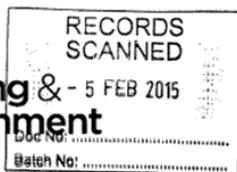


Attachment One – Gateway Determination



Planning & Environment



Mr P Hickey
General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Our ref: PP_2015_BALLI_002_00 (15/02187)
Your ref: 1592-02

Dear Mr Hickey

Planning proposal to amend Ballina Local Environmental Plan (2012)

I am writing in response to your Council's letter dated 23 January 2015 requesting a Gateway determination under section 56 of the *Environmental Planning and Assessment Act 1979* ("EP&A Act") in respect of the planning proposal to rezone land at Blue Seas Parade Lennox Head, to permit residential development.

As delegate of the Minister for Planning, I have now determined the planning proposal should proceed subject to the conditions in the attached Gateway determination.

I have also agreed the planning proposal's inconsistencies with S117 Directions 1.2 Rural Zones, 1.5 Rural Land and 4.2 Mine Subsidence and Unstable Land are justified and of minor significance. No further approval is required in relation to these Directions.


Council may still need to obtain the agreement of the Secretary to comply with the requirements of relevant S117 Directions 3.5 Development Near Licensed Aerodromes and 4.4 Planning for Bushfire Protection. Council should ensure this occurs prior to the plan being made.

The amending Local Environmental Plan (LEP) is to be finalised within 12 months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request for Department of Planning and Environment to draft and finalise the LEP should be made 6 weeks prior to the projected publication date.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the *EP&A Act* if the time frames outlined in this determination are not met.

Should you have any queries in regard to this matter, I have arranged for Ms Jenny Johnson of the Northern Region office to assist you. Ms Johnson can be contacted on (02) 6641 6614.

Yours sincerely

 3 February 2015
Stephen Murray
General Manager, Northern Region
Planning Services



Planning & Environment

Gateway Determination

Planning proposal (Department Ref: PP_2015_BALLI_002_00): to rezone land at Blue Seas Parade Lennox Head, to permit residential development.

I, the General Manager, Northern Region at Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the EP&A Act that an amendment to the Ballina Local Environmental Plan (LEP) (2012) to rezone land at Blue Seas Parade Lennox Head, to permit residential development should proceed subject to the following conditions:

1. Prior to undertaking public exhibition the following studies need to be completed:
 - Bushfire Threat Assessment Report;
 - Coastal Zone Impacts and Visual Amenity Impacts assessment;
 - Contaminated Land Assessment and Remedial Action Plan;
 - Due Diligence Aboriginal Heritage assessment;
 - Flora and Fauna assessment;
 - Geotechnical Assessment (Landslip); and
 - Land Use Conflict Risk Assessment.
2. Following the preparation of the studies in condition (1) Council should determine an appropriate minimum lot size and prepare a map for public exhibition in accordance with the Standard Technical Requirements for LEP Maps. Council is to provide the Department with a copy of the material for community consultation for approval, as required by section 57(2) of the EP&A Act.
3. Consultation is required with the following public authorities and agencies prior to public exhibition under section 56(2)(d) of the EP&A Act and/or to comply with the requirements of relevant S117 Directions:
 - Air Services Australia
 - Ballina Byron Gateway Airport (Ballina Council)
 - Civil Aviation Safety Authority (CASA)
 - NSW Primary Industries
 - NSW Rural Fire Service

Each public authority and agency is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

4. Community consultation is required under sections 56(2)(c) and 57 of the EP&A Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of **28 days**; and

- (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing LEPs (*Planning & Infrastructure 2013*).
- 5. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
- 6. The timeframe for completing the LEP is to be **12 months** from the week following the date of the Gateway determination.

Dated *3rd* day of *February* 2015.


Stephen Murray
General Manager, Northern Region
Planning Services

Delegate of the Minister for Planning



Alteration of Gateway Determination

Planning proposal (Department Ref: PP_2015_BALLI_002_00)

I, the General Manager, Northern Region at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(7) of the *Environmental Planning and Assessment Act 1979* (the Act) to alter the Gateway determination dated 3 February 2015 for the proposed amendment to the Ballina Local Environmental Plan 2012 as follows:

1. Delete:

Condition 6, "The timeframe for completing the LEP is to be **12 months** from the week following the date of the Gateway determination"

and replace with:

New Condition 6 "The timeframe for completing the LEP is by **10 February 2017**"

Dated 30th day of November 2015


Stephen Murray
General Manager, Northern Region
Planning Services
Department of Planning and Environment

Delegate of the Minister for Planning



Blue Seas Parade Documentation Review and Gap Analysis Report

Prepared for Ballina Shire Council
by MikeSvikisPlanning
June 2016

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MikeSvikisPlanning
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CONTENTS

Introduction	4
Subject Land	6
Planning Proposal	8
Methodology	10
Key Issues	11
Ecological Attributes	11
Bushfire Threat Assessment	13
Coastal Impacts and Visual Amenity Impacts	14
Contaminated Land Assessment and Remedial Action Plan	18
Aboriginal Heritage	18
Land Use Conflict Risk Assessment	19
Geotechnical Assessment	21
Other Issues	24
Obstacle Limitation Surfaces and Aircraft Noise	24
Access and Stormwater	25
The Way Forward	27
Additional Information and Matters to be Resolved	27
Appendices	29



Introduction

Past Rezoning Proposals

This land has a long history in relation to its prospective rezoning for urban purposes. A summary of the history is as follows:

Ballina Shire Council, at its Ordinary Meeting held in July 2010 [Minute No 220710/7], resolved to initiate a stand-alone LEP amendment for Lot 2 DP 587685. That LEP amendment proposed that a residential zone be applied to part of Lot 2 DP 587685.

Following assessment of issues relevant to the rezoning, the Council resolved at its Ordinary Meeting held in March 2011 [Minute No 240311/11] to cease processing of the LEP amendment request. This was on the basis of several unresolved issues and followed the proponent formally withdrawing the request.

Council's March 2011 resolution also provided for the land designated for potential urban development within Lot 2 DP 587685 to be reduced in area, primarily based on assessment of visual amenity issues. This reduction was subsequently incorporated within the Ballina Shire Growth Management Strategy as well as the Strategic Urban Growth Area mapping within Ballina LEP 2012.

The current request for rezoning of the subject site was initially reported to Council's Ordinary Meeting held on 22 May 2014. At that meeting, the Council resolved as follows [Minute No 220514/1]:

- 1 *That Council prepare a planning proposal for the application of an R2 Low Density Residential zone over that part of Lot 1 DP 1165957 designated as a Strategic Urban Growth Area in Ballina LEP 2012.*
- 2 *That the subdivision potential and associated minimum lot size for the future development of Lot 1 DP 1165957 be determined following assessment of additional technical information.*
- 3 *That a further report be presented to the Council documenting the planning proposal when prepared for submission for Gateway determination.*
- 4 *For the purpose of further investigation the planning proposal shall include a minimum lot size of 600 m².*

A further report was considered by Council at its Ordinary Meeting on 24 July 2014, following preparation of the planning proposal. At that meeting the Council resolved as follows [Minute No 240714/10]:

- 1 *That Council discontinue processing of the LEP amendment request to apply a residential zone to part of Lot 1 DP 1165957 and take no further action with respect to the rezoning of the land under the current amendment request, for the following reasons:*
 - A *That the Council does not support the application of a zoning to Lot 1 DP 1165957 that enables further residential development to occur on the land beyond what is enabled under the current rural land use zoning.*
 - B *That Council take steps at the next revision of the Ballina Shire Growth Management Strategy to remove all land contained within Lot 1 DP 1165957 from identification as a potential urban growth area from local planning policy.*

The Current Planning Proposal

A request for a pre-Gateway review was submitted to the Department of Planning and Environment on 19 August 2014 by Ardill Payne and Partners, on behalf of the land owner of Lot 1 (Mr Farley). The review was considered by the Joint Regional Planning Panel on 25 November 2014. The Department of Planning and Environment has advised Council, by letter dated 8 December 2014, that the planning proposal should proceed to the Gateway determination stage. Council has also been requested to advise whether it would like to be the Relevant Planning Authority (RPA) and submit a planning proposal for Gateway determination.



Council considered the request from the Department of Planning and Environment at its Ordinary Meeting on 22 January 2015, and resolved as follows [Minute No 220115/6]:

That Council agree to accept the role of Relevant Planning Authority (RPA) and endorse the attached planning proposal for submission to the DP&E for Gateway determination.

Ballina Shire Council also resolved on 22 January 2015 that upon an affirmative Gateway determination being received from Planning and Environment, it will initiate a third party review and prepare an environmental and planning assessment report for Part Lot 1 DP 1165957, Blue Seas Parade, Lennox Head. This work will then be reviewed by Council before proceeding to public exhibition of the planning proposal.

The Department of Planning and Environment indicated on 3 February 2015 that it supported the planning proposal and that it could proceed to public exhibition. Council then engaged MikeSvikisPlanning as the independent consultant for this third party review.

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, 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. If this is not consistent with the Gateway determination then this will need to be reported to Council.
- Prepare a Council report following the public exhibition of the planning proposal for Council to consider along with any submissions received.

This Documentation Review and Gap Analysis Report addresses the first four points. The final report will take any findings arising from this review and any technical information required, and address the final three points.

Subject Land

This Documentation Review and Gap Analysis Report substantially relates to part Lot 1 DP 1165957, Blue Seas Parade, Lennox Head (Figure 1). The subject land is an irregular shaped lot that has 220 metres frontage to Blue Seas Parade and 180 metres frontage to The Coast Road. Although Lot 1 has an area of 3.476 hectares, only 1.1 hectares is subject to this planning proposal. That part of Lot 1 that is subject to the planning proposal is elevated land with contours between 56 metres and 62 metres AHD (Figure 2).

The planning proposal also relates to a very small part of Lot 2 DP 1165957 (not owned by the applicant) and a section of Blue Seas Parade. It will correct an anomaly in the Strategic Growth Area mapping for both these areas and an anomaly in the minimum lot size for a section of Blue Seas Parade.

To the west is the recently released Coastal Grove residential estate on which a number of houses have recently been built. Grazing land is located to the east and south of the subject land. A rural dwelling is located on the lot immediately adjacent to the subject land. To the north the land drops sharply down an escarpment to The Coast Road.



Figure 1: The parent lot (Lot 1 DP 1165957, Blue Seas Parade) is 3.476 hectares

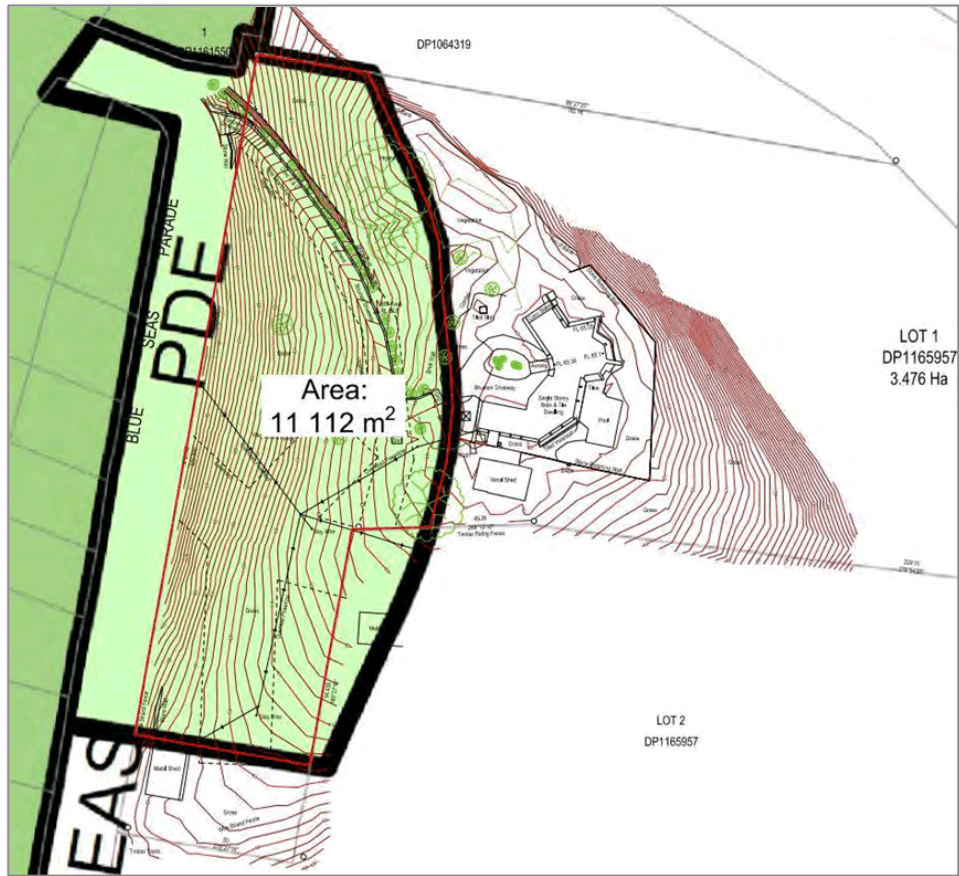


Figure 2. The subject land is approximately 1.1 hectares (sharp red boundary)

Planning Proposal

The amendment to Ballina LEP 2012 as proposed by the Lot 1 land owner (proponent) involves rezoning the subject land from RU1 Primary Production to an R2 Low Density Residential zone to enable subdivision and residential development on the site. The proponent has nominated a 600 m² minimum lot size (MLS) for the R2 zone and requested that the current 8.5 metres Height of Building (HoB) control remains in place. The balance of Lot 1 is to remain in an RU1 zone and be subject to the existing 40 hectares MLS. It is also proposed that upon the rezoning proceeding, the Strategic Urban Growth Area (SUGA) designation is to be removed from the subject land. Current LEP maps are shown in Figure 3.



Figure 3: Current LEP maps

The proponent currently envisages in the order of nine (9) residential lots of various sizes (870 m² to 950 m²) and a split lot remnant of 2.68 hectares, which includes the existing dwelling and fig trees (with a residue down to The Coast Road) and an existing farm shed at the southern edge of the subject land.

As shown in the indicative subdivision plan (Figure 4), the proposal may include the construction of a privately owned, shared driveway that allows access to the proposed lots from their eastern edge. This would also give access to the otherwise isolated split part of the residue lot. It should be noted that the proposed nine lots are only a draft layout and yield. This may not be what is presented to Council at the development application stage, once the zone has been changed. The applicant may also not proceed with an access road on the eastern edge of the subject land. Most of the land can be accessed from Blue Seas Parade.

In association with the proposed zones, the proponent has proposed a 600 m² MLS standard for the proposed R2 zoned land. The proponent cites the MLS of the adjacent residential area as the reason for this MLS, notwithstanding that Council has previously supported a 1200 m² MLS. 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.

Based on a 600 m² MLS, the land could yield up to 16 residential lots depending on access arrangements and buffers to the fig trees. Based on a 1200 m² MLS, the land could yield up to eight (8) lots depending on access arrangements and buffers to the fig trees.

