



# **Planning Proposal – September 2016**

## **44 – 52 Blue Seas Parade, Lennox Head**

Part Lot 1 and Part Lot 2 DP 1165957, Blue Seas Parade,  
Lennox Head

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## INTRODUCTION

### Summary of Planning Proposal

This planning proposal primarily relates to part Lot 1 DP 1165957 (Lot 1) known as 44 – 52 Blue Seas Parade, Lennox Head, as shown on the Site Identification Map in Part 4.

The proponent and land owner is Mr George Farley. The LEP amendment request (Refer Appendix G) has been prepared by Mr Paul Snellgrove of Ardill Payne and Partners.

Lot 1 has a total area of 3.476 hectares and frontages to Blue Seas Parade and The Coast Road. The land the subject of the LEP amendment request has an approximate area 1.1 hectares and an approximate frontage to Blue Seas Parade of 196 metres.

The amendment as proposed by the proponent (subsequently amended by the Council at its meeting on 28 July 2016) involves the rezoning of part of Lot 1 designated as a Strategic Urban Growth Area (SUGA) from RU1 Primary Production to R2 Low Density Residential zone (see Existing and Proposed Zoning Maps in Part 4).

The proponent's original LEP amendment request submission indicated, that based on a 600m<sup>2</sup> lot size, the site could yield up to 13 lots. A concept subdivision was subsequently prepared by the proponent in September 2015 which indicated that 9 residential lots and a rural residue lot were proposed. The residential lots on this plan ranged in size from 870m<sup>2</sup> to 950m<sup>2</sup>.

Following the decision of the Council at its meeting on 28 July 2016 to adjust the area proposed for residential zoning and apply a mixed 600m<sup>2</sup> and 1200m<sup>2</sup> minimum lot size regime to the land proposed for residential zoning, lot yield was further reduced. An amended subdivision concept plan was submitted by the property owner in July 2016 which makes provision for 8 residential lots, and a residue lot (Lot 10) which retains its current RU1 Primary Production zoning.

Appendix K contains the subdivision concept plan prepared by the proponent in September 2015 as well as the amended concept plan submitted by the property owner in July 2016.

This planning proposal has been prepared on the basis that the land proposed for residential rezoning will be subject to a mixed 600m<sup>2</sup> and 1200m<sup>2</sup> minimum lot size regime. The proposed 1200m<sup>2</sup> minimum lot size for part of the site is considered appropriate having regard to the following factors:

- Provides additional scope for buffers to the adjoining primary industry; and
- Ridge top location and associated scenic amenity considerations.

The proposed Lot Size Map which forms a part of this planning proposal also applies a 600m<sup>2</sup> minimum lot size to that part of Blue Seas Parade which adjoins Lot 1 to ensure consistency with adjoining properties.

This planning proposal also relates to Part Lot 2 DP 1165957 (Lot 2) which contains a triangular section of land, having approximate area of 900m<sup>2</sup>, which is also designated as a Strategic Urban Growth Area (SUGA). It is proposed to remove the SUGA affectation from Lot 2 as well as from the section of Blue Seas Parade which adjoins Lot 1. The SUGA affectation on Lot 2 resulted from the non alignment of subdivision and SUGA boundaries at the time of creation of Lots 1 and 2 in 2011.

Consultation with the owners of Lot 2 has revealed that they object to the proposed rezoning of Lot 1. They state, however, that if the rezoning is to go ahead then they support the removal of the SUGA affectation from their property.

A Gateway determination was issued on 3 February 2015 which requires the LEP to be completed within a 12 month period. The time period in which to complete the LEP was subsequently extended by the Department of Planning and Environment until 10 February 2017.

Appendix J contains a copy of the original Gateway determination and the alteration dated 30 November 2015. Also contained within Appendix J is a letter from the Department of Planning and Environment, dated 16 September 2016. This letter confirms that the changes made to the planning proposal, following Council's meeting on 28 July 2016, do not require an alteration to the Gateway determination dated 3 February 2015. The Department's letter also confirms that the requirements of condition No. 2 of the Gateway determination (determination of minimum lot size and submission of material for community consultation) have been satisfied and Council may now proceed with community consultation and assessment of the proposal.

The Gateway determination required the following seven site specific studies and assessments to be prepared prior to public exhibition:

- Contaminated Land Assessment and Remediation Action Plan,
- Coastal Zone Impacts and Visual Amenity Impacts Assessment,
- Bushfire Threat Assessment Report,
- Geotechnical Assessment (Landslip),
- Due Diligence Aboriginal Heritage Assessment,
- Land Use Conflict Risk Assessment, and
- Flora and Fauna Assessment.

The proponent's consultant submitted technical reports during February and March 2016 which were then subject to staff assessment and external consultation as required by the Gateway determination. Consultation was undertaken with the following public authorities and agencies:

- Air Services Australia,
- Ballina Byron Gateway Airport (Ballina Council),
- Civil Aviation Safety Authority (CASA),
- NSW Primary Industries, and
- NSW Rural Fire Service.

Appendix L contains copies of public authority and agency responses. A summary of comments received is contained within *Section D - State and Commonwealth interests* of this planning proposal report.

Council engaged Mike Svikis Planning (MSP) to review the technical assessments submitted by the proponent and prepare a *Document Review and Gap Analysis Report*. This report also considered the comments made by public authorities and agencies as well as by various Council staff.

Appendix M contains a copy of the MSP *Document Review and Gap Analysis Report*. A summary of the conclusions reached by MSP in the *Document Review and Gap Analysis Report* is contained within the Planning Context section of this report under the heading of Planning Issues.

## Planning Context

### Site History

Lot 1 was created in July 2011 from the re-subdivision of Lot 2 DP 587685 and two other lots. Lot 2 DP 587685 which had an area of 31.52 hectares was the subject of a rezoning application submitted in May 2008.

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. An indicative plan of subdivision showed 12 residential lots were proposed to be created at that time.

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 (SUGA) mapping within Ballina LEP 2012.

The extent of the proposed rezoning, the subject of this amended planning proposal, reflects the reduced area resulting from Council's resolution in March 2011, and the further reduction occasioned by Council's decision on 28 July 2016 to decrease the area proposed to be zoned R2 Low Density Residential.

