are:

- (1) The potential noise impacts to residential development from the realigned North Creek Road and Hutley Drive.

It is proposed that the applicant be asked to update their noise assessment while the planning proposal is on exhibition to clarify any impacts and (if necessary) any solutions.

- (2) The proponent's suggestion that Council should allow residential development of some areas of Hairy Joint Grass and Freshwater Wetland EEC on the site. This should only be considered where a biobanking assessment process has shown that the areas to be lost can be compensated for (at appropriate rates) either on or off the site, and who will look after those areas over the long-term. If the proponent does not wish to do this then Council can (at some time in the future) consider the use of E2 Environmental Conservation or E3 Environmental Management zones on the western parts of the subject land, when these zones are introduced into Ballina LEP 2012.

If the applicant wants to undertake the biobanking assessment while the planning proposal is on exhibition then it may be able to influence the final planning proposal.

- (3) If Council supports the revised planning proposal, it needs to seek an amended Gateway Determination from the Department of Planning and Environment and an extension of the time available to complete the planning proposal process.