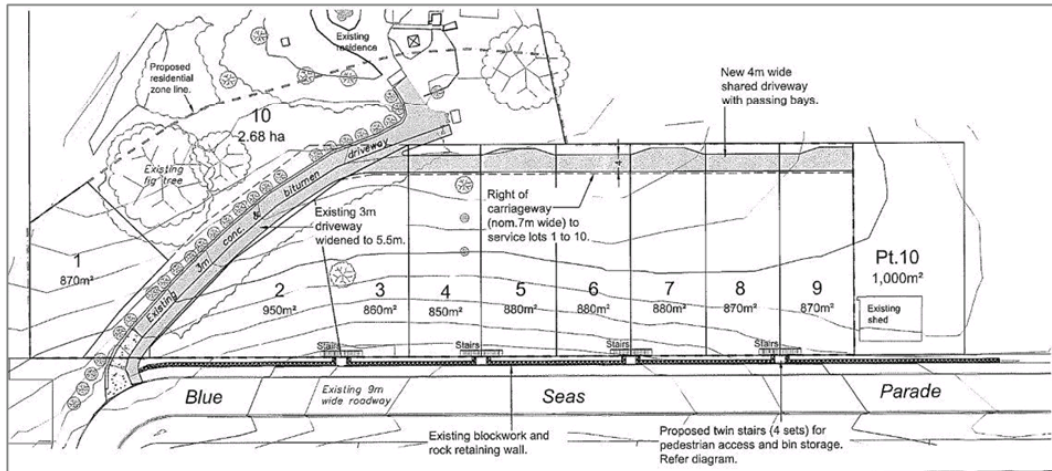


Figure 4: Proponent's suggested lot layout

Methodology

The Department of Planning and Environment's Gateway determination included a requirement that seven studies be undertaken prior to public exhibition. These are:

- Bushfire threat assessment
- Coastal zone impacts and visual amenity impacts assessment
- Contaminated land assessment and remedial action plan
- Due diligence Aboriginal heritage assessment
- Flora and fauna assessment
- Geotechnical assessment
- Land use conflict risk assessment.

The other issue that is also relevant to this land is:

- Obstacle limitation surfaces and aircraft noise.

This report examines each of these issues to establish if they have been dealt with in sufficient detail to allow Council to make decisions on the proposed zone/s of the land and the development standards that will apply through the LEP such as minimum lot size, building height and floor space ratio.

If sufficient information is not available then the additional information required will need to be supplied by the applicant or obtained by Council.

If sufficient information is available then it will be used to complete the environmental assessment, planning report and recommendation.

Key Issues

Ecological Attributes

Blackwood Ecological Services have been engaged by Ardill Payne to review the flora and fauna attributes of the site. Vegetation across the majority of the site consists of grassed areas dominated by Kikuyu, Buffalo grass, Narrow-leaved carpet grass, Couch and other grasses with varying degrees of common pasture weeds and groundcovers. No Hairy Joint Grass was located. Other areas include landscaped gardens with minimal conservation value. The two Moreton Bay fig trees (Figure 5) located near the house have conservation value and provide forage habitat for mobile native fauna species, particularly birds and bats. Overall, the subject site has limited biodiversity value due to historical land clearing, fragmentation and ongoing occupation. Vegetation communities within the site do not meet the definition of any Endangered Ecological Communities listed on the Schedules of the TSC Act 1995 or comply with the condition thresholds of any Threatened Ecological Communities listed under the EPBC Act. The subject site is located outside of the 100 metre buffer of nearby areas of SEPP 26 Littoral rainforest. Future residential subdivision of the site is highly unlikely to result in any impacts on nearby areas of SEPP 26 Littoral rainforest. No areas of SEPP 14 Coastal wetland are likely to be affected, and the subject site does not provide potential Koala habitat as defined by SEPP 44.

Council's staff ecologist has advised that the two Moreton Bay figs are worthy of protection. They consider that due to the invasive nature of fig trees, Council usually applies a 20 metre "no building" buffer from the tree's dripline to any residential development. It is noted that the buffer zone has been reduced to 10 metres in some circumstances where an historical residential zone was in existence. They also advise that given the relative immaturity of the fig and the early stage of this planning proposal, the 20 metre buffer zone should be applied.

The mature Norfolk Island pine is also nominated by Council staff as worthy of protection and has the potential to be affected by root damage from future work. However, Norfolk Island pines are not native to Ballina Shire and have limited ecological value.

Including the Moreton Bay fig trees in the R2 Low Density Residential zone allows Council to enforce its vegetation management DCP, but creates pressure for the trees to be removed to create an additional house site and/or to avoid any "no building" buffer".

Listing the trees as heritage items in order to provide them with some form of protection is possible, but they are not identified in Council's community-based heritage study so the heritage value (beyond being old trees) is not documented.

Ballina currently has no environment protection zones in its LEP that could be applied. It is not clear whether two isolated trees would meet the E2 or E3 criteria as identified in the Final Recommendations of the Northern Councils E zone Review (October 2015). Therefore, there is minimal likelihood of a future E zone to provide protection.

Council could consider applying an RE1 Public Recreation zone, however this would require the land to come into Council ownership either by donation or acquisition. Council would then be responsible for the management of the land and the trees in perpetuity. Council has recently been reviewing its ownership of small, isolated areas of RE1 zoned land rather than acquiring it.

Leaving the trees in the RU1 zone leaves them open to destruction without Council consent and without consequence. Council has no tree preservation controls on RU1 zoned land. However, that is the current situation. There is no reason to believe that the trees are under threat from the current land owner at this stage.

In order to better understand the value, health and buffer requirements of the Moreton Bay fig trees, an independent arborist's report was prepared (Appendix A). The arborist concluded that the two trees are

significant trees, in good health, that can be expected to grow in a healthy, viable state for many years. The report evaluated the likelihood of future development damaging the trees, the likelihood of the trees damaging future development, the potential for nuisance from wildlife, and the risk of the trees falling onto property or people. It evaluated options for buffer distances that included the Australian Standard for Protection of Trees, 20 metres, protection of the root ball and canopy protection. The report concluded that a 5 metre buffer measured from the drip line of the trees would be sufficient to protect the trees from future development and protect future development from the trees.

Gap Analysis and Recommendation

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 is required. The following options could be considered:

- 1 Retain the two Moreton Bay figs and an adequate curtilage (5 metres from the drip line) in the RU1 zone in order to reduce pressure for a dwelling to be located where the figs are currently situated. (Note: Council vegetation management DCP does not apply); or
- 2 Rezone the land on which the two Moreton Bay figs are located to R2 Low Density Residential (as indicated in the current Gateway Approval) in order that the Council vegetation management DCP applies; or
- 3 Identify the two Moreton Bay figs as items of environmental heritage in Ballina LEP 2012 (Schedule 5) in order that they have a level of protection regardless of what zone they are in (would need a supportive heritage assessment); or
- 4 Rezone the land on which the two Moreton Bay figs are located to RE1 Public Recreation, and Council acquires and manages the land.

Option 1 is recommended.



Figure 5: Two mature Moreton Bay figs provide habitat for birds and bats

Bushfire Threat Assessment

Ardill Payne (AP) produced a Bushfire Threat Assessment dated February 2016. The assessment notes that the vegetation mapping on which the Council Bushfire Prone Land map is based is incorrect. Most of the subject land is open grassland with landscaping around the two dwellings. There are also two large figs and a large Norfolk Island pine tree. Immediately north of the subject land is an area of regrowth littoral rainforest (weed infested), which is located on a steep escarpment that drops down to The Coast Road.

On the basis of this revised vegetation mapping, AP suggests that the vegetation on the northern boundary of the subject land is actually the only source of fire hazard to the proposed dwellings. It suggests an asset protection zone of 10 metres should be adequate to place dwellings outside the flame zone on this northern boundary to achieve BAL 29 and meet RFS requirements. An 8 metre APZ for grassland can also be applied to the eastern and southern boundaries.

It is also noted by AP that future subdivision of the land will be integrated development pursuant to section 91 of the EPA Act 1979. As integrated development, an authorisation pursuant to section 100B of the Rural Fires Act 1997 will be required in respect of the bushfire safety of a subdivision of land for residential purposes.

The planning proposal was referred to RFS pursuant to s117 Direction 4.4 (response received dated 16 March 2016). The RFS has raised no objection to the planning proposal proceeding, noting that further assessment will be required in accordance with section 100B of the Rural Fires Act 1997.

Gap Analysis and Recommendation

It is agreed that the vegetation mapping needs to be updated. The AP vegetation mapping shows that Council's bushfire hazard mapping is not accurate on this site. It is important that any proposed buffers are contained within the subject land and are not imposed on neighboring properties.

There is sufficient information for Council to make a decision on the issue of bushfire hazard for the subject land, and no further technical information is required.

Coastal Impacts and Visual Amenity Impacts

The proponent has provided a basic visual impact assessment. It does not follow the structure of a typical visual assessment undertaken by a landscape architect. It concludes that the likely residential development will not have any significant adverse impacts on the scenic quality and character of the subject land as a result of the existing buildings in the vicinity.

The site is a long and narrow parcel that generally faces in a westerly direction. It is located at the top of a ridge, and slopes down towards Blue Seas Parade. It rises from 56 metres AHD to 64 metres AHD, and generally faces in a westerly direction (Figure 6). The site is mostly cleared of tall vegetation, being predominantly grassland. Two large fig trees are located at the northern end of the site and a mature Norfolk Island pine is located between the two dwellings on the ridge immediately behind the subject land. Smaller regrowth and landscape trees are scattered across the site. A single large Colorbond farm shed is located at the southern end of the subject land. It is approximately 6 metres tall and situated on the 59 metre AHD contour. A low voltage power line crosses from the north-west to south-east through the middle of the site.

Although the subject land does not contain any dwellings itself, there are two large dwellings (with associated sheds, pools, fencing and landscaping) immediately east of it. These dwellings and sheds are all located on or around the 64 metre and 65 metre AHD contours.

The site is located approximately 250 metres from the high tide mark at the nearest point. It is within the coastal zone identified in the Coastal Protection SEPP and is also subject to the NSW Coastal Policy 1997. The subject land is not affected by coastal erosion or long-term sea level rise. It does not provide access to the coast or other significant public land. The site has adequate access to infrastructure, facilities and services from the adjacent urban area. Proposed residential development will not affect threatened species or wildlife corridors. It 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.

However, the site is within the coastal zone, is elevated and visually prominent. It is important that scenic values and visual impact be considered at the rezoning stage. In the Ballina Growth Management Strategy (2012), Council identified land throughout the Shire that it considers is sensitive to change in relation to visual amenity (page 29). The subject land is identified in this mapping. It was also identified in the Lennox Head Structure Plan in 2002 as being visually significant, but this document was superseded by the later Ballina Growth Management Strategy.

The subject land is identified in Ballina LEP 2012 as a Strategic Urban Growth Area (SUGA). The current shape of the SUGA was a result of previous strategic planning work undertaken in August 2010 by Council and its consultant, Darryl Anderson Consulting (DAC). This work considered the scenic values of the locality and

recommended a reduced Strategic Urban Growth Area to achieve compliance with the NSW Coastal Policy and SEPP 71. Council adopted that reduced SUGA.

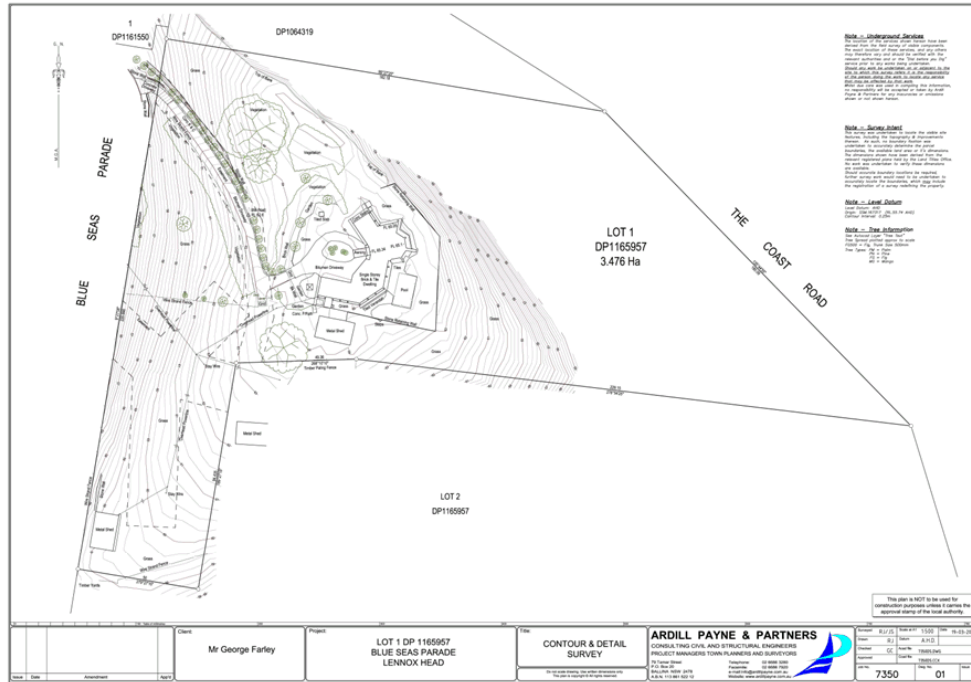


Figure 6: Site contour map (supplied by Ardill Payne)

In New South Wales, limited guidelines are available to establish what scenic amenity is and how it should be determined, other than as provided through court cases. The Queensland guideline *Implementation Guideline No 8 Identifying and protecting scenic amenity values*, defines scenic amenity as “a measure of the relative contribution of each place in the landscape to the collective appreciation of open space as viewed from places that are important to the public” (Queensland Government Department of Infrastructure, 2007).

This guideline lists the values that comprise scenic amenity as being:

- *public viewing locations: publicly accessible outdoor locations such as roads, walkways, beaches, picnic areas, lookouts and viewing platforms. This includes significant and popular viewpoints where people can safely stop and admire the view*
- *seen landscape areas: natural or built areas such as hills, the ocean, farmlands, waterways, towns, cities or suburbs visible from one or many public viewing locations. This includes areas of high scenic amenity which are highly preferred and seen landscape areas*
- *view corridors: spaces that connect public viewing locations with seen landscape areas, including important view corridors which connect significant and popular viewpoints, with areas of high scenic amenity*

One approach to assessing the scenic values of the site is to ask a series of questions that assist in characterising the visual prominence of the site and the potential visual impact. The actual visual impact cannot be accurately assessed as the final location and form of buildings and roads are not known. However, it can be reasonably assumed that land zoned for residential purposes will be used for housing, and that the general height limit of 8.5 metres will apply to the site, unless Council imposes a different height limit. The second part of the assessment is to consider the potential impact on views and view sharing from neighbouring residential property or future residential development on the site.

Potential Visual Impact

Can the site be viewed from public locations such as reserves, waterways, beaches and roads?

Yes. The site can be easily viewed from public roads such as Survey Street and Amber Drive as well as The Coast Road (south of the site). The northern edge of the site can be viewed from public roads through the southern parts of Lennox Head such as Dress Circle Drive.

The Survey Street/Amber Drive locations are established urban areas, which are similarly visible from public roads such as Blue Seas Parade. It is not really possible to create an urban area that is bounded and accessed by public roads and not visible from those roads. The additional row of houses along Blue Seas Parade will blend in with the foreground of existing dwellings. Landscaping on private land and street trees on public land and in road reserves will both act to soften these impacts over time.

As the land is predominantly west-facing, it is not clearly visible from the beach or waterways. It is visible from the Pat Morton Lookout and the coastal shared path that links this lookout back to Lennox Head. However, this impact will be confined to the tops of proposed structures. If 8.5 metre structures are located at about 62 metres AHD then they will be easily seen from the top viewing area at the Pat Morton Lookout in the same way that the existing houses are easily seen. This impact could be softened by imposing a building line or setback on the eastern boundary of the proposed lots to restrict buildings to the western parts of the site. This would be imposed through a DCP. A diagram showing the approximate location of a possible setback is at Appendix B. This would also reduce the visual impact of the new dwellings on the existing dwelling on Lot 2. If an internal access road to the proposed lots is used then this would also assist in reducing the impact of structures when viewed from the Pat Morton Lookout. A different approach would be to limit building height to 4.8 metres in the eastern part of the site (say the first 20 metres) so that two-storey structures could not be located towards the eastern boundary (see Appendix B). Both options have a similar effect and could be used in combination.