### Council Resolutions – Planning Proposal for Rezoning of Lot 1

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 m<sup>2</sup>.*

Council again considered the rezoning request 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:*

2. *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.*
3. *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.*

### **Request for pre-Gateway Review and Subsequent Council Resolution**

A request for a pre-Gateway review was submitted to the Department of Planning and Environment on 19 August 2014 by Paul Snellgrove, Ardill Payne and Partners, on behalf of the proponent Mr George Farley. The review was considered by the Joint Regional Planning Panel on 25 November 2014.

The Department of Planning and Environment advised Council, by letter dated 8 December 2014, that the planning proposal should proceed to the Gateway determination stage. Council was also requested to advise whether it would like to be the Relevant Planning Authority (RPA) and submit a planning proposal for Gateway determination.

Appendix H contains copies of letters received from the Department of Planning and Environment.

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.*

Appendix I contains a copy of the report to Council's Ordinary Meeting on 22 January 2015.

### **Council's Consideration of Document Review and Gap Analysis Report**

Council considered the *Document Review and Gap Analysis Report* prepared by MSP at its meeting on 23 June 2016. The MSP report also included consideration of advice received from public authorities and agencies as well as from Council staff. In respect to this matter the Council initially resolved as follows [Minute No. 230616/8], (This decision was subsequently rescinded at Council's Ordinary Meeting on 28 July 2016):

1. *That the planning proposal relating to land comprising part Lot 1 and part Lot 2 DP 1165957, Blue Seas Parade, Lennox Head be amended to make provision for the altered zoning and minimum lot size regime as shown in Diagram 3 within this report, **with the proposed residential zone being no closer than 50 metres from the common property boundary to the south (Mr and Mrs Small's property)** [emphasis added].*
2. *The existing maximum building height of 8.5 metres applicable to the site be retained.*
3. *The amended planning proposal be submitted to the NSW Department of Planning and Environment for an altered Gateway determination.*
4. *A draft amendment to Ballina DCP 2012 be prepared which incorporates the rear setback provisions applied by the Codes SEPP to lots having an area of 1,200m<sup>2</sup> as detailed in this report, as well as appropriate slope sensitive design principles as recommended in the Mike Svikis Planning report.*

5. *Upon an altered Gateway determination being received, Council authorise the public exhibition of the planning proposal and draft amendments to Ballina DCP 2012 for a minimum period of 28 days.*
6. *That the matter be reported for further consideration by Council following the mandatory public exhibition period.*

Appendix N contains a copy of the report to Council's Ordinary Meeting on 23 June 2016.

### **Council's Consideration of a Rescission Motion**

Council considered a rescission motion at its meeting on 28 July 2016 arising from the following concerns as expressed within the rescission motion:

- that the 50 metre restriction on the zone boundary from the southern property is unreasonable given the proximity to other residential allotments in the immediate vicinity which are closer than the proposed 50 metres;
- the likelihood that the applicant could seek a review from the Department of Planning to overturn the Council decision, considering that the 50 metres was not recommended in the independent review undertaken by Mike Svikis Planning or by Council staff; and
- that the recommendation, as proposed by Council staff and supported by the independent assessment of the proposal, achieves a number of positive outcomes which negate the need for the 50 metre restriction.

In respect to this matter the Council resolved as follows [Minute No. 280716/14]:

*That resolution 230616/8, as follows, be rescinded:*

1. *That the planning proposal relating to land comprising part Lot 1 and part Lot 2 DP 1165957, Blue Seas Parade, Lennox Head be amended to make provision for the altered zoning and minimum lot size regime as shown in Diagram 3 within this report, with the proposed residential zone being no closer than 50 metres from the common property boundary to the south (Mr and Mrs Small's property).*
2. *The existing maximum building height of 8.5 metres applicable to the site be retained.*
3. *The amended planning proposal be submitted to the NSW Department of Planning and Environment for an altered Gateway determination.*
4. *A draft amendment to Ballina DCP 2012 be prepared which incorporates the rear setback provisions applied by the Codes SEPP to lots having an area of 1,200m<sup>2</sup> as detailed in this report, as well as appropriate slope sensitive design principles as recommended in the Mike Svikis Planning report.*
5. *Upon an altered Gateway determination being received, Council authorise the public exhibition of the planning proposal and draft amendments to Ballina DCP 2012 for a minimum period of 28 days.*
6. *That the matter be reported for further consideration by Council following the mandatory public exhibition period.*

Following the successful rescission motion, the Council resolved to adopt the original staff recommendation, which was supported by the independent review undertaken by Mike Svikis Planning, as follows [Minute No. 280716/15]:

1. *That the planning proposal relating to land comprising part Lot 1 and part Lot 2 DP 1165957, Blue Seas Parade, Lennox Head be amended to make provision for the altered zoning and minimum lot size regime as shown in Diagram 3 within this report.*



2. *The existing maximum building height of 8.5 metres applicable to the site be retained.*
3. *The amended planning proposal be submitted to the NSW Department of Planning and Environment for an altered Gateway determination.*
4. *A draft amendment to Ballina DCP 2012 be prepared which incorporates the rear setback provisions applied by the Codes SEPP to lots having an area of 1,200m<sup>2</sup> as detailed in this report, as well as appropriate slope sensitive design principles as recommended in the Mike Svikis Planning report.*
5. *Upon an altered Gateway determination being received, Council authorise the public exhibition of the planning proposal and draft amendments to Ballina DCP 2012 for a minimum period of 28 days.*
6. *That the matter be reported for further consideration by Council following the mandatory public exhibition period.*

Appendix V contains a copy of the report to Council's Ordinary Meeting on 28 July 2016.

### **Consistency with Strategic Planning Policy**

The proposed rezoning of the subject land to enable residential development is generally consistent with both Council and State Government urban planning policy. The following provides an overview of the proposed amendment with respect to key planning policy documents.

#### *Far North Coast Regional Strategy (FNCRS) and Draft North Coast Regional Plan (DNCRP)*

The subject land is located within the existing urban footprint of Lennox Head and designated as a future urban release area under the FNCRS. The proposed rezoning for residential purposes is consistent with this strategy.

The DNCRP designates the subject land as proposed urban land.

#### *Ballina Shire Growth Management Strategy 2012 (GMS)*

The subject land is identified as a strategic urban growth area under the GMS. Given that the site is identified as a potential future urban area, the proposed rezoning for residential purposes is consistent with Council's GMS.

#### *Lennox Head Structure Plan (LHSP)*

The Lennox Head Structure Plan (LHSP) includes the whole of Lot 1 within an area designated as *visually significant land*. It should be noted, however, that the section of Lot 1 the subject of this planning proposal has been subject to some additional visual amenity assessment in association with the previous rezoning request over the land. The subject land is located generally below the top of the ridgeline on the landward side. As such, it was incorporated as a Strategic Urban Growth Area within Ballina LEP 2012. The LHSP was adopted in 2004, well before the GMS and Ballina LEP 2012.

#### *Ballina Local Environmental Plan 2012 (BLEP 2012) and Ballina Local Environmental Plan 1987 (BLEP1987)*

The western most (front) section of Lot 1, which has a frontage to Blue Seas Parade is substantially zoned RU1 Primary Production under the provisions of BLEP 2012. The eastern most (rear) and southern most sections of Lot 1 are designated as deferred matters under BLEP 2012 and retain their Ballina LEP 1987 zones.

The eastern most (rear) section of Lot 1, which has a frontage to The Coast Road, is zoned 7 (d) Environmental Protection (Scenic/Escarpment) under the provisions of BLEP 1987. In addition, a small section of Lot 1 at its southern most end, fronting Blue Seas Parade, is zoned 1(d) (Urban Investigation). Refer to Existing Zoning Map in Part 4.

This planning proposal relates to part of the western most section of Lot 1, which is designated as a Strategic Urban Growth Area under the provisions of Ballina LEP 2012. Part of this section of Lot 1, which is currently, zoned RU1 Primary Production is proposed to be rezoned R2 Low Density Residential.

A minimum 40 hectare lot size is currently applicable to Lot 1.

That part of Lot 2 which is affected by this planning proposal, in so far as the removal of the SUGA affectation is proposed, is zoned RU1 Primary Production under the provisions of BLEP 2012. No change to this zone is proposed at this time.

### Key Planning Issues

Key planning issues identified in relation to the proposal are summarised in the table below. It is noted that these issues, and the associated technical information submitted by the proponent, have been considered in detail in the *Document Review and Gap Analysis Report* prepared by MSP (Appendix M) and by Council's planning staff in the report to the Council's Ordinary Meeting on 23 June 2016 (Appendix N).

Key Issue	Summary
Access and Right of Carriageway (ROW)	<p>A 10 metre wide ROW affects Lot 1 in favour of Lot 2 DP 1165957. The subdivision concept plan contained within Appendix K indicates that it is proposed to access residential lots via an extension to the existing ROW. Council's engineers have indicated that it is feasible to obtain access from the proposed ROW or alternatively from Blue Seas Parade.</p> <p>Access issues are not considered to be an impediment to the proposed rezoning they are issues more appropriately considered at the development application / subdivision stage.</p>
Airport Obstacle Limitation Surface Restrictions	<p>The site protrudes into the existing Obstacle Limitation Surface (OLS) levels associated with Ballina Byron Gateway Airport. Consultation with relevant agencies as required by s117 Direction 3.5 has been undertaken. Responses received are contained within Appendix L.</p> <p>Future development on this site will penetrate the Inner Horizontal Surface (IHS) for Ballina Aerodrome (46.5m AHD). Natural ground on the site at its highest point (64m AHD) already penetrates the IHS, as do existing trees and structures.</p> <p>Consultation with Ballina Byron Airport, Airservices Australia and the Civil Aviation Safety Authority (CASA) has been undertaken. Given the response received, OLS is not an issue that will impact the proposed rezoning of the subject land.</p> <p>The OLS will be required to be further considered at the development application / subdivision stage. Future development will require consultation with airport authorities pursuant to clause 7.5 of Ballina LEP 2012.</p> <p>Aircraft noise modelling for the Ballina/Byron Gateway Airport shows that the site is not affected by any noise contours.</p>

Key Issue	Summary
Bushfire Threat	<p>Lot 1 is partly affected by Category 2 vegetation and is located within the 30 metre bushfire buffer area.</p> <p>A Bushfire Threat Assessment Report has been prepared and is contained within Appendix O. The report has concluded that compliant asset protection zones can be achieved for the future residential subdivision of the land. The report has also found that whilst the majority of the land is mapped as being bushfire prone land that current mapping is somewhat erroneous and does not reflect true and current site conditions.</p> <p>The Rural Fire Service in correspondence dated 16 March 2016 (Appendix L) has raised no objection to the planning proposal proceeding noting that any future development would be subject to further assessment in accordance with s100B of the Rural Fires Act 1997.</p>
Drainage	<p>Council engineers have indicated that the development will require lot-based on-site detention and treatment in accordance with Council's Stormwater Standards and will not adversely impact on the existing stormwater infrastructure in the Coastal Grove Estate.</p>
Due Diligence Aboriginal Heritage Assessment	<p>The planning proposal is supported by an Archaeological Assessment undertaken by Heritage Surveys in November 2006. Appendix Q contains a copy of the Archaeological Assessment.</p> <p>Although the Archaeological Assessment is dated 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 representatives.</p> <p>Consultation with Jali LALC has been recommended by MSP as part of the public exhibition process.</p> <p>MSP has concluded that there is sufficient information available for Council to make a decision in respect to this matter and no further technical information is required prior to this proposal proceeding to public exhibition. Consultation with Jali LALC will be undertaken as recommended by MSP as part of the public exhibition process.</p>
Electricity Easement Relocation	<p>A 20 metre wide easement for overhead power lines affects Lot 1 in favour of Essential Energy. Consultation has been undertaken with Essential Energy who in their response dated 30 March 2016 (Appendix L) have indicated their requirements should it be proposed to relocate the existing low voltage electricity easement.</p>
Land Contamination	<p>A Detailed Contaminated Land Assessment and Remedial Action Plan were previously submitted in support of the 2008 rezoning proposal. These reports are contained within Appendix S.</p> <p>MSP has reviewed these reports and found that they have been prepared in accordance with the requirements of SEPP 55 and the relevant NSW EPA Guidelines.</p> <p>A small part of one proposed residential lot (13m<sup>2</sup>) as shown on the subdivision concept plan contained within Appendix K has been found to be contaminated with lead and pesticides. The RAP contains details of how the land may be remediated.</p> <p>It is noted that land contamination issues appear to affect that part of Lot 1 in close proximity to the farm shed at the southernmost end of the lot 1. This planning proposal retains the current RU1 rural zoning for land within 30 metres of the southern boundary of Lot 1.</p>