Parts of the site can be viewed from The Coast Road when travelling north from Ballina and cresting the hill near the Skennars Head Road intersection. Dwellings located on part of the site will be visible. This impact will take place with the existing shed in the foreground, and the dwellings and tall trees as a backdrop. This will also be a distant view (approximately 2 kilometres), and the new buildings will be mixed in with the Coastal Grove development on adjacent land to the west. If an internal access is constructed on the eastern boundary, it will be narrow (4 metres seal suggested) and will not be easily seen from The Coast Road due to its position to the west of the hill crest, with The Coast Road being located east of the site.

The visual impact from the southern parts of Lennox Head (Dress Circle Drive) will be confined to any structures built at the far northern edge of the subject land. There is potentially space for one residential lot in this location. Any development of this lot will be viewed with a backdrop of a very large fig tree located at this northern edge.

On balance, the key visual impact will be from the Pat Morton Lookout. This could be addressed with a restriction on building height over the eastern part of the subject land. This might be a 4.8 metre HoB on the subject land at the 60 metre AHD contour or above. It could also be assisted by imposing a building line or setback on the eastern boundary of the proposed lots to restrict buildings to the western parts of the site.

Is the site elevated or on slopes greater than 20%?

Yes. The site rises from west to east from approximately 56 metres AHD to 64 metres AHD over a distance of 50 metres. The geotechnical assessment estimated the average slope at approximately 21%. This is about the same or less steep than much of the most recent residential development along Blue Seas Parade. Although the land is elevated, it is already impacted by the large retaining wall along Blue Seas Parade. The immediate change from open grazing land to a residential area will have an impact, but this will soften over time as landscaping and street trees mature.

Will future buildings visually disrupt the skyline when viewed from public locations?

Yes. If future 8.5 metre dwellings are constructed across the site, they will be visible from parts of The Coast Road and Pat Morton Lookout. Such buildings will disrupt the skyline. They will also disrupt the skyline when viewed from the west, although this impact will be softened, in part, by an existing Norfolk Island pine tree, large fig trees and existing dwellings that are located on the crest of the hill. One option is to establish a single storey height limit (say 4.8 metres) to restrict building height above the 60 metre contour. Another option is to impose a building line or setback on the eastern boundary of the proposed lots to restrict buildings to the western parts of the site.

Will future development result in the loss of significant vegetation?

No. The site is predominantly grassland that was cleared more than 50 years ago for agriculture. Twin mature fig trees and a mature Norfolk Island pine will be retained.

Will the future development integrate with surrounding land uses?

Yes. The site represents the final piece of the Strategic Urban Growth Area in this locality and will represent the last of the residential land along Blue Seas Parade.

Will future development cause issues with reflection of sunlight from glazed surfaces?

This will be a key aspect to resolve if the future development of this site is to have minimal visual impact. Reflective glazing on the site could cause issues in the afternoon for east-facing development in Amber Drive and Survey Street. This should be addressed with future development applications and does not warrant specific controls in Ballina LEP 2012.

Views and View Sharing

Will future development impact on views from another property to a significant vista?

No. Development on this west-facing site will not impact on other established property views to the coast. It may impact on the hinterland views of the existing dwelling on Lot 2 DP 1165957, located immediately to the south of the subject land. However, this impact is tempered by the location of existing farm buildings on the western edge of Lot 2 already. If a building line or setback is imposed on the eastern boundary of the proposed lots to restrict buildings to the western parts of the site, this would also reduce the impact on the views from the existing dwelling on Lot 2 and increase the privacy for this dwelling.

Is there an opportunity for view sharing?

Yes. The existing dwelling on Lot 2 DP 1165957 will retain its eastern, north-eastern and southern coastal views, which are the most significant.

Gap Analysis and Recommendation

There is sufficient information for Council to make a decision on the issue of scenic values and amenity for the subject land, and no further technical information is required.



The subject site does not include significant public viewing locations. However, it is on the immediate western edge of land that is a significant seen landscape and a significant view corridor. The subject land is 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 20 metres of the subject land will have the potential to impact on the skyline when viewed from the Pat Morton Lookout, and it is recommended that a building height limit of 4.8 metres be imposed on land at or above the 60 metre contour. Council should also impose a building line or setback on the eastern boundary of the proposed lots to restrict all buildings to the western parts of the site.

It should be noted that SEPP Exempt and Complying Development Codes (2008) would permit a dwelling of 8.5 metres, despite the LEP prescribing 4.8 metres. The suggested 4.8 metre height limit would still apply to structures other than dwellings. Therefore the setback is required, as well as the height limit, to achieve the least impact on the skyline.

Contaminated Land Assessment and Remedial Action Plan

The planning proposal is accompanied by a stage 2 Detailed Investigation and a stage 3 Remedial Action Plan (RAP), which have been prepared in accordance with the requirements of SEPP 55 and the relevant NSW EPA Guidelines.

The Detailed Investigation determined that contamination from lead and pesticides is present to the north and south of the existing shed on concept subdivision Part Lot 10. One proposed residential lot will be affected by this land contamination over an area of approximately 13 m². The RAP proposes how the land may be remediated to make it suitable for the proposed residential land use.

Council can therefore be satisfied that its planning functions under SEPP 55 have been fulfilled as it has been determined that past land uses have contaminated a small part of the land, but that remediation can make it suitable for the proposed residential land use. The site is identified on Council's contaminated land register.

It is noted that the submitted documents relate to a previous planning proposal and any future development application for the subdivision of the land will need to be accompanied by an updated RAP. The approved RAP will be implemented and a stage 4 Validation and Monitoring Report will need to be submitted prior to the issue of any future subdivision certificate.

Gap Analysis and Recommendation

There is sufficient information for Council to make a decision on the issue of contaminated land assessment for the subject land, and no further technical information is required prior to proceeding to public exhibition of the planning proposal.

Aboriginal Heritage

The planning proposal is supported by an Aboriginal Archaeological Assessment undertaken by Heritage Surveys in November 2006. Although it was 10 years ago, this work was undertaken over a much broader area (up to 52 hectares) that included the subject land. It involved site inspections and survey with Jali LALC. The assessment was done in anticipation of a 21 unit resort, with spa and education facility, which ultimately did not proceed. The development was to be focused on the ridge line in the vicinity of the existing houses. The 2006 assessment concluded that:

- No Aboriginal Objects or Places were identified within the survey area



- Consultation with the Jali LALC identified no places of cultural (spiritual) significance.

OEH indicated in its response to Council dated 26 November 2008, that it considered the cultural heritage report and inspection with Jali LALC undertaken in 2006 to be appropriate, and that it is satisfied there are no known Aboriginal cultural heritage constraints to the rezoning. OEH concluded that further consultation with Aboriginal stakeholders was not warranted.

Ardill Payne undertook a AHIMs search on Lot 1 DP 1165957 (with a zero buffer) in November 2015, which identified zero Aboriginal sites or places. A AHIMs search undertaken on the same lot with a 50 metre buffer identified one Aboriginal site. Therefore it is possible that additional sites have been located in the vicinity of the subject land in recent years.

Given the time that has passed since the Jali LALC was last consulted about this land and the change in proposed use, it is appropriate that further consultation takes place. However, this can be done as part of the general public exhibition and no additional studies are required to support that consultation at this stage.

Gap Analysis and Recommendation

There is sufficient information for Council to make a decision on the issue of Aboriginal cultural heritage for the subject land, and no further technical information is required prior to proceeding to public exhibition of the planning proposal.

Land Use Conflict Risk Assessment

The subject land is mapped as Regionally Significant Farmland in the Northern Rivers Farmland Protection Project. In making its Gateway determination, the Department of Planning and Environment agreed that as the site is identified in an agreed strategy and within a Strategic Urban Growth Area, the loss of agricultural land is not significant and no further assessment of this issue is required. It did specifically request that a Land Use Conflict Risk Assessment be completed.

The encroachment of residential dwelling-houses towards the agricultural property adjoining the subject land [mostly zoned 7(d) Environmental Protection (Scenic Escarpment) or 1(d) Urban Investigation] will result in an increased chance of land use conflict occurring and may impact on normal agricultural activities continuing. The neighbouring property (Lot 2 DP 1165957) is currently utilised for beef cattle grazing and bee keeping. It is approximately 49 hectares, with a farm house immediately adjacent to the subject land. Cattle yards are currently located on the adjacent lot about 30 metres to the south of the proposed R2 Low Density Residential zone boundary, behind the existing shed. The entire eastern boundary of the R2 zoned land will abut land zoned either RU1 Primary Production or 1(d) Urban Investigation.

Land use conflict can occur in these situations due to noise (eg cattle and poultry), chemical use, pest and weed control, dust and odours, etc. The risk of conflict occurring is real and likely in these situations. DPI recommends that suitable land use buffers be applied to avoid problems. The Living and Working in Rural Areas Handbook (NSW DPI, 2009) requires the following buffer distances from residential premises:

- 50 metres to cattle grazing; and
- 200 metres to cattle yards.

The applicant has prepared a Land Use Conflict Risk Assessment (LUCRA). It suggests that cattle noise will be infrequent. It relies on retaining the existing shed on the subject land, and the location of the neighbouring farm dwelling and sheds to buffer the proposed residential lots. The LUCRA also states that scope exists for the provision of vegetated buffers because the DPI land use buffers cannot be achieved. However, the concept subdivision layout does not seem to provide the opportunity for a vegetated buffer.

The submitted subdivision concept layout has a 30 metre buffer from the proposed southern R2 zone edge to the cattle yards. The existing shed is within this buffer. No buffer is proposed to the adjoining RU1 zoned land, although a 4 metre wide access driveway is proposed along this boundary (within a 7 metre wide Right of Way). The farm dwelling on Lot 2 DP 1165957 has a fenced "home paddock", which includes the house and outbuildings. This "home paddock" (which excludes cattle) runs the full length of the land proposed to be zoned R2 on the subject land. If this is maintained, it will act as a de facto buffer to the proposed residential lots.

The DPI submission dated 24 March 2016 indicates the planning proposal is consistent with the Farmland Protection Project recommendations as the site is within local and regional planning documents as a future urban area. However, DPI also indicates that the potential for land use conflict with adjoining agriculture will be increased if the planning proposal proceeds, and the LUCRA does not adequately consider this. DPI further indicates that it supports the imposition of a 1200 m² minimum lot size for the subject land, albeit in reference to the scenic values of the site. It also refers Council to the recently released "Right to Farm" policy.

The buffer issue is a difficult one. The R2/RU1 buffer is currently Blue Seas Parade, which is in a 20 metre road reserve. At the southern end of Blue Seas Parade, a small strip of RE1 Public Recreation zone has been used as a mini-buffer (about 10 metres wide), but this is required for a public access path. Rural zones permit agriculture (such as grazing) without consent. Structures such as stock yards can also be constructed without consent. The Standard LEP format provides Council with minimal opportunity to impose site-specific controls. The issue of buffers to non-intensive agriculture is now one that Council has to deal with in a DCP rather than its LEP.

The subject land is less than 200 metres long, therefore a 200 metre buffer around the cattle yards would eliminate the entire area proposed as R2. It would be unusual to impose such a large buffer on this planning proposal when there are already residential lots about 25 metres to the west of the cattle yards. In combination with the existing shed, the proposed 30 metre buffer to the cattle yards is reasonable at the southern end of the subject land. The fact that the proposed R2 zone abuts a rural zone to the east is something that cannot be avoided if the planning proposal proceeds. The use of an access road in this location may assist in a minor way. Council could also impose a specific setback for dwellings to the eastern edge of the proposed R2 zone to ensure that dwellings are not erected within 20 metres (say) of the zone boundary. This would have to be achieved through site-specific provisions in Ballina DCP 2012.

Another potential planning control, in combination with building setbacks, is minimum lot size. Imposing a large minimum lot size allows more room on each lot for a large building setback to the rural zone. There is no specific rule that can be applied as to what minimum lot size is right. Council has previously considered a 1200 m² minimum lot size for this site, and the proponent has suggested a 600 m² minimum lot size. The indicative subdivision plan shows lots ranging in size from 850 m² to 950 m². Given the greatest propensity for conflict is at the southern and eastern end of the subject site, near the shed and cattle yards, it may be that a larger minimum lot size is applied to the southern half of the site (1200 m²) with a smaller minimum lot size applied to the northern half (600 m²). A plan showing where the different lot sizes might apply is at Appendix C.

Gap Analysis and Recommendation

The proposed 30 metre buffer (of land zoned RU1) between the proposed R2 zone and the cattle yards is sufficient in this case (at the southern end of the subject land), even though it is considerably less than the DPI preferred distance of 200 metres. Council should consider site-specific DCP controls that require at least a 20 metre setback for dwellings from the eastern zone boundary (including any Right of Way for access) to create a further small separation between the farm activities on the adjacent lot and future residential activities. Imposing a large minimum lot size (say 1200 m²) will also allow more room on each lot for a large building setback to the adjacent rural zone. This is more relevant at the southern end of the subject land as the northern end is more isolated from the rural land uses on the adjacent property.

Geotechnical Assessment

The proponent has supplied a preliminary geotechnical study undertaken in 2008 by Coffey Geotechnics. Although undertaken for a larger area than the current subject site, it is covered adequately. Eight test pits were undertaken and three of these (TP1, TP2 and TP3) are within the subject land (Figure 7). The study also included a site walkover, soil tests and a slope hazard assessment.

The study found that the subject land is an upper plateau that is underlain by a thin soil profile (less than 1 metre), which itself is underlain by basalt rock. The soil profile includes basalt cobbles or boulders. No surface springs were observed, although they may be present after wet weather. No evidence of past landslip was observed. The slope analysis found that surface slopes of the subject land are mostly 12–13 degrees (21% to 23%), with some areas around 5 degrees (9%). The escarpment on the northern edge of the site, sloping down to The Coast Road (north of the fig trees) is >35 degrees (70%) (Figure 8).

The study concluded that the slope hazard for most of the site is within tolerable limits, normally dealt with by design and building practices. The two Hazard Zones (Zones 1 and 2) that affect most of the site are considered suitable for residential development (Figure 7). However, the steep land at the northern boundary (Hazard Zone 3) is not acceptable for development without further detailed site investigation. Normal caution with cut and fill and drainage should apply to the subject site.