Key Issue	Summary
Ecological Matters	<p>An Ecological Assessment in respect to Lot 1 has been undertaken by Blackwood Ecological Services in March 2016. Appendix R contains a copy of this assessment. Vegetation across the majority of the site consists of mainly grassed areas.</p> <p>A site survey was undertaken on 17 March 2016 and recorded no Threatened flora species on the subject or adjacent land. No Hairy Joint Grass was found on the subject land. It was concluded that the subject land has limited biodiversity value due to historical land clearing, fragmentation and occupation. It was also concluded that two Morton Bay fig trees on the land have conservation value and provide forage habitat for mobile fauna species – birds and bats.</p> <p>So as to ensure the future retention of the Moreton Bay fig trees MSP recommends that a 5 metre buffer be applied beyond the drip line of the trees. This buffer area and the area occupied by the trees are recommended by MSP to retain the existing RU 1 zoning which applies to this land and be excluded from residential rezoning.</p> <p>The 5 metre buffer was recommended in a specialist “<i>Arboricultural Impact Assessment Report</i>” commissioned by MSP. This report is contained within Appendix M.</p> <p>The MSP report concludes that in terms of ecological issues sufficient information has been submitted for Council to be able to make a decision on issues related to the ecological attributes of the land and that no further technical information is required.</p> <p>This planning proposal provides for the retention of the RU1 zone for that part of Lot 1 occupied by the Morton Bay fig trees together with the 5 metre buffer from the drip line as recommended in the report by MSP. A large Norfolk Island Pine tree located on Lot 1 is also located within an area which will retain its existing RU1 rural zoning.</p>

Key Issue	Summary
Coastal Zone Impacts and Visual Amenity Impacts	<p>Consideration of relevant matters for consideration as specified in Clause 8 of <i>SEPP 71 - Coastal Protection</i> and Appendix C – Table 3 of the <i>NSW Coastal Policy</i> is required. This includes issues associated with visual impacts.</p> <p>The <i>Coastal Zone Design Guidelines 2003</i> are also required to be considered.</p> <p>The proponent's consultant has submitted a Visual Assessment to support the planning proposal. Appendix P contains a copy of this Visual Assessment.</p> <p>The proponent's assessment has been supplemented by work undertaken by MSP. MSP have undertaken an assessment of the visual and amenity impacts of future residential development on lots shown within the subdivision concept plan (contained within Appendix K).</p> <p>It was concluded by MSP that development of the eastern most 20 metres of the subject land will have the potential to impact on the skyline when viewed from Pat Morton Lookout. MSP has recommended a building height limit of 4.8 metres to be imposed for land at or above the 60 metre contour level. A rear setback (20 metres) has also been recommended to prevent development on the eastern end of certain proposed lots.</p> <p>The proposed building height limit is an LEP control. The 20 metre rear setback is a proposed DCP control.</p> <p>An 8.5 metre building height limit currently applies to the land, which is consistent with the height applicable to R2 zoned areas elsewhere within the shire. MSP notes that under the provisions of the Codes SEPP it would be possible to build an 8.5 metres high dwelling despite the provisions of the LEP.</p> <p>Incorporating a 4.8 metre height limit into Ballina LEP 2012 for this site, as suggested by MSP, is not supported. There are already a number of structures built on the crest of the hill on the subject and adjoin site as well as elsewhere along the Lennox Head escarpment. In this context a reduced building height is not considered to provide any significant advantage, especially in the context of the Codes SEPP's ability to override the height restriction.</p> <p>The approach supported is to reduce the potential for multiple structures through adoption of a larger minimum lot size. The 1,200m<sup>2</sup> minimum lot size endorsed by Council for part of this site is considered appropriate. It will assist to ensure that, whilst buildings will be visible from various vantage points, they will be surrounded by open unbuilt upon areas which will assist to reduce their overall visual impact.</p> <p>The proposed 30 metre minimum rural zone buffer to the southern boundary of Lot 1 will also assist to reduce the visual impact of future residential development. This will be achieved by pushing development further towards the north where it will be clustered with existing development on Lots 1 and 2.</p> <p>A rear building line to the 60 metre contour as suggested by MSP has not been supported as this will push development towards the Blue Seas Parade end of the site. This will also be the steepest part of future residential lots. In this location buildings will have a greater visual impact when viewed from the street level. It is considered that the 12 metre minimum rear boundary setback prescribed by the Codes SEPP (General Housing Code) for buildings having a height greater than 4.5 metres, on lots with an area of 1200m<sup>2</sup>, is appropriate and will bring consistency between the standards applicable to complying development and those applicable to development that requires consent.</p> <p>If the land is to be rezoned for low density residential purposes then it is considered that issues of visual amenity can best be addressed by restricting the lot yield via a suitable larger minimum lot size applied to part of Lot 1 and limiting the extent of the residential zone, as has been recommended by MSP, and setting a 12 metre rear setback as a DCP control for lots subject to the 1200m<sup>2</sup> lot size control.</p>

Key Issue	Summary
Land Slip	<p>Lot 1 is located within an area identified as being susceptible to land slip (Coffey Partners Pty Ltd report and Department of Mineral Resources mapping.)</p> <p>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 covers the proposed site adequately.</p> <p>The study also included references to a site walkover, soil tests and a slope hazard assessment. No evidence of surface springs or past landslip was observed.</p> <p>MSP has advised that given the slopes on part of the site are around 21–23%, there is a basis for imposing the slope sensitive design principles applicable for the adjoining Coastal Grove development to also be applicable to the development on the subject land.</p> <p>MSP has indicated that 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.</p> <p>Council at its meeting on 28 July 2016 has resolved to prepare an amendment to Ballina DCP 2012 which provides for the application of slope sensitive design principles to the land as recommended by MSP.</p> <p>Appendix T contains a copy of the Preliminary Geotechnical Report submitted in support of this planning proposal.</p>
Land Use Conflicts	<p>The compatibility of agricultural land uses located upon Lot 2 with residential uses proposed for Lot 1 requires assessment. To enable determination of minimum buffer distances between agricultural and residential land uses a Land Use Conflict Risk Assessment (LUCRA) report has been prepared by Ardill Payne.</p> <p>Appendix U contains a copy of the LUCRA report.</p> <p>The LUCRA report was assessed by MSP, the Department of Primary Industries – Agricultural Land Use Planning (DPIA) and Council staff.</p> <p>The DPIA have indicated in their correspondence dated 24 March 2016 (Appendix L) that the planning proposal does increase the potential for land use conflict despite statements to the contrary in the LUCRA. Advice was provided that recommended buffer distances between residential areas and grazing of stock of 50m and cattle yards 200m are contained within the 'Living and Working in Rural Areas' handbook. It was also indicated that site specific factors will play a role in determining the most appropriate level of separation and/or approach to conflict avoidance.</p> <p>DPIA also considered the location of a shed which separates the cattle yard on Lot 2 from the proposed residential zone and whether this will provide a sufficient barrier as indicated in the LUCRA. DPIA indicated that this consideration fails to consider such times as cattle weaning when cattle bellowing will be more frequent. DPIA indicated support for the 1200m<sup>2</sup> minimum proposed lot size in consideration of scenic amenity and land use conflict issues.</p> <p>MSP considered the LUCRA and the advice from DPIA and has indicated that the proposed 30 metre buffer to the cattle yards is sufficient in this case. In coming to this view MSP noted the buffer between the R2/RU1 zone currently is Blue Seas Parade which has a width of 20 metres. Recommendations made to reinforce the buffer between rural and proposed residential land include a large 1200m<sup>2</sup> lot size for lots at the southern end of the rezoning site and a DCP control which provides for a setback of at least 12 metre to the rear eastern boundary of proposed 1200m<sup>2</sup> minimum lot size lots.</p> <p>Council considered the issue of appropriate buffer distances at its meeting on 28 July 2016. At that time the Council resolved that the proposed residential zone be no closer than 30 metres from the common boundary to the south.</p>

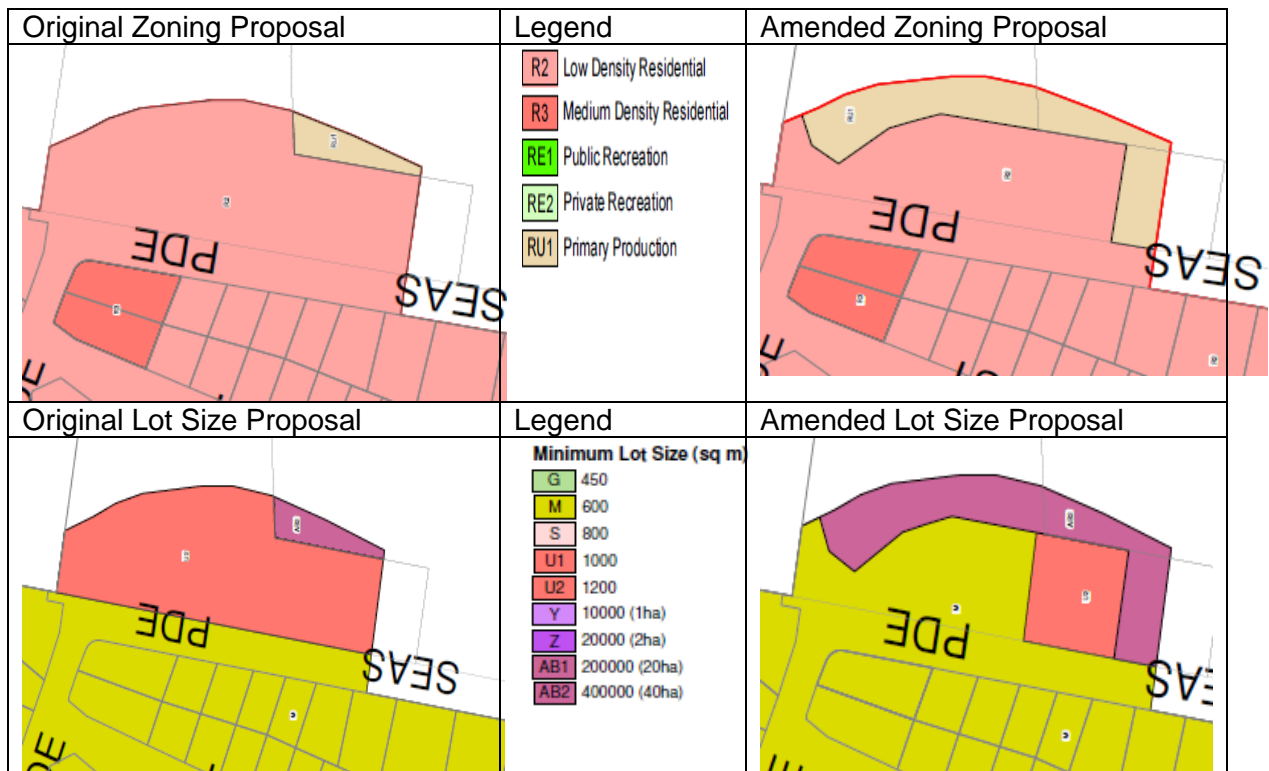
This amended planning proposal has been prepared following consideration of the technical reports submitted by the proponent and the independent review of documentation adequacy and resultant recommendations made by MSP.

It has been concluded that the site is subject to various constraints which when assessed and considered precludes the rezoning as originally proposed and the subject of the February 2015 Gateway determination.

This amended planning proposal seeks a reduction in the area originally proposed to be zoned for residential purposes. It also seeks a mixed 1200m<sup>2</sup> and 600m<sup>2</sup> minimum lot size regime to be applied to the area proposed for residential zoning. The reduction in area proposed to be zoned for residential purposes, and the proposed lot size regime, are considered to provide an appropriate response to the expectations of the property owner and the need to ensure that appropriate environmental outcomes are achieved.

The diagram below provides a comparison between the land zoning and lot size maps the subject of the original planning proposal, and the February 2015 Gateway determination, and the amendments endorsed by Council at its Ordinary Meeting on 28 July 2016.