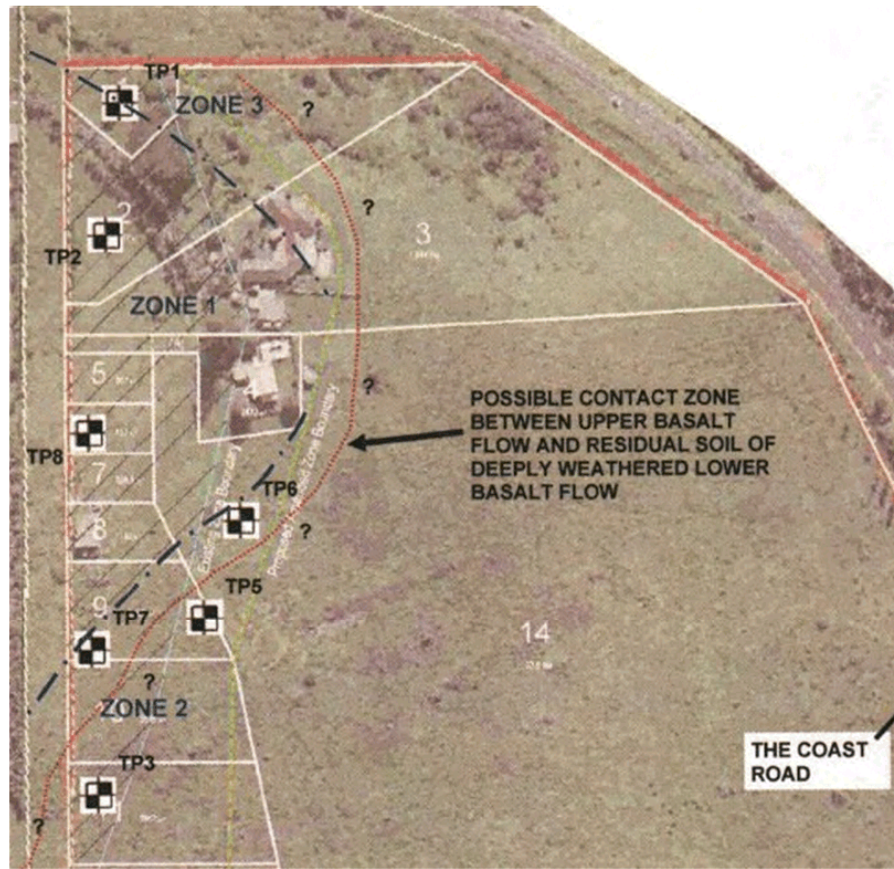


Figure 7: Test pit locations and geotechnical zones from 2008 geotechnical assessment

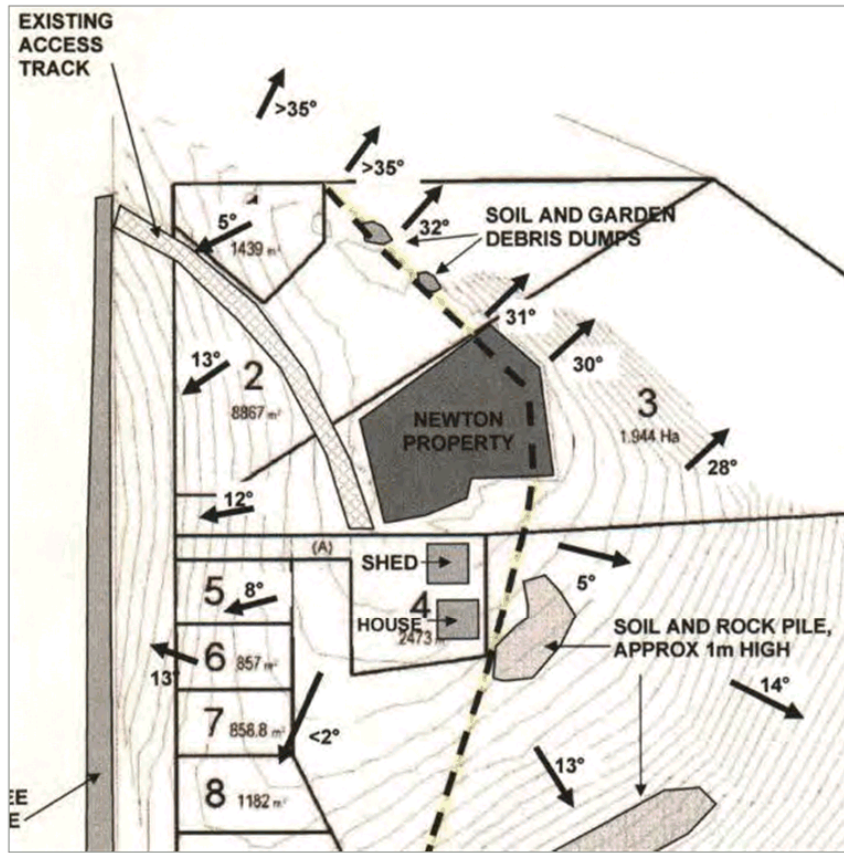


Figure 8: Surface slopes of the subject land

Gap Analysis and Recommendation

There is sufficient information for Council to make a decision on the issue of geotechnical suitability of the subject land, and no further technical information is required prior to proceeding to public exhibition of the planning proposal. Given the slopes on part of the site are around 21–23%, there is a basis for applying the slope sensitive design principles from the Coastal Grove development in Ballina DCP 2012 as follows:

Slope sensitive design – Dwellings and associated development on residential lots with a slope greater than 15% required to conform to specific requirements set out in the DCP including:

- *Driveways subject to maximum grades of 1:6 unless it can be demonstrated to the satisfaction of the consent authority that no reasonable alternative to this solution is possible. In such cases driveways are not to exceed a maximum gradient of 1:4.*

- Applications are to include a long section drawing of proposed driveway access that has been prepared by an appropriately qualified person based on site survey information.
- Earthworks subject to a maximum cut or fill based on geotechnical zones identified by Coffey Geosciences.
- Applications for development to be accompanied by relevant engineering and geotechnical assessment.
- Residential Accommodation must be designed such that buildings address the Blue Seas Parade frontage even if vehicle access is from a Right of Way on the eastern edge of the land.
- Screening underfloor space of buildings – All underfloor areas between external walls and ground level should be screened.

Other Issues

Obstacle Limitation Surfaces and Aircraft Noise

The subject land is entirely within the Obstacle Limitation Surface (OLS) for Ballina Aerodrome (Figure 9). The implications are as follows:

- Future dwellings on the subject land will penetrate the Inner Horizontal Surface, which for Ballina Aerodrome is set at RL 46.5 metres AHD
- The natural ground level of the subject land at the highest point (64 metres AHD) already penetrates the Inner Horizontal Surface by 17.5 metres
- Including the 8.5 metres maximum permitted dwelling height, there is the propensity for development at the highest point on the subject land to infringe the Inner Horizontal Surface by 26 metres
- The subject land already contains a mature Norfolk Island pine tree that penetrates the Inner Horizontal Surface by more than 26 metres.

A response was sought from the Civil Aviation Safety Authority (CASA) and was received on 2 April 2015. It indicated as follows:

CASA has determined that future structures would normally be classified as hazardous objects under regulation 139.370(1) of the Civil Aviation Safety Regulations 1998 because of its height, location and lack of obstacle lighting. However the proposed property is surrounded by existing developments which at night are lit, as will the future proposal, and therefore would provide visual indication of the height of the area.

Council could consider as part of your own safety and risk management approach that Obstacle Lighting is installed on the highest most practicable point of the land to be developed by:

- I. Installing a low intensity steady red lighting at night as per Section 9.4 of the MOS. Characteristics for low intensity lights are stated in subsection 9.4.6, and*
- II. The obstacle lighting should be maintained in serviceable condition and any outage immediately reported to the aerodrome Ballina/Gateway aerodrome operator, and*

If obstacle lighting is undertaken as suggested above, then in accordance with regulation 139.350(1) of the CASR 1998 and subsection 7.1.4 and 9.4.10 of the Manual of Standards – Part 139 Aerodromes, Ballina/Byron Gateway Aerodrome is to monitor the ongoing availability of the obstacle lighting.



Gap Analysis and Recommendation

Given this response, it is considered that OLS is not an issue that should affect the future zoning of the subject land. 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 outcome of this planning proposal. No further information is required on this issue.

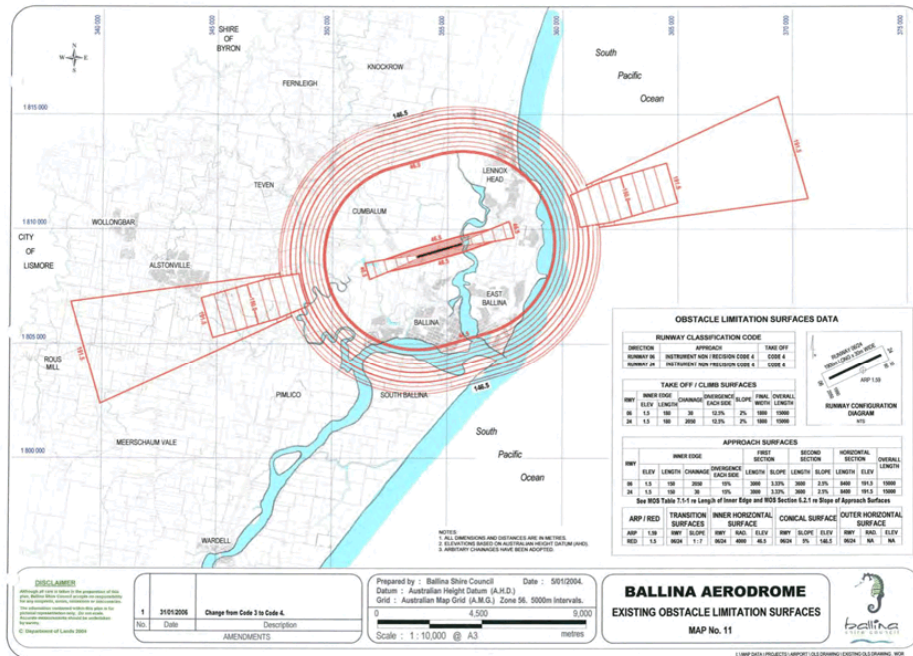


Figure 9: Obstacle Limitation Surface for Ballina Aerodrome

Access and Stormwater

An issue raised in consultation with Council staff is that the proposed residential area is to be accessed by a private shared road on the eastern boundary rather than by direct driveway access to Blue Seas Parade. The argument is that this is not good practice, is inconsistent with Ballina DCP, will create a scar on the landscape, makes it difficult for emergency vehicles, and has been discouraged elsewhere.

Although the applicant has shown a shared access in the draft plan of subdivision, they are not bound by this in any way. The key issue at this stage is "Does this site have access for the likely future residential development that will follow a rezoning should it be approved?" The answer is that it has two options for access. One is Blue

Seas Parade and the other is a private internal access. Both options have some merit. Both options have some negative aspects. It may be that some lots access a private road and some access Blue Seas Parade. It is not appropriate at the rezoning stage to require certainty about which option is the best. Council engineers have not indicated that either option is preferred.

It has also been noted that subdivision of nearby lots in Blue Seas Parade will bring the established stormwater infrastructure to its capacity, and additional dwellings on the subject land may not be able to rely on this existing infrastructure. This would only be an issue at rezoning if it is likely that no other option exists to address stormwater for the subject land. Council engineers have indicated that the development will require lot-based on-site detention and treatment in accordance with Council Stormwater Standards, and therefore will not adversely impact the existing stormwater infrastructure in the Coastal Grove Estate. A stormwater management plan will be required at DA stage.

Gap Analysis and Recommendation

Given this response, it is considered that access and stormwater is not an issue that should affect the future zoning of the subject land. No further information is required on this issue.

The Way Forward

Additional Information and Matters to be Resolved

There are no additional studies or information that is required in order that this matter can proceed to either a revised Gateway determination (recommended) or to public exhibition (if no changes are agreed).

However, in order for Council to proceed with the planning proposal for this site, the key matters that need to be resolved are:

- 1 The land on which the two Moreton Bay figs are located (and a 5 metre curtilage to the drip line) should be excluded from the proposed R2 Low Density Residential zone. The exclusion should also cover the small residual area to the south-east of the trees (Appendix A).

Note: The drip line to be used is the one determined in the arborist's report. The recommended zoning of the land to reflect this is shown in Appendix D.

- 2 The key potential visual impact will be from the Pat Morton Lookout. This can be addressed with a restriction on building height over the eastern part of the subject land. There should be a 4.8 metre HoB on the subject land for the first 20 metres from the eastern boundary at the southern end, with 8.5 metres HoB on the balance (Appendix B).
- 3 Council should amend Ballina DCP 2012 to include site-specific controls that require a 20 metre setback for dwellings from the eastern zone boundary (inclusive of any Right of Way for access, should that be preferred) to create a further small separation between the farm activities on the adjacent lot and future residential activities. This would apply only to the southern part of the site as identified in Appendix B.
- 4 Imposing a large minimum lot size (1200 m²) on part of the land would allow more room on each lot for a large building setback to the adjacent rural zone. This should be applied to the southern half of the subject land as the northern end is more isolated from the rural land uses on the adjacent property. The northern end should have a 600 m² minimum lot size, consistent with land immediately across Blue Seas Parade (Appendix C).
- 5 The Coastal Grove slope sensitive design principles should apply to this site. Dwellings and associated development on residential lots with a slope greater than 15% will need to conform to specific requirements set out in the DCP including:
 - *Driveways subject to maximum grades of 1:6 unless it can be demonstrated to the satisfaction of the consent authority that no reasonable alternative to this solution is possible. In such cases driveways are not to exceed a maximum gradient of 1:4.*
 - *Applications are to include a long section drawing of proposed driveway access that has been prepared by an appropriately qualified person based on site survey information.*
 - *Earthworks subject to a maximum cut or fill based on geotechnical zones identified by Coffey Geosciences.*
 - *Applications for development to be accompanied by relevant engineering and geotechnical assessment.*
 - *Residential Accommodation must be designed such that buildings address the Blue Seas Parade frontage even if vehicle access is from a Right of Way on the eastern edge of the land.*
 - *Screening underfloor space of buildings – All underfloor areas between external walls and ground level should be screened.*

Recommendation

It is recommended that a revised Gateway determination be obtained from the Department of Planning and Environment to implement the changes in items 1, 2 and 4 above. It is also proposed that upon the rezoning proceeding, the Strategic Urban Growth Area (SUGA) designation is to be removed from the subject land entirely.

It is recommended a draft DCP amendment to Ballina DCP 2012 be prepared for simultaneous exhibition with the revised planning proposal that addresses items 3 and 5 above.

Appendices

Appendix A: Blue Seas Parade Arboricultural Assessment Report (Gray, 2016)

Appendix B: Building height and building setback area on the subject land

Appendix C: Minimum lot size on the subject land

Appendix D: Recommended zone regime on the subject land

APPENDIX A
Blue Seas Parade Arboricultural Assessment Report
(Gray, 2016)

Arboricultural Impact Assessment Report

Blue Seas Parade
Lennox Heads
NSW 2479.

Report compiled by
Peter Gray
PO Box 81, Burringbar NSW 2483.
Ph 0414186161
25th May, 2016.



Table of Contents

1.	Introduction	3
2.	Scope	4
3.	Method	4
4.	Description	5
5.	Tree Retention Value	6
6.	Appraisal	7
7.	Recommendations	10
8.	Disclaimer.	11
9.	Bibliography	11
10.	Glossary.	11
11.	Impartiality and Non Pecuniary Declaration	12
12.	Attachment 1. Site Plan	13
13.	Attachment 2. Proposed Rezoning.	14
14.	Attachment 3. Tree Data.	15
15.	Attachment 4. Tree Significance	16
16.	Attachment 5. Photos.	17

1. Introduction

Peter Gray has compiled this report on request from Mr. Mike Svikis, Planner who is acting for Ballina Shire Council. The landowner, (Mr George Farley) is applying to Ballina Shire Council to have part of his property at Blue Seas Parade, Lennox Head (Lot 1 DP1165957) rezoned from RU1 Primary Production to R2 Low Density Residential. The part he is proposing to rezone to R2 Low Density Residential contains two large Moreton Bay Fig Trees (*Ficus macrophylla*).