**Diagram 1 – Comparison Gateway Endorsed Maps and Amended Planning Proposal Maps (Part Lot 1 and Part Lot 2 DP 1165957, Blue Seas Parade, Lennox Head)**



Note: Amendment No.26 to the Ballina LEP 2012 involves change to the minimum lot size for subdivision for lots located on the western side of Blue Seas Parade (street no.s 51 – 65). This change is not shown in the above illustration as the amendment has not yet been completed.

## PART 1 – OBJECTIVES & INTENDED OUTCOMES

The objectives of this planning proposal are to:

- enable residential development on part of the land through the application of low density residential zone;
- apply a part 1200m<sup>2</sup> and a part 600m<sup>2</sup> minimum lot size requirement to the land;
- resolve mapping anomalies relating to the application of a SUGA to part of Lot 2 and a portion of Blue Seas Parade;
- resolve a mapping anomaly by rezoning a portion of Blue Seas Parade from RU1 to R2 so as to conform with the existing and proposed adjoining zone; and
- resolve a mapping anomaly by applying a 600m<sup>2</sup> minimum residential lot size to a portion of Blue Seas Parade consistent with that applicable to adjoining land to the west and north.

## PART 2 – EXPLANATION OF THE PROPOSAL

This planning proposal relates primarily to Lot 1 DP 1165957 (Lot 1) known as 42 – 52 Blue Seas Parade, Lennox Head (see Site Identification Map in Part 4). The planning proposal also addresses mapping anomalies relating to the removal of a SUGA affectation currently located on Lot 2 DP 1165957 and a section of Blue Seas Parade. Proposed changes to the Lot Size Map will also relate to that section of Blue Seas Parade which adjoins Lot 1.

The LEP amendment request has been prepared by Ardill Payne and Partners on behalf of the proponent Mr George Farley who is the sole property owner of Lot 1. The proponent has submitted technical information as required by the Gateway determination which has addressed identified site constraints. The technical information submitted has been independently reviewed for adequacy by MSP who has concluded that the information is generally adequate.

Recommendations made by MSP have proposed alterations to the extent of the area nominated for residential rezoning as well as associated lot size changes from those the subject of the February 2015 Gateway determination. It is these changes initiated by the Council following consideration of the MSP report that have triggered this request for an altered Gateway determination.

Lot 1 has an area of 3.476 hectares of which approximately 1.1 hectares relates to this planning proposal. Lot 1 has a frontage of 220.89 metres to Blue Seas Parade of which approximately 196 metres relates to land affected by this planning proposal.

Lot 1 extends from Blue Seas Parade to the Coast Road. That part of Lot 1 subject to this planning proposal is located on the landward side of the main ridge which separates the residential and rural sections of Lennox Head.

Appendix A contains photos of the site and surrounds.

The amendment to the LEP originally proposed by the proponent involved the rezoning of part of Lot 1 subject to the SUGA affectation, from RU1 Primary Production to R2 Low



Density Residential and the application of 600m<sup>2</sup> minimum lot size provision. The proposed amendment was considered to be generally consistent with applicable local and State government urban planning policy.

The planning proposal the subject of the February 2015 Gateway determination principally proposed an R2 Low Density Residential zone over that part of Lot 1 the subject of the SUGA affectation as well as a 1200m<sup>2</sup> minimum lot size (subject to further evaluation of constraints). Various consequential changes relating to removal of the SUGA affectation from adjoining land and changes to zones and lot size requirements applicable to public roads were also proposed.

This amended planning proposal reduces the area subject to a proposed R2 Low Density Residential zone within Lot 1 and seeks to apply a mixed 600m<sup>2</sup> and 1200m<sup>2</sup> minimum lot size regime to the area the subject of the proposed R2 zone. Other associated consequential changes as previously outlined remain unchanged.

## PART 3 – JUSTIFICATION

### Section A - Need for the Planning Proposal

**1. Is the planning proposal a result of any strategic study or report?**

The subject land is identified in the Ballina Shire Growth Management Strategy and the Far North Coast Regional Strategy as a potential area for urban development. The proposed rezoning to enable residential development on the land is consistent with local and State government urban planning policy.

**2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

Yes, the zoning of the land to enable residential development is the appropriate mechanism to recognise the proposed change of land use.

### Section B - Relationship to the Strategic Planning Framework

**3. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?**

The proposal is consistent with the Far North Coast Regional Strategy, as the land is identified as a proposed future urban release area.

**4. Is the planning proposal consistent with the local Council's Community Strategic Plan, or other local strategic plans?**

The proposal is consistent with the Ballina Shire Growth Management Strategy as the land is identified as a potential urban release area (see further detail under Planning Context).

The proposal is consistent with Council's Community Strategic Plan (CSP) in that it aligns with Council's endorsed urban planning policy which sits under the overarching direction of the CSP.

**5. Is the planning proposal consistent with applicable State Environmental Planning Policies?**

The proposal is considered to generally consistent with applicable State Environmental Planning Policies (SEPP's).

**6. Is the planning proposal consistent with the applicable Ministerial Directions (S. 117 directions)?**

This amended planning proposal is not considered consistent with the following relevant Section 117 Directions:

- 1.2 Rural Zones;
- 1.5 Rural Lands;
- 4.2 Mine Subsidence and Unstable Land; and
- 5.3 Farmland of State or Regional Significance on the NSW Far North Coast.

In each case the inconsistencies are considered to be minor and justifiable in terms of the criteria contained within the direction.

Inconsistencies have been documented in a Section 117 Direction checklist for the planning proposal contained in Appendix B.

## **Section C - Environmental, Social and Economic Impact**

**7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats will be adversely affected as a result of the proposal?**

An Ecological Assessment in respect to Lot 1 has been undertaken by Blackwood Ecological Services in March 2016. Vegetation across the majority of the site has been found to consist of mainly grassed areas.

A site survey was undertaken on 17 March 2016 as part of the Ecological Assessment. No Threatened flora species were recorded on the subject or adjacent land. No Hairy Joint Grass was found on the subject land.

The Ecological Assessment concluded that the subject land has limited biodiversity value due to historical land clearing, fragmentation and occupation. It was also concluded that two Morton Bay fig trees on the land have conservation value and provide forage habitat for mobile fauna species – birds and bats. The area containing the fig trees, and an associated 5 metre buffer beyond the drip line, will be retained on land now not proposed to be zoned for residential purposes.