The trees are a significant part of the local landscape. A suggested subdivision proposal includes the area around the two Fig trees. The Fig trees will affect the use of the land for residential housing.

This report was compiled by Peter Gray Dip Hort (Arb). of Northern Tree Care. The author is an arborist who has been providing Tree Reports for Local Government, State Government and private clients for over 15 years. The information contained in this report is true and accurate to the best knowledge of the author. Best professional judgement was used to make the recommendations contained in this report.

Peter Gray is qualified to AQF level 5 in Arboriculture and a Consulting Arborist registered association No. 2344 with Arboriculture Australia. He is a trained registered user of Quantified Tree Risk Assessment (QTRA) registered number 980 (Ellison 2015).

2. Scope

Mr George Farley owns the property at Blue Seas Parade Lot 1 in DP 1165957 that is currently zoned RU1 Primary Production (see Attachment 1. Site Plan). Mr Farley proposes to change the zoning of part of the property to allow residential subdivision. The proposed subdivision and building of residences on the land (that would follow a change in zone) have the potential to affect two large Fig trees on the site (see Attachment 2 Proposed Rezoning). The proposed subdivision shows that the trees will be retained in the development. Their retention impacts upon the size and position of future building envelopes in the proposed blocks. It also provides a basis on which a zone boundary can be suggested.

This report assesses and makes recommendations for:

- the health and vitality of the trees
- the potential for future dwellings to be damaged by the fig tree roots and what buffer (or root barriers) should be applied to avoid damage occurring
- the potential for future dwellings to damage the Fig trees and cause problems, stress or disease possibly leading to the demise of the trees. What buffer should be applied to avoid significant damage to the trees occurring
- the potential for wildlife using the trees to cause disturbance to future dwelling and residents and what buffer should be applied to prevent this occurring
- the risk to future dwelling or residents from falling branches or trees and what buffer should be applied to ensure the risk is acceptable.

3. Method

The Australian Standard AS 4970-2009 *Protection of trees on development sites* was used as the set of standards to assess the likely impact of the proposed development on the trees.

The trees were assessed visually from the ground. The height of the trees was measured with a hypsometer. The diameter at breast height (DBH) was measured at approximately 1.4 m above ground level with a tape. These trees are large, have low branches and buttress roots which makes it difficult to make an accurate measurement as described by the Standard. In this case the measurements were taken at the narrowest point of the trunk where the buttress roots narrow and before the branches emerge.

The health and condition of the trees was assessed using Visual Tree Assessment (Mattheck & Breloer 2003). This is a method of assessing the trees using the body language or shape and features of the trees to indicate their condition.

The Tree Retention Value of the trees was assessed. The significance of the trees in the landscape was considered and then the significance was plotted against the expected useful life of the tree giving a retention value for each of the trees.

The Standard (AS 4970-2009) does not address the need for a buffer zone, additional to the Tree Protection Zone (TPZ). When looking at the question of what if any buffer zone is needed, this report uses best industry practice that includes the use of calculations for the size of the rootball when transplanting trees. The Standard (AS 4970) uses a calculation based on the diameter at breast height to determine the Tree Protection Zone but has a 15 m limit. The report looks at the size the TPZ would be if the limit did not apply.

The information in the report is derived from a site visit conducted on 17th May, 2016 and from plans and information supplied by Mr Svikis. The following plan used in the report was prepared by Ardill Payne of Ballina:

- *Contour and Detail Survey. Job 7350 Dwg 01.*

The photographs used in this report were taken by the author during the site visit.

4. Description

The site is part of the Lennox Head headland. The house and garden is on top of the headland and the land slopes away except to the south. The soil is red krasnozem clay loam and is well suited to the growth of trees. The buildings on the property consists of a residence and farm sheds. These were originally the farm buildings and have been renovated by Mr Farley. When the property was purchased, the land was overgrown with weeds. These have now been removed and grass and lawn established. The area to the west of the property is residential and a new subdivision is currently being built adjoining the property.

It is proposed to rezone a section of the property. This area includes the land the two trees, subject of this report, are growing on. Under the current Rural zoning RU1, the trees are not protected by Ballina Shire Development Control Plan 2012 Chapter 2a- Vegetation Management Part 3. They will be protected under the proposed new residential zoning (Part 3.1.1).

The trees are a local native species Moreton Bay Fig *Ficus macrophylla* (Harden 2009). While the species is common in the local area, large mature specimens in good condition are less common (see Attachment 5 Photo 1). The trees are described in detail in **Attachment 3 Tree Data**.

The site of the trees slopes to the south. The driveway runs to the south of the trees and is approximately 20 m away from the them (see Attachment 5 Photo 2). The rest of the adjoining areas are maintained lawn area.

The tree centres are 11 m apart and the crowns of the trees join. The overall affect is a continuous tree canopy 33 m x 44 m. The area under the canopy of the trees has been weeded, mulched and landscaped. The trees were recently pruned to remove the dead wood from the crown. The shape and branching in the crown are consistent with salt burn from onshore winds (see Attachment 5 Photo 3). The lower branches extend almost to the ground. Some insect pests were observed on the leaves of the trees including the Fig Psyllid *Mycopsylla fici* (see Attachment 5 Photo 4). No decay or large wound areas were observed in the trees during the site visit.

The planned residential blocks to be subdivided include one block to the west of the tree. Mr Farley intends to retain the land the trees are growing on and subdivide the land to the west of the trees and to the south of the driveway.

The root zone of the trees extends well beyond the dripline of the tree. Most of the root zone comprises small absorbing and transport roots. A transport root 50 mm in diameter was observed on the southern side of the driveway where weed clearing had exposed it (see Attachment 5 Photo 5). The Australian Standard AS 4970-2009 *Protection of trees on development sites* provides a maximum of 15 m radius for its recommended tree protection zone (TPZ). This zone is inside the dripline of the tree. The standard also seeks to protect the canopy however, so the above ground TPZ also includes the canopy of the trees.

5. Tree Retention Value

When considering the retention value of trees, two major issues must be considered. They are the significance of the tree and its estimated life expectancy.

When assigning a value to the significance of the tree a number of factors should be considered (Moreton 2003). The significant outcomes have been determined in **Attachment 4. Tree Significance**.

Once the significance of the tree in the landscape has been determined, it can be assessed against its Estimated Life Expectancy. The values for the trees have been placed into Table 1. below.

Table 1. Tree Retention Values

		Landscape Significant Rating						
		1 Significant	2 Very High	3 High	4 Moderate	5 Low	6 Very Low	7 Insignificant
Estimated Life Expectancy	Greater than 40 years	High Retention Value # 1 & 2			Moderate Retention Value		Low Retention Value	
	15 to 40 years							
	5 to 15 years							
	Less than 15 years					Very Low Retention Value		

Ref:- Modified from
 Couston, Mark & Howden, Melanie (2001) *Tree Retention Values Table*. Footprint Green Pty Ltd, Sydney Australia

Where trees have a high retention value they should be retained and protected in the development.

6. Appraisal

Tree Health

The two trees are significant trees in good health that can be expected to grow in a healthy viable state for many years. It is planned to retain and protect the trees in the rezoning and subdivision. The pruning work and site remediation that has been carried out is in accordance with industry best practice. The pruning work is broadly in accordance with the recommendations of the Australian Standard *AS 4373-2007 Pruning of amenity trees*.

Damage to the Tree

The Standard *AS 4970-2009* seeks to give guidance for the protection of trees during construction. The Tree Protection Zone is an area that is determined by the size of the tree and is recommended to be protected during and after construction. Individual circumstances should be taken into account when assessing the practical extent of the TPZ. In this case the trees are large and the root zone extends into the areas proposed to be developed for housing.

Provided that any buildings are constructed outside the dripline or canopy of the trees the loss of roots from such construction is likely to be only a small percentage of the total root zone of the tree even taking into account that there may be more than one residence constructed in the root zone. As the TPZ does not extend beyond the dripline of the tree, the construction of such buildings is allowed under the Standard.

The use of pier footings rather than strip or slab foundations will significantly reduce the damage to the root system of the tree (*AS 4970 Sect 3.3.4*).

It is possible to install a root barrier between any buildings and the tree. The use of root barrier would result in the loss of a significant amount of the root zone of the adjacent tree.

Damage to Buildings

The potential for the trees' roots to damage buildings is twofold. Firstly transport roots near the surface can lift and damage pathways, driveways and house slab foundation. The turgid pressure that can be exerted by the roots is limited to less than 1 mPh and most properly engineered building foundations should be strong enough to withstand that pressure. Pathways constructed from concrete and bitumen driveways may be lifted and cracked. The driveway does have some minor cracking, probably from the lifting pressure from roots growing under it (see Attachment 5 Photo 6). Given that the driveway has been in place for at least some decades, the damage to the driveway now and the potential future damage is considered to be insignificant.

The roots of the trees also have the potential to damage buildings constructed on slab foundations on reactive soils. As these soils are clay it is expected that they would be reactive, that is expand when wet and contract when dry. The damage occurs when tree roots dry the soil out under the foundations and the soil shrinks, cracking the building.

The use of pier type footings rather than strip or slab foundations significantly reduces the likelihood the roots of the trees will damage the buildings.

Nuisance from Wildlife

As it is not proposed to build under the canopy of the tree, little if any nuisance is likely to occur from leaf litter and stick falling on the buildings. This species of tree produces large quantities of fruit that are eaten by various birds and the local grey headed and black flying foxes.

Risk from the Trees

The trees are wider than they are tall. If they were to fail at the roots or drop branches, the tree would not fall outside its dripline. The target area should the trees fail is therefore under the trees. As this is a landscaped area, the risk associated with tree failure is considered to be low and broadly acceptable (Ellison 2015).

Buffer Zones

The Standard (AS 4970) does not require any buffer zone in addition to the TPZ. In this case the canopy of Tree # 1 must also be protected (AS 4970 Sect. 3.2). The canopy extends 20 m from the centre of the base of the tree on the north western side. The TPZ follows the dripline and is therefore 20 m from the centre of the base of the tree on this side.

If the TPZ were not limited to 15 m, it would be $12 \times 4 = 48$ m or a 28 m buffer from the dripline for Tree # 1. This would be an area of over 7,000 sq m and is clearly impractical. The Standard does not discuss why the figure of 15 m was selected as the upper limit, however 15 m does provide a practical balance between the requirements of trees and development (AS 4970 Foreword).

When transplanting trees, best industry practice is to move a root ball 5 times the DBH (Hartley 2015). A 97% success rate when moving healthy trees can be expected. For Tree # 1 the root ball would need to be 20 m in diameter using this calculation. This is the same size as the canopy. If the tree could theoretically be transplanted with this sized root ball, then encroachment into the root zone less than this, is unlikely to significantly impact upon the viability of the tree.

Council has indicated it thinks a 20 m buffer from the dripline of Fig trees is reasonable. For Tree # 1 this would be an area 40 m from the centre of the base of the tree. While a buffer of this size would reduce the influence of the tree to a very low level, there is no evidence that a buffer needs to be that size.

When considering a buffer the following points should be taken into account:

- The risk from falling branches
- The potential for damage to the roots and canopy
- The potential for roots to damage buildings
- Nuisance from wildlife.

The trees have a spreading canopy. If the branches or trees failed, they would not impact outside the dripline.

As discussed the potential for root damage is acceptable outside the TPZ of the trees. The canopy is included as part of the TPZ.

The potential for damage to buildings is primarily from reactive clay. The roots likely to be encountered in the proposed building zones would be smaller than 50 mm in diameter and are not likely to physically lift and damage buildings. The tree can be expected to grow and increase in size over time. A buffer should be provided to ensure the canopy does not impact on building structures now and in the future.

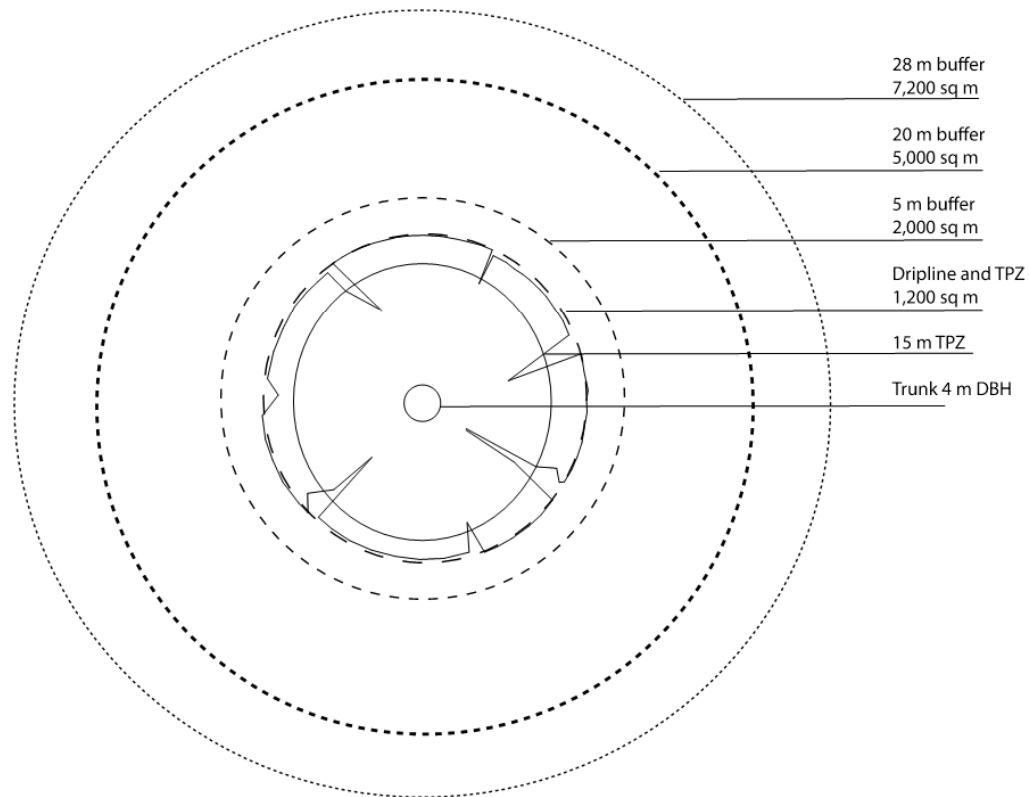
The nuisance from wildlife is limited to the area under the canopy of the trees.

It is considered that no buffer beyond the 20 m TPZ is required to protect the canopy or root ball of the tree from damage from buildings. If a buffer zone were adopted it would reduce the potential for damage but since the potential impact is already acceptable it is not considered to be a significant reduction. There are many examples in the urban forest of Fig trees growing successfully with little or no buffer zones.

The tree can be expected to grow and the canopy increase in area. The author considers that the minimum buffer that would provide practical protection to buildings and reduce nuisance from wildlife to an acceptable level is 5 m from the dripline. This would allow for at least 2 decades of growth.

Figure 1. Buffer Zones below shows the theoretical relative size of the buffer zones for Tree # 1. It should be noted that as the buffer zone increases in size it increases in area exponentially. The area of the canopy and TPZ is 1,200 sq m and the 20 m buffer is over 4 times as large at 5,000 sq m or half a hectare.

Figure 1. Buffer Zones



7. Recommendations

Issue	Recommendations
Health of the trees.	Retain and protect the trees in accordance with the recommendations of the Australian Standard <i>AS 4970-2009 Protection of trees on development sites</i> Sect 4.
Damage from the trees.	<p>For the proposed lot to the north west of the tree; the lot boundary should be at least 5 m from the dripline of Tree # 1. This would allow sufficient room for future growth of the canopy of the tree. No additional buffer from Trees # 1 and # 2 is recommended for any lots on the southern side of the driveway.</p> <p>Consideration should be given to restricting building foundations to pier footings.</p> <p>The use of root barriers is not recommended. The potential loss of the affected root system outweighs any benefits likely to be achieved. If it is decided to use root barrier to protect buildings it should be installed approximately 0.5 - 1 m from and around the building to a depth of at least 1 m.</p>
Damage to the trees.	<p>The most likely damage to occur is damage to the roots of the tree and loss of root zone. The use of pier footings will minimise the loss of tree roots. Consideration should be given to restricting building foundations to pier footings.</p> <p>Wherever possible the services should be designed to encroach as little as possible into the root zone of the trees.</p> <p>Changes in soil grade by excavating or filling should be minimised. No additional buffer zone is recommended to prevent unacceptable damage to Trees # 1 and # 2 from any future buildings.</p>
Nuisance from wildlife.	The birds and animals using and likely to use the trees may cause some minor nuisance. The area affected is largely under the canopy of the trees. No additional buffer zone is recommended to reduce the nuisance from wildlife in respect of Tree # 1 and # 2..
Risk from the tree.	The target for the trees is the area under the canopy. The risk is considered to be low or broadly acceptable (Ellison 2015). No action is considered necessary to reduce the risk from Trees # 1 and # 2.

8. Disclaimer

The information contained in the report is true and accurate to the best knowledge of the author. Best professional judgement was used to make recommendations. However the author of this report is not responsible for any action which might be taken or not taken in reliance on it.

This report remains the property of the author, Mr Svikis and Ballina Shire Council. It may not be used or reprinted without their express permission.

9. Bibliography

Australian Standards. 2009. *AS 4970 Protection of Trees on Development Sites*. Australian Standards. Sydney.

Australian Standards. 2007. *AS 4373 -2007 Pruning of Amenity Trees*. Australian Standards. Sydney.

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Ellison M. 2015. *Quantified Tree Risk Assessment User Manual*. QTRA. Cheshire.

Harden G. MacDonald W. Williams J. 2009. *Rainforest Trees and Shrubs*. Gwen Harden Publishing. Nambucca Heads.

Hartley M. 2015. Discussion on site of Fig tree transplant. Sydney.

Mattheck C. Breloer H. 2003. *The Body Language of Trees*. TSO. London.

10. Glossary

TPZ The Tree Protection Zone is an area around the tree both above and below the ground that is recommended to be protected during construction (AS 4970 - 2009 Protection of trees on development sites). It is calculated as an area around the tree with a radius of 12 times the diameter at breast height of the tree.

SRZ The Structural Root Zone is the area around the tree that is necessary for the structural stability of the tree. Where there is significant damage to the SRZ the tree may become unstable and likely to fail at the roots.

DLT Diameter of the tree trunk at just above the root flare. Used to calculate the SRZ.

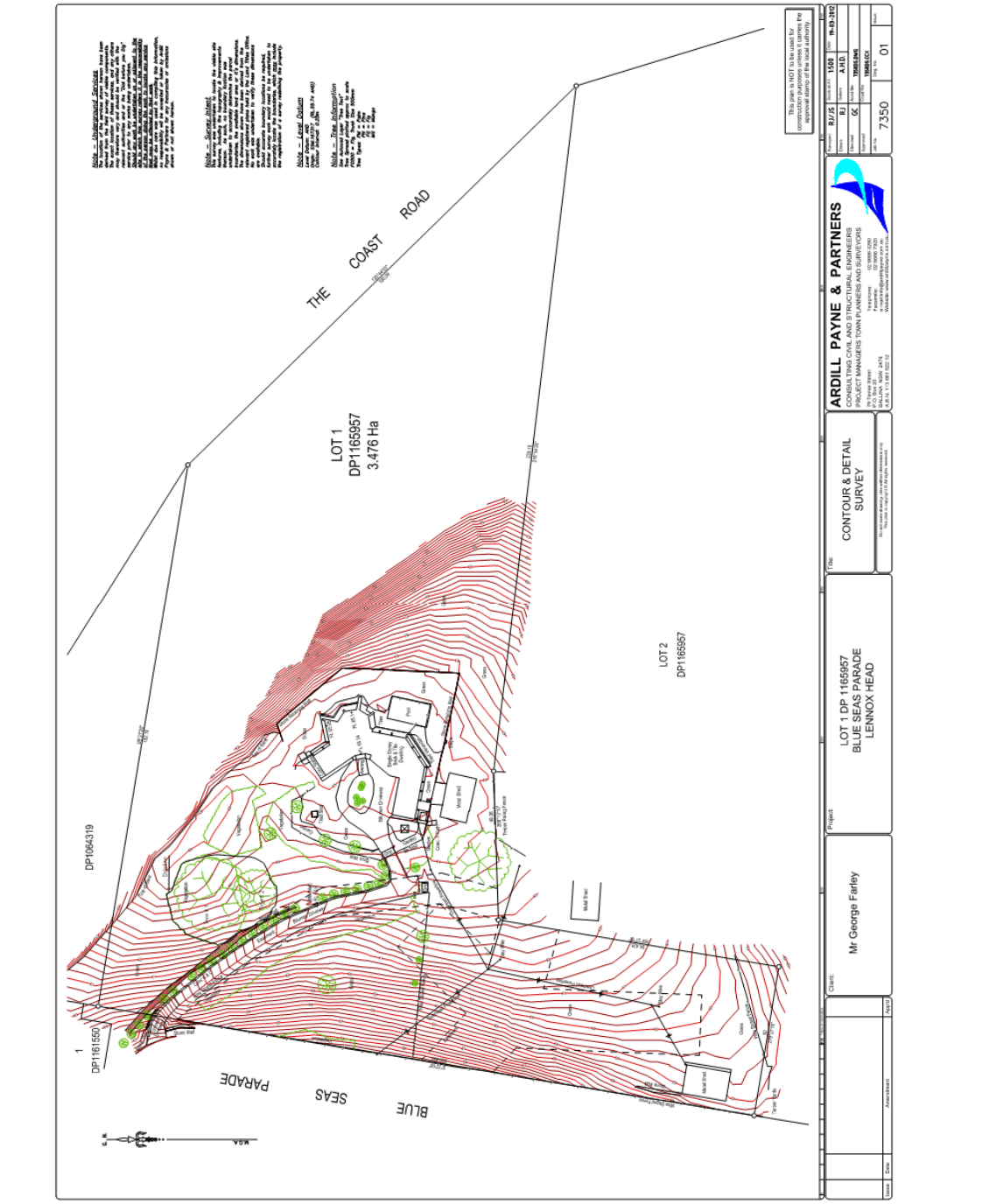
11. Impartiality and Non Pecuniary Declaration

I declare that I have compiled this report impartially using best professional judgement. I have no financial interest in the outcome of the report.

Signed Peter Gray, Northern Tree Care.
25th May, 2016.

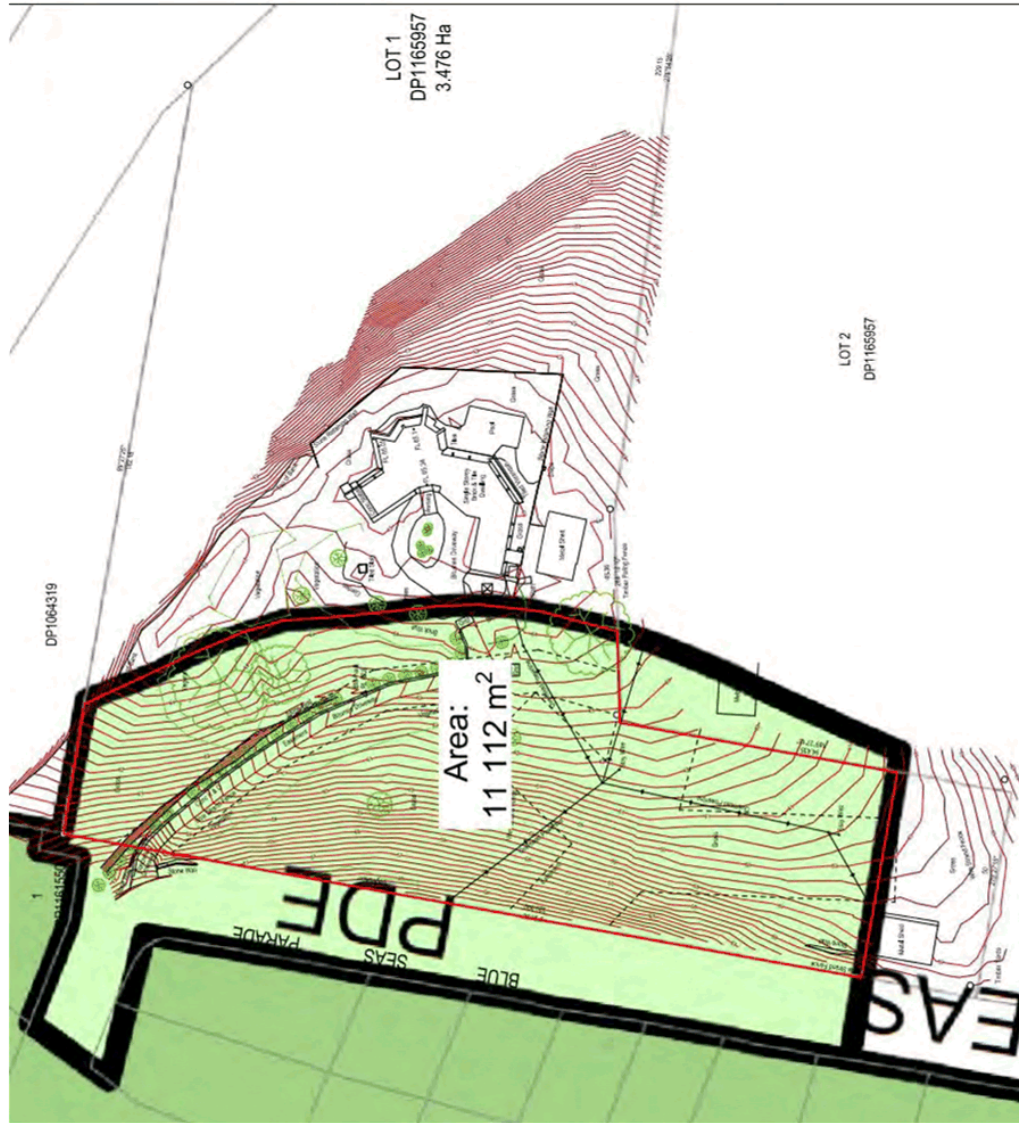


12. Attachment 1. Site Plan



Blue Seas Parade
Arboricultural Assessment Report. Compiled by Peter Gray. 25th May, 2016.

13. Attachment 2. Proposed Rezoning



Blue Seas Parade
Arboricultural Assessment Report. Compiled by Peter Gray. 25th May, 2016.

14. Attachment 3. Tree Data.

Tree #	Name	Age	Health	Height (m)	DBH (mm)	Crown (m)	DLT (mm)	TPZ (m)	SRZ (m)	Comments	Action
1	Moreton Bay Fig <i>Ficus macrophylla</i>	Mature	Good	16	4,000	40	6,000	15	4.5	Large tree in good condition	Retain and protect
2	FMoreton Bay Fig <i>Ficus macrophylla</i>	Mature	Good	16	2,000	20	4,000	15	4.5	Tree is the smaller of the two trees	Retain and protect

15. Attachment 4. Tree Significance

Significance of Tree in the Landscape.

Tree #	Name	Condition	Vigour	Protected	Environmental value	Amenity value	Significance
1	Moreton Bay Fig <i>Ficus macrophylla</i>	Good	Good	No	High	Very High	Very High
2	Moreton Bay Fig <i>Ficus macrophylla</i>	Good	Good	Yes	High	Very High	Very High

16. Attachment 5. Photos



Photo 1.
Trees # 1 & 2
Moreton Bay Fig *Ficus macrophylla*.



Photo 2.
The driveway runs to the south of the trees.



Photo 3.
There are many small branches in the crown,
consistent with salt burn.



Photo 4.
Fig Psyllid *Mycopsylla fici* was observed on the trees.



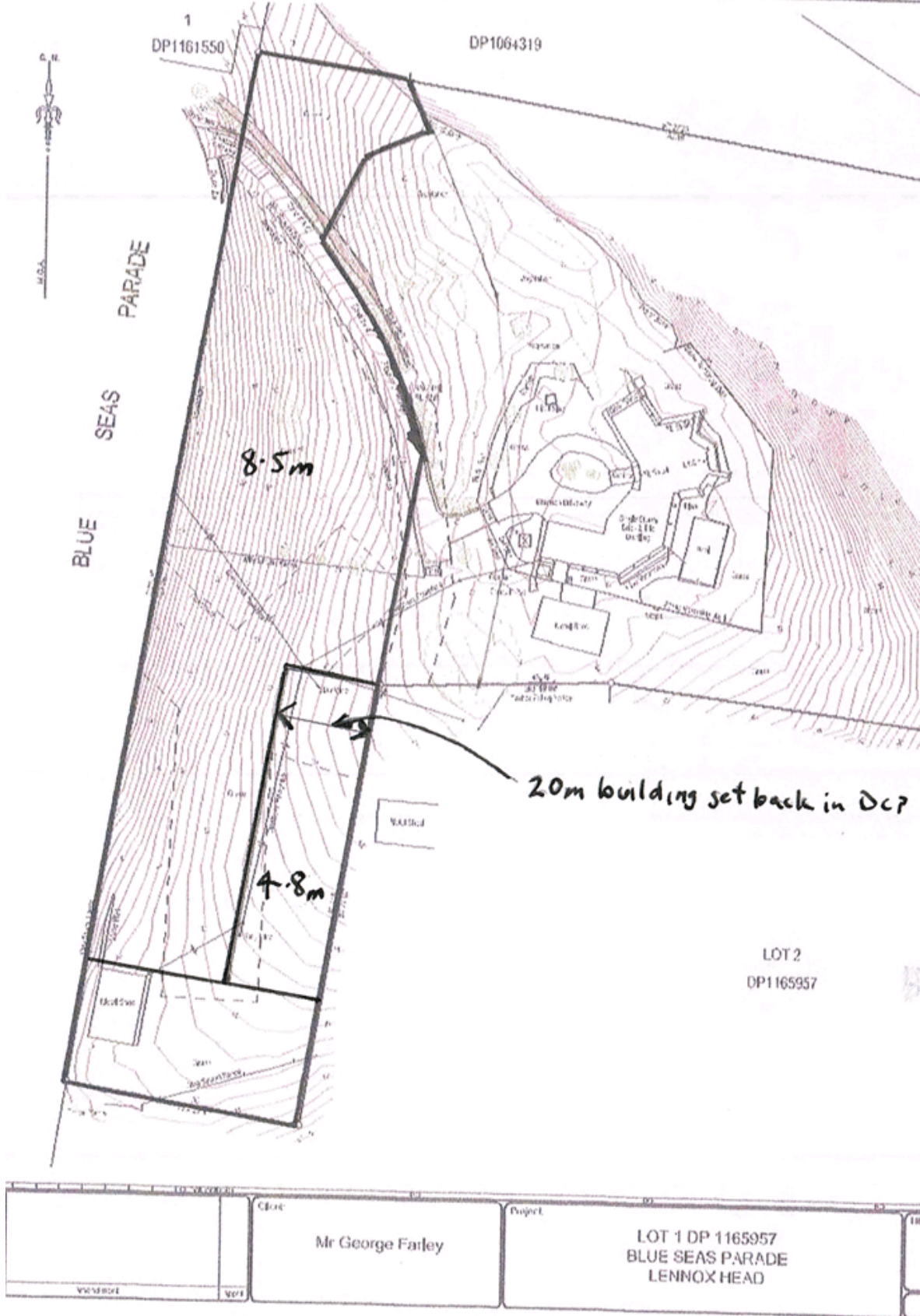
Photo 5.
Tree root on the southern side of the driveway
approximately 50 mm in diameter.



Photo 6.
Minor cracks in the bitumen.

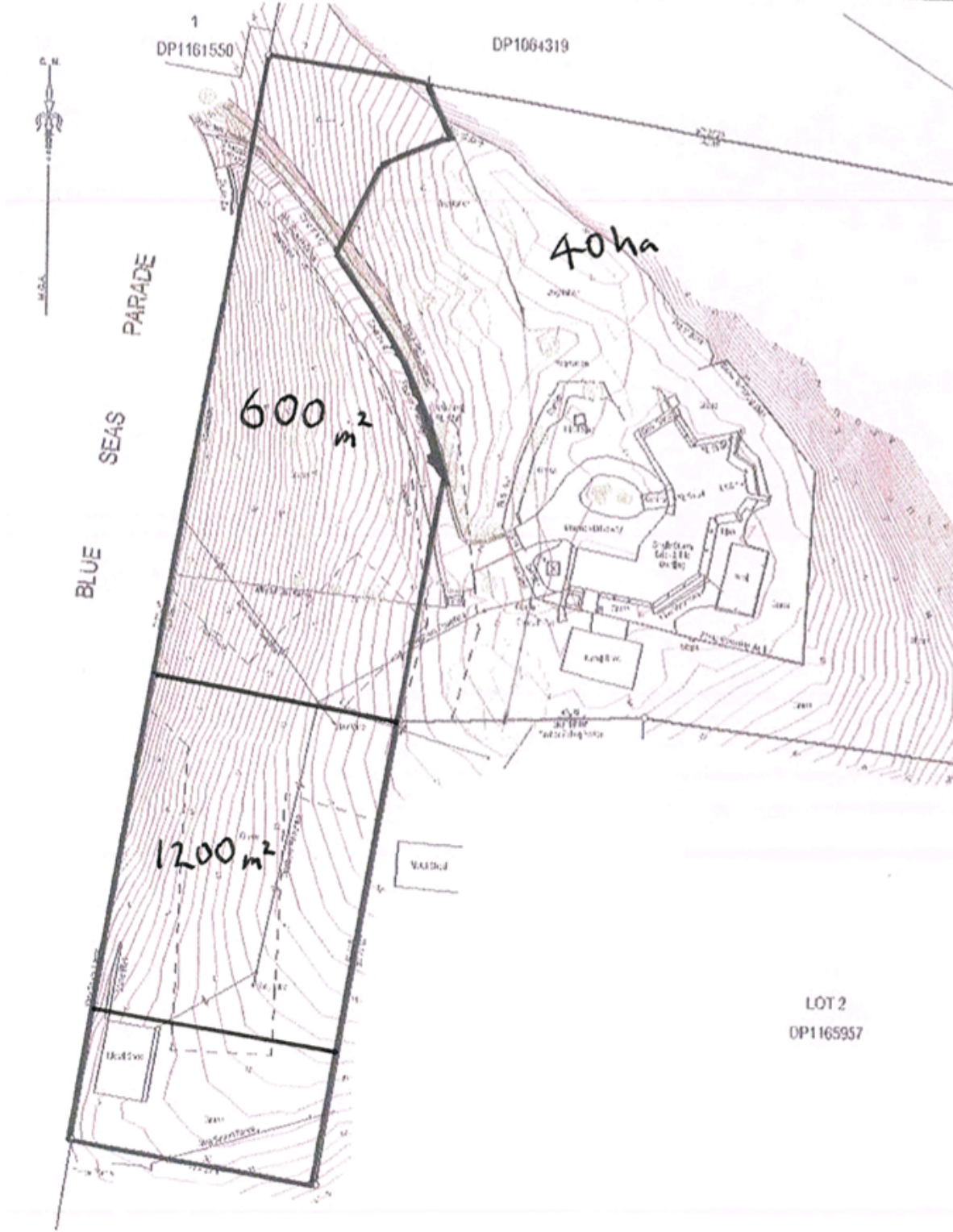
APPENDIX B

Building height and building setback area on the subject land



APPENDIX C

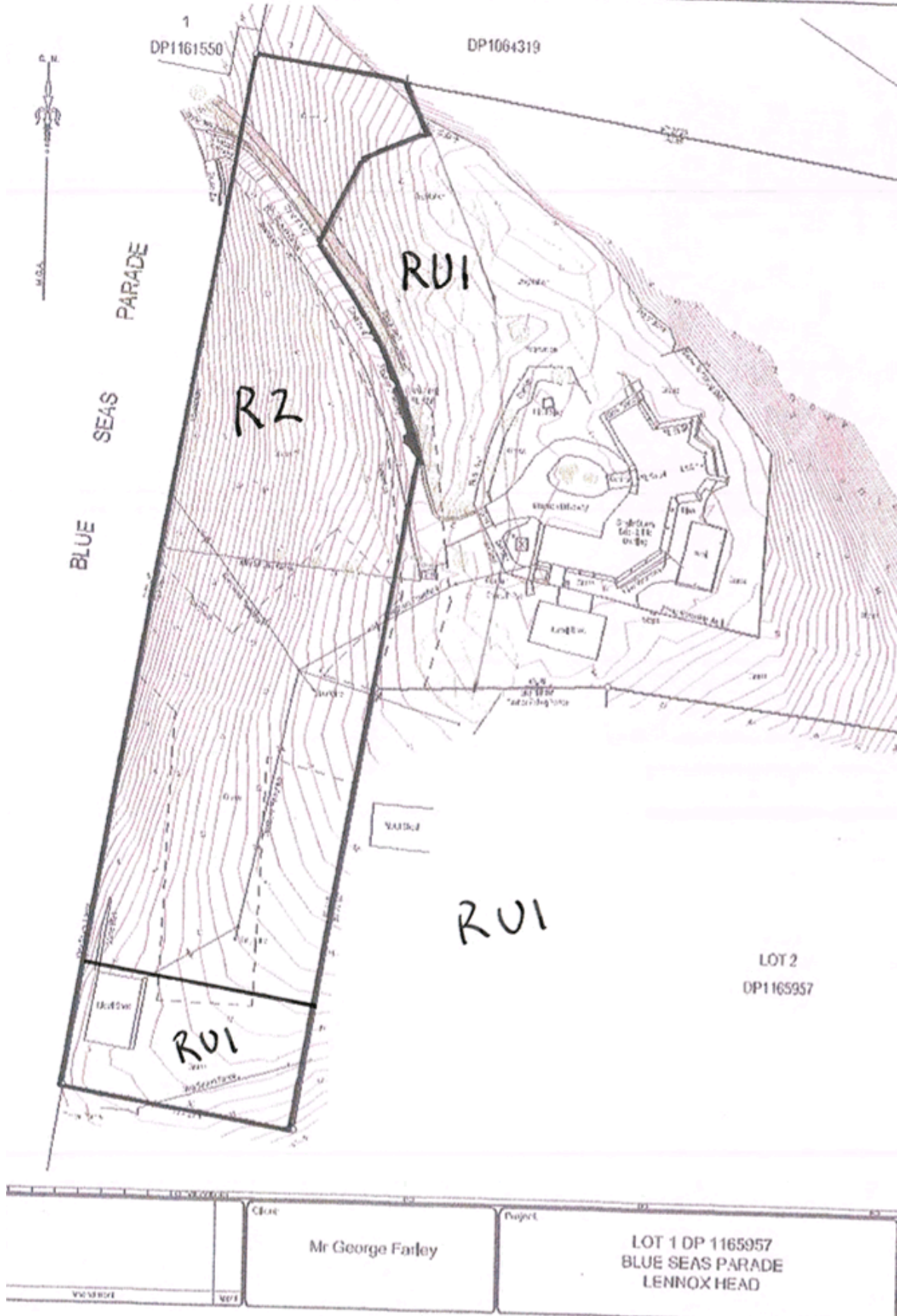
Minimum lot size on the subject land



	<p>Client Mr George Farley</p>	<p>Project LOT 1 DP 1165957 BLUE SEAS PARADE LENNOX HEAD</p>
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APPENDIX D

Recommended zone regime on the subject land



Attachment Three – Correspondence Received From Public Authorities

Ballina Byron Gateway Airport

Dear Klaus,

I refer to your email below re Planning Proposal BSCPP 14/005 and attached documents.

My assessment, conclusions and recommendations in so much as the application affects the airspace of Ballina Aerodrome are as follows:

PROPOSED DEVELOPMENT

This planning proposal proposes the rezoning of the currently rural zoned site to permit approximately 7 - 13 lots.

Lot yield will be dependent on whether a 600m² or a 1200m² minimum lot size is applied to the land once rezoned.

PROPOSED SITE

- Private Property Address: 44-52 Blue Seas Parade, Lennox Head, NSW.
(Part Lot 1 DP 1165957)
- MGA Co-Ordinates: The site is generally contained within the following Co-ordinates (MGA94 Zone 56)

- North West corner	558 449 E	6 813 353 N
- North East corner	558 484 E	6 813 347 N
- South East corner	558 460 E	6 813 126 N
- South West corner	558 412 E	6 813 135 N
- Elevation: The elevation at ground level of the subject land ranges approximately from 56m ASL to as high as 64m ASL as determined from the 2m contour layer on the Council's GIS.
- The site is located

- at its closest extremity:	approx. 3733m north east of the RWY24 Inner Edge.
- at its furthest extremity:	approx. 3932m north east of the RWY24 Inner Edge.
- Two existing residences adjoin immediately to the east of the subject rezoning site.
- A large Moreton Bay Fig tree and a tall Norfolk Island Pine tree are located within the rezoning site. No information is provided in the documentation as the height of the trees.
- It is noted in the attached Referral Letter that in regard to the proposal, the permitted residential building height will be 8.5 metres.

OBSTACLE LIMITATION SURFACES (OLS)

- The site is located under the Ballina Aerodrome Obstacle Limitation Horizontal Surface. The vertical limit of this surface at the site is R.L. 46.5 m AHD (00m Sea Level equals approx. 00m AHD).
- The natural terrain of the site being 64m ASL at the highest point, penetrates the Horizontal Surface by more than 17.5m (by mere observation, the existing buildings and trees would obviously penetrate the OLS even further).

PANS-OPS SURFACES

- The proposed development is situated under the lateral dimensions of the NDB-A; RNAV-Z (GNSS)RWY 06; RNAV-Z (GNSS) RWY 24; the RNAV-X (RNP) RWY 06; and the RNAV-X (RNP) RWY 24 instrument approach and/or departures surfaces.
- PANS-OPS Surfaces cannot be infringed in any circumstances.

FURTHER COMMENT

- The site is located east of and immediately adjacent to an existing and well established residential area.
- The site is only 650 metres eastwards of a similar rezoning proposal BSCPP14/002 - Reservoir Hill Site Lennox Head, which was subject to assessment by Airport Management, the CASA and Air Services Australia last year. Penetration by this land into the OLS is not as extensive as the subject site. CASA (letter dated 6 November 2014) stated no obstacle lighting was required for the development however to mitigate their own risk Council should consider installing a low intensity steady red obstacle light on the water tower.
- It is the view of Airport Management that in terms of new development or proposed construction, likely to create an obstacle, infringement of the OLS be not made worse.

CONCLUSIONS

1. The Planning Proposal relates to a rezoning of existing Rural Land to permit the development of between 7 – 13 residential allotments.
2. Existing terrain penetrates the OLS by more than 17.5 metres.
3. The erection of any tall structure is not specifically planned with this proposal.
4. The permitted residential building height of 8.5 metres will apply.
5. Existing trees of substantial height are located on the site.

RECOMMENDATIONS

Having regard to my comments and conclusions above:

Airport Management raise no objection in principle against the subject Planning Proposal BSCPP 14/005 at 44-52 Blue Seas Parade, subject to the following:

- A. The rezoning proposal be for residential development only and the maximum building height be 8.5 metres above natural ground level.
- B. The proponent undertake a survey of the trees for further assessment to confirm their impact on the Obstacle Limitation Surface, with the view that:
 - a. The trees be trimmed, lopped or removed; or
 - b. If the trees are to remain, CASA may require installation of a low intensity steady red obstacle light to mark the trees.
 - c. If such an Obstacle Light is proposed, then consideration should be given to providing one single obstacle light in a suitable location to satisfy the requirements of both the subject site and the Reservoir Hill Site.
- C. Any obstacle lighting must comply with CASA standards. Ballina aerodrome must monitor the obstacle lights daily, which can be achieved visually or by a remote monitoring capability. In all probability the site would not be seen from the airport, and we may require that the proponent provide remote monitoring capability.
- D. As regards installation of any obstacle lighting, advice is to be provided to Ballina Airport Management:

- a. upon determination of that requirement;
 - b. at the commencement of works for installation of the light on site;
 - c. at least one week prior to the use of any crane to be erected for use of construction works for the light installation, so an assessment on airport space can be made and a Notice to Airmen prepared and issued; and
 - d. upon completion of works on site.
- E. The proposed site affects the Horizontal Surface of the Ballina Aerodrome OLS. The application and the above information is to be referred to the Civil Aviation Safety Authority for further assessment and advice regarding measures to mitigate any adverse effects on air navigation.
- The District Aerodrome Inspector
Civil Aviation Safety Authority
PO Box 2005
Canberra ACT 2601.
Em. daniel.eatock@casa.gov.au
- F. The proposed site is situated under the lateral extents of the PANS-OPS Surfaces for Ballina Aerodrome. Note: PANS-OPS Surfaces cannot be infringed in any circumstances. The application and the above information is to be referred to Air Services Australia for assessment of the proposed development against the PANS-OPS surfaces to determine infringement (if any).
- Senior Designer – Procedure Design Section
Aeronautical Information Management
GPO Box 367
Canberra ACT 2601.
Em. Pds.procs@airservicesaustralia.com

Regards

Graeme Gordon
Airport Operations Manager
Ballina Byron Gateway Airport



ballina.nsw.gov.au | discoverballina.com | ballinabyronairport.com.au
p: 02 6681 1858 | f: 02 6681 1873 | m: 0415 222 349

Airservices Australia

From: Sepasspour, Chris [mailto:Christopher.Sepasspour@AirservicesAustralia.com]

Sent: Friday, 20 March 2015 2:56 PM

Subject: RE: Consultation re OSL breach for proposed rezoning at Lennox Head

Hi Klaus,

I refer to the application for property development and rezoning at 44-52 Blue Seas Parade, Lennox Head.

With respect to procedures designed by Airservices in accordance with ICAO PANS-OPS and Document 9905, at a height of 72.5m (238ft) AHD, using a residential building of 8.5m AGL, the property development will not affect any sector or circling altitude, nor any instrument approach or departure procedure at Ballina aerodrome.

Note: procedures not designed by Airservices at Ballina aerodrome were not considered in this assessment

Regards,

Chris Sepasspour

Airspace, Air-route & Procedure Design Specialist

Air Traffic Control | airservices

☎ 02 6268 5487 | ☎ 0424 169 481 | ✉ chris.sepasspour@airservicesaustralia.com

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Civil Aviation Safety Authority (CASA)



Australian Government
Civil Aviation Safety Authority

AIRSPACE AND AERODROME REGULATION
File Ref: EF12/10657-5

02/04/2015

Mr Klaus Kerzinger
Strategic Planner
Strategic & Community Facilities Group
PO Box 450
BALLINA
NSW 2478

email: klausk@ballina.nsw.gov.au

Dear Mr Kerzinger

Re: Ballina-Byron Gateway Airport – OLS consultation – Part Lot 1 DP 1165957, 44 – 52 Blue Seas Parade, Lennox Head:

I refer to the correspondence dated the 23rd of March 2015, requesting CASA's assessment of the Department of Planning and Environment's planning, proposed changes to the land use zoning of subject rural zoned site on land within the Obstacle Limitation Surface (OLS) for the Ballina Byron Gateway Airport.

CASA has assessed the proposed development; the assessment included the consideration of comments from Ballina Byron Gateway Aerodrome management team, and CASA Flying Operations Inspector (FOI).

Unless the Ballina aerodrome management team have the ability to assess this application against all Procedures for Air Navigation Services – Aircraft Operations (PANS-OPS) surfaces, an assessment will be required by the procedural designers.

As notified by Council the property development maximum building height of 8.5 metres is adjacent to Council land use proposals, which have previously been assessed by CASA.

CASA has determined that these structures would normally be classified as hazardous objects under regulation 139.370(1) of the *Civil Aviation Safety Regulations 1998* because of its height, location and lack of obstacle lighting.

However the proposed property is surrounded by existing developments which at night are lit, as will the future proposal, and therefore would provide visual indication of the height of the area.

However Council could consider as part of your own safety and risk management approach that Obstacle Lighting is installed on the highest most practicable point of the land to be developed by:

- I. Installing a low intensity steady red lighting at night as per Section 9.4 of the MOS. Characteristics for low intensity lights are stated in subsection 9.4.6, and
- II. The obstacle lighting should be maintained in serviceable condition and any outage immediately reported to the aerodrome Ballina/Gateway aerodrome operator, and.

If obstacle lighting is undertaken as suggested above, then in accordance with regulation 139.350(1) of the *CASR 1998* and subsection 7.1.4 and 9.4.10 of the Manual of Standards – Part 139 Aerodromes, Ballina/Byron Gateway Aerodrome is to monitor the ongoing availability of the obstacle lighting.

GPO Box 2005 Canberra ACT 2601 Telephone 131 757
Canberra, Brisbane, Darwin, Cairns, Townsville, Tamworth, Sydney, Melbourne, Adelaide, Perth

For detailed requirements for the monitoring of obstacle lights within the aerodrome's OLS refer to subsection 9.4.10 of MOS Part 139.

Yours sincerely,



Danny Eatock
Aerodrome Inspector
Brisbane Office

NSW Department of Industry Division of Resources and Energy

From: Andrew Helman [mailto:andrew.helman@industry.nsw.gov.au]

Sent: Monday, 29 February 2016 11:58 AM

Subject: Planning proposal BSCPP 14/005 - Rezoning Blue Seas Parade - Geological Survey of NSW

Good morning Klaus,

NSW Department of Industry - Geological Survey of NSW does not have issues to raise regarding the proposed rezoning of 44 - 52 Blue Seas Parade, Lennox Head.

No significant mineral resources (as identified in Mineral Resource Audit - Ballina Shire, July 2015) nor any mineral or petroleum titles exist in the vicinity of, or over the subject site.

Regards,
Andrew

Andrew Helman | Geoscientist | Minerals and Land Use Assessment | Geological Survey of NSW

NSW Department of Industry | Division of Resources and Energy

516 High Street | Maitland NSW 2320 | PO Box 344 | Hunter Region Mail Centre NSW 2310

T: 02 49 31 6572 | E: andrew.helman@industry.nsw.gov.au

W: www.trade.nsw.gov.au | www.resourcesandenergy.nsw.gov.au

NSW Department of Primary Industry – Water



Contact Christie Jackson
Phone 02 6763 1426
Email christie.jackson@dpi.nsw.gov.au

OUT16/11623

Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Email: council@ballina.nsw.gov.au

Attention: Klaus Kerzinger

Dear Mr Kerzinger,

**Planning Proposal: BSCPP 14/005
Proposed Residential Rezoning 44-52 Blue Seas Parade, Lennox Head**

I refer to your letter dated 19 February 2016 seeking comments from the Department of Primary Industries – Water (DPI Water) on the planning proposal for Blue Seas Parade, Lennox Head.

DPI Water understands the planning proposal is for rezoning the land from RU1 Primary Production to R2 Low Density Residential Zone. The planning proposal does not provide detailed information on the future proposal for the site therefore DPI Water's comments will be general.

Water Supply and Licensing: The planning proposal report states that any future subdivision on the site will be serviced by reticulated water supply.

DPI Water recommends Council carefully consider the water supply to service this area to ensure there will be a secure (quality and quantity) reliable and manageable water supply for any future developments.

Any proliferation of residential living in the local government area may increase the demand and use of water resources, affect other users of the resource including the environment and potentially contribute to declining river health (for example decline in aquatic habitat, geomorphic stability, water quality and riparian areas etc) unless properly managed. The potential future subdivision of the site requires a strategic understanding of the water needs of different allotments by size and location.

Basic Landholder Rights: The *Water Management Act 2000* provides that landholders with land overlying an aquifer, or with river or lake frontage, can access water for domestic (household) purposes, without the requirement for an access licence, through a domestic and stock right. Landholders can also capture a portion of rainfall from their property under a

Tamworth Agricultural Institute 4 Marsden Park Road Calala NSW 2340 | PO Box 550 Tamworth NSW 2340
t (02) 6763 1426 | www.water.nsw.gov.au

harvestable right. These rights are known as basic landholder rights (BLRs). DPI Water notes that where landholdings are subdivided, creating new basic landholder rights for water extraction, there is the potential to impact on existing water users, including the environment. Whilst the planning proposal outlines any future developments will be supplied by town water supply, consideration should be given to the potential increase in basic landholder rights and the impacts on other users and the environment.

Groundwater: Council should consider the impacts of future developments on the site on groundwater. In coastal areas the groundwater is quite shallow and there is the potential for contamination. Council should consider locating future settlement intensification (in particular new subdivisions) away from vulnerable groundwater resources and existing groundwater users. This minimises land use conflict, maintains existing industries reliant on water supply and achieves important environmental outcomes for the systems connected to these sources.

Future Development Application: Future development applications for the site should include information on the following issues, including, but not limited to:

- Impacts of the development on surface water and groundwater;
- Impacts on any watercourses/ wetlands on or adjacent to the site;
- Management of stormwater;
- Consideration and provision of adequate setbacks or buffers to sensitive areas such as watercourse, wetlands;
- Management of Acid Sulfate Soils;
- Provision of infrastructure and services;
- Consideration of potential off-site impacts;
- Consideration of all relevant guidelines.

DPI Water would like the opportunity to review any future development applications proposed for this land.

If you require clarification on any of the above please contact Christie Jackson on (02) 6763 1426 at the Tamworth office.

Yours sincerely,



Brendan Fletcher
A/ Manager Assessments
7 March 2016

NSW Rural Fire Service



NSW RURAL FIRE SERVICE



The General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Your reference: BSCPP 14/005
Our reference: L12/0003
DA 16022200833AB

Attention: Mr Klaus Kerzinger

16 March 2016

Dear Mr Kerzinger,

Planning Proposal - Ballina Local Environmental Plan 2012 Residential Rezoning lot 1 DP 1165957; 44-52 Blue Seas Parade Lennox Head

I refer to your letter dated 19 February 2016 seeking comments from the NSW Rural Fire Service (NSW RFS) with respect to the above Planning Proposal.

The NSW RFS has reviewed the submitted documentation and understands the Planning Proposal intends to amend Ballina Local Environmental Plan 2012 with respect to part Lot 1 DP 1165957 to rezone the land from RU1 Primary Production zone to R2 Low Density Residential zone. The concept subdivision plan submitted with the Planning Proposal bush fire report is understood to be indicative only and any such development of the land would be subject to a separate development application following the rezoning of the land.

The NSW RFS notes that part of the land is mapped as bush fire prone by Ballina Shire Council.

It is also noted that the Bushfire Threat Assessment accompanying the Planning Proposal has identified future residential subdivision of the land can comply with the specifications and requirements of *Planning for Bushfire Protection 2006*.

The NSW RFS has no objection to the Planning Proposal proceeding, noting that any future subdivision of the land would be subject to further assessment in accordance with Section 100B of the *Rural Fires Act 1997*.

With respect to potential future residential development of the land, the following comments are provided:

- future development applications for all development on bush fire prone lands will be required to comply with either S79BA of the Environmental Planning and Assessment Act 1979 or S100B of the Rural Fires Act 1997, depending upon the nature of the proposed development, and the relevant provisions of *Planning for Bush Fire Protection 2006*.
- it should be noted that the minimum specifications for asset protection zones for residential subdivisions in Table A2.5 of *Planning for Bush Fire Protection 2006* do not correspond directly with the minimum separation distances for BAL-29 construction under Table 2.4.3 of *AS 3959-2009 Construction of Buildings in Bushfire-Prone Areas*. Minimum asset protection zones for future development should be designed to achieve separation distances consistent with BAL 29 under AS 3959-2009.

Postal address

NSW Rural Fire Service
Coffs Harbour Customer Service Centre
Suite 1, 129 West High Street
COFFS HARBOUR NSW 2450

Street address

NSW Rural Fire Service
Coffs Harbour Customer Service Centre
Suite 1, 129 West High Street
COFFS HARBOUR NSW 2450

T (02) 6691 0400
F (02) 6691 0499
www.rfs.nsw.gov.au

For any queries regarding this correspondence please contact Alan Bawden on 1300 NSW RFS.

Yours sincerely



John Ball
Manager – Customer Service Centre Coffs Harbour

The RFS has made getting information easier. For general information on 'Planning for Bush Fire Protection, 2006', visit the RFS web page at www.rfs.nsw.gov.au and search under 'Planning for Bush Fire Protection, 2006'.

NSW Department of Primary Industry – Agriculture



OUT16/13699

24 March 2016

General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Attention: Klaus Kerzinger

Dear Sir/Madam

Re: Planning Proposal – BSCPP 14/005, 44 - 52 Blue Seas Parade, Lennox Head

Thank you for the opportunity to provide comments on the proposed rezoning of part of Lot 1 DP1165957 from RU1 Primary Production to R2 Low Density Residential, as per your letter dated 19 February 2016. Department of Primary Industries (DPI) Agriculture has reviewed the Planning Proposal and associated Land Use Conflict Risk Assessment (LUCRA) and provides the following comments:

Rezoning the part of Lot 1 DP1165957 which has been strategically identified as an 'Urban Growth Area' under the Far North Coast Regional Strategy and Ballina Growth Management Plan is supported in principle as well as the removal of Lot 2 DP1165957 from the Strategic Urban Growth Area.

As noted within the planning documents, the subject site and surrounding agricultural land has been identified as Regionally Significant, Non-contiguous Farmland under the *Northern Rivers Farmland Protection Project - Final Recommendations*. Such land is considered a highly important agricultural resource for the region and is under significant pressure from competing demands for housing and other forms of development. Whilst the planning proposal is considered justifiably consistent with the principles outlined in the Farmland Protection Project Recommendations (given its strategic identification for urban growth under regional and local strategic planning documents), due consideration of the cumulative impacts from the loss of important agricultural lands within the LGA is recommended.

DPI Agriculture considers that the planning proposal does increase the potential for land use conflict with the adjoining agricultural activities despite the LUCRA statement to the contrary. It is recognised that the residential development to the west of the agricultural land already poses a land use conflict risk to the agricultural land. However increasing the number of residents adjoining the land through the proposed rezoning will heighten the risk of potential complaints against existing or future agricultural activities.

The 'Living and Working in Rural Areas' handbook (Learmonth *et al* 2007) provides a recommended minimum buffer distance between residential areas and grazing of stock of 50m and to cattle yards of 200m. Site specific factors will also play a role in determining the most appropriate level of separation and/or approach to conflict avoidance.

NSW Department of Primary Industries
Wollongbar Primary Industries Institute, 1243 Bruxner Highway, Wollongbar NSW 2477
Tel: 02 66261215 Fax: 02 66281744 www.dpi.nsw.gov.au ABN: 72 189 919 072

The LUCRA indicates that the existing shed between the cattle yards and proposed development will be a sufficient barrier between the two land uses. This consideration however fails to consider such times as cattle weaning when cattle bellowing will be more frequent. Further consideration of land use conflict mitigation measures should be considered. Refer to the 'Living and Working in Rural Areas Handbook' at:
http://www.dpi.nsw.gov.au/research/alliances/centre_for_coastal_agricultural_landscapes/living-and-working-in-rural-areas .

It is also recommended that a rural area notice be provided to any purchaser/lessee of the subsequent subdivision lots advising that their property is located within close proximity to an agricultural activity where incidences of noise, odour and dust may occur.

Your attention is drawn to the NSW Government's 'Right to Farm Policy' that has recently been released that provides further information on the Government's commitment to reducing land use conflict to increase certainty for existing agricultural use. Further information is available at:
<http://www.dpi.nsw.gov.au/agriculture/resources/lup/legislation/right-to-farm-policy> .

It is recognised that the subject area and surrounding land has a high scenic value. The proposal to restrict the area to be rezoned and to increase the minimum lot size of the resultant lots to 1200m in consideration of the scenic amenity and potential land use conflict is supported.

Should you require clarification on any of the information contained in this response, please contact Selina Stillman on (02) 66261215 or Alex Wells on (02) 66503125.

Yours Sincerely



Liz Rogers
Manager,
Agricultural Land Use Planning

Essential Energy



Ref: RM:SG 244404

30 March 2016

By email: klausk@ballina.nsw.gov.au
Klaus Kerzinger
Strategic Planner
Ballina Shire Council
PO Box 450
Ballina NSW 2478

Dear Klaus

**Planning proposal BSCPP 14/005 proposed relocation of Essential Energy easement for overhead powerlines 20 metres wide
Property: 44-52 Blue Seas Parade Lennox Head more particularly described as Lot 1 in DP1165957**

We refer to your correspondence dated 19 February 2016 seeking comment from Essential Energy in relation to the planning proposal as indicated above.

For Essential Energy's infrastructure to be removed or relocated within the proposed development Essential Energy requires:

- a) the developer to submit a design information application to Essential Energy;
- b) any electricity infrastructure design and construction work to be completed by a suitably qualified Accredited Service Provider not at the expense of Essential Energy; and
- c) easements for new or relocated powerlines to be created using Essential Energy's standard easement terms current at the time of registration. Currently reference should be made to Part A/B/C of Memorandum AG189384.

It should be noted that as there is low voltage overhead electricity infrastructure in the area. It is the responsibility of the person/s completing any works around powerlines to understand their safety responsibilities. WorkCover NSW (www.workcover.nsw.gov.au) has publications that provide guidance when working close to electricity infrastructure this includes the *Code of Practice – Work near Overhead Power Lines*.

If you have any queries or require any further information please contact Steve Gardoll Encroachment Officer by telephone 02 6589 8926 or by email steve.gardoll@essentialenergy.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read "Raelene Myers".

Raelene Myers
Conveyancing Team Leader

PO Box 5730 Port Macquarie NSW 2444 | Telephone: (02) 6589 8810 | essentialenergy.com.au