**8. Are there any other likely environmental effects as a result of the planning proposals and how are they proposed to be managed?**

There are no significant environmental impacts associated with the amended planning proposal. The incorporation of a 30 metre buffer to the southernmost property boundary as well as a 1200m<sup>2</sup> minimum lot size for part of the R2 proposed zoned area will assist to mitigate rural / residential land use conflict issues. Proposed amendments to Ballina DCP 2012 to introduce a minimum 12 metre rear setback for 1200m<sup>2</sup> minimum lots will assist further in this regard.

**9. How has the planning proposal adequately addressed any social and economic effects?**

Potential visual impacts associated with housing development on this escarpment site may be the subject of concerns from surrounding residents and the broader community. Visual impacts have been examined in the report by MSP and were the subject of further consideration in the report to the Council’s Ordinary meeting on 23 June 2016. On balance given the nature of proposed controls (minimum lot sizes, reduced extent of proposed R2 zone and setback controls) and the nature of existing development on this ridgetop location what is proposed is considered to strike an appropriate balance.

There are considered to be few broader economic consequences associated with the proposed rezoning. Overall economic impacts associated with the release of additional residential land in a prime location are considered to be positive.

**Section D - State and Commonwealth interests**

**10. Is there adequate public infrastructure for the planning proposal?**

The proposal for residential development on the land is generally compatible with existing and planned infrastructure in the locality. However, there may be a need for onsite stormwater management infrastructure such as on site detention and bio filtration areas. This will be further examined as part of the development application process associated with future subdivision should the land be rezoned.

**11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?**

In accordance with the requirements of the February 2015 Gateway determination consultation was undertaken with the public authorities and agencies detailed in the table below. Appendix L contains copies of correspondence received.

A brief summary of comments made by public authorities and agencies is contained in the table below:

<b>Authority</b>	<b>Summary of Authority Comments</b>
Ballina Byron Gateway Airport	No objection raised in principle subject to conditions which include a maximum building height of 8.5 metres above natural ground level.
Air Services Australia	Indicate that the property development will not affect any sector or circling altitude, nor any instrument approach or departure procedure at Ballina aerodrome.
Civil Aviation Safety Authority	Indicate that proposal has been assessed. Proposed structures would normally be classified as hazardous objects because of height, location and lack of obstacle lighting. Note that proposal surrounded by existing developments which at night are lit. Indicate that Council could consider Obstacle Lighting on the highest most practicable point of the land to be developed.
Department of Primary Industries - Water	Council to ensure that water supply to this area is secured (quality and quantity). Council should consider the increase in Basic Landholder Rights to access water supply. Council should consider the impact of development on groundwater. Specify a range a matters that future development applications should consider.

Authority	Summary of Authority Comments
Department of Primary Industries – Agricultural Land Use Planning	<p>Rezoning land identified as an Urban Growth Area under the Far North Coast Regional Strategy and the Ballina Growth management Plan is supported in principle.</p> <p>Council should give due consideration to the cumulative impacts from the loss of important agricultural land within the LGA.</p> <p>Planning proposal increases potential for land use conflicts with the adjoining agricultural land despite the LUCRA statement to the contrary. Indicate that the "Living and Working in Rural Areas Handbook" recommends a minimum buffer between residential areas of 50m for grazing of stock and 200m for cattle yards.</p> <p>Indicate that site factors play a role in determining most appropriate separation distances.</p> <p>Indicate that the proposed 1,200m<sup>2</sup> minimum lot size is supported in consideration of scenic amenity and potential land use conflict factors.</p>
NSW Rural Fire Service	NSWRFS raises no objection to the planning proposal proceeding, noting that any future subdivision of the land would be subject to further assessment.
Essential Energy	Provide requirements for the developer to remove or alter Essential Energy infrastructure.
NSW Department of Industries – Division of Resources and Energy	Advise they have no issues to raise with respect to proposed rezoning. Neither significant mineral resources nor any mineral or petroleum titles exist in the vicinity of the subject site.

Advice dated 16 September 2016 has been received from the Department of Planning and Environment which indicates that the amendments to the planning proposal endorsed at Council's Ordinary Meeting on 28 July 2016 do not require an altered Gateway determination. Accordingly the planning proposal may now proceed to public exhibition. The public exhibition process will also incorporate consultation with the Office of Environment and Heritage and the Jali Local Aboriginal Land Council.

## PART 4 – MAPPING

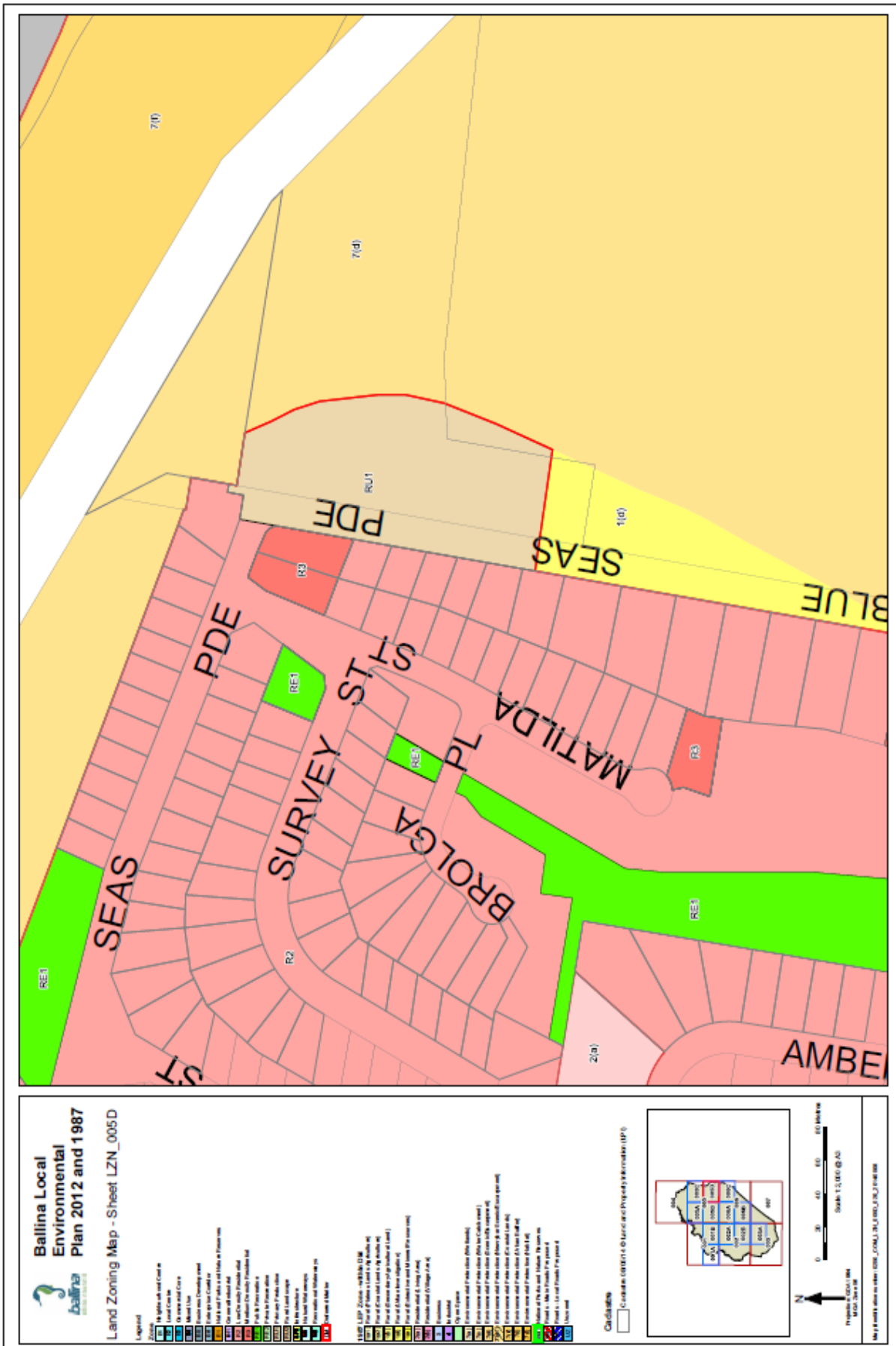
The following maps have been prepared to support this planning proposal:

- Map 1 – Site Identification Map;
- Map 2 – Existing Combined Zoning Map Ballina LEP 1987 and Ballina LEP 2012;
- Map 3 – Existing Zoning Map Ballina LEP 2012;
- Map 4 – Proposed Land Zoning Map;
- Map 5 – Proposed Strategic Urban Growth Area Map; and
- Map 6 – Proposed Lot Size Map.

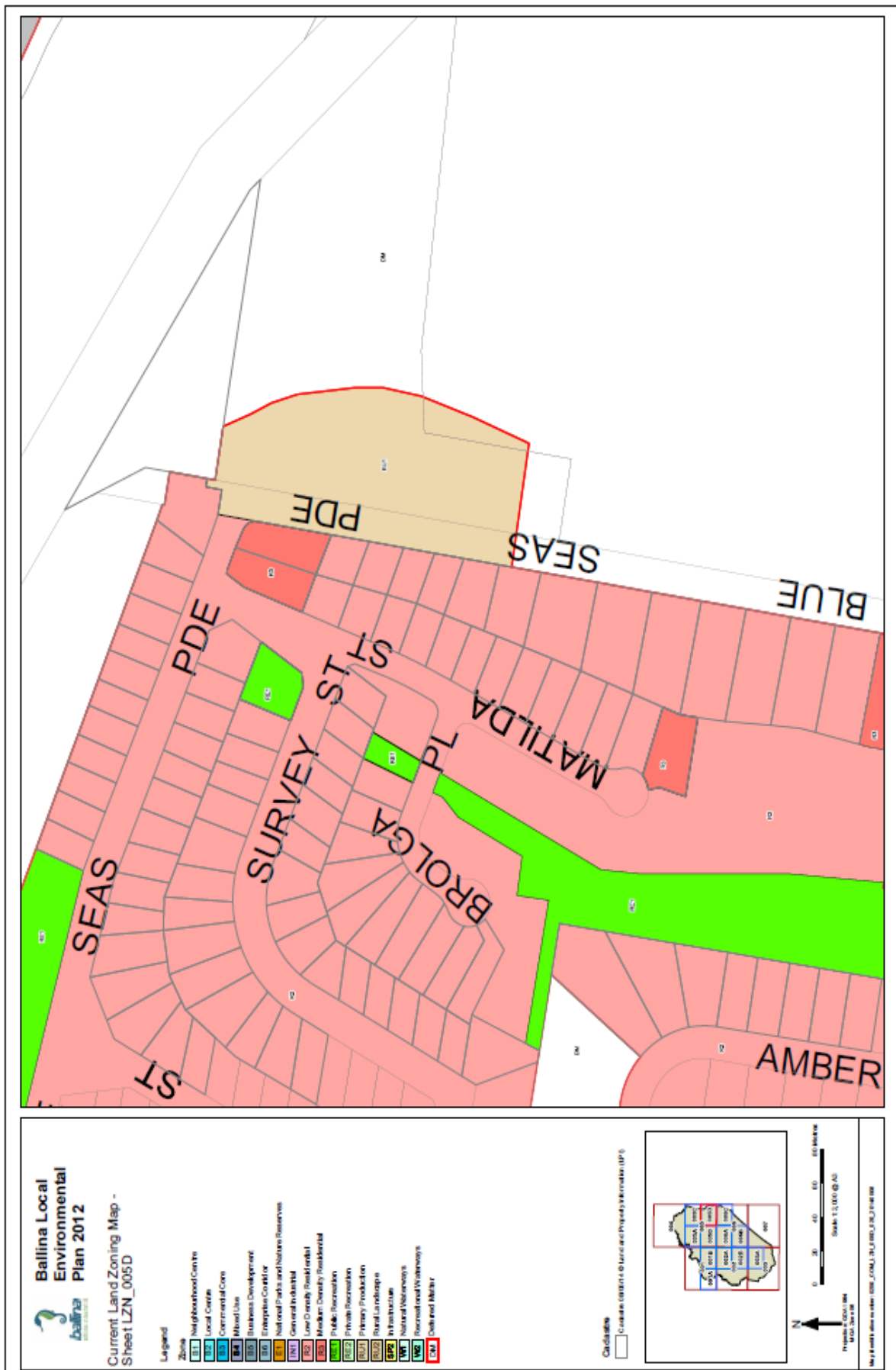
# Map 1 – Site Identification Map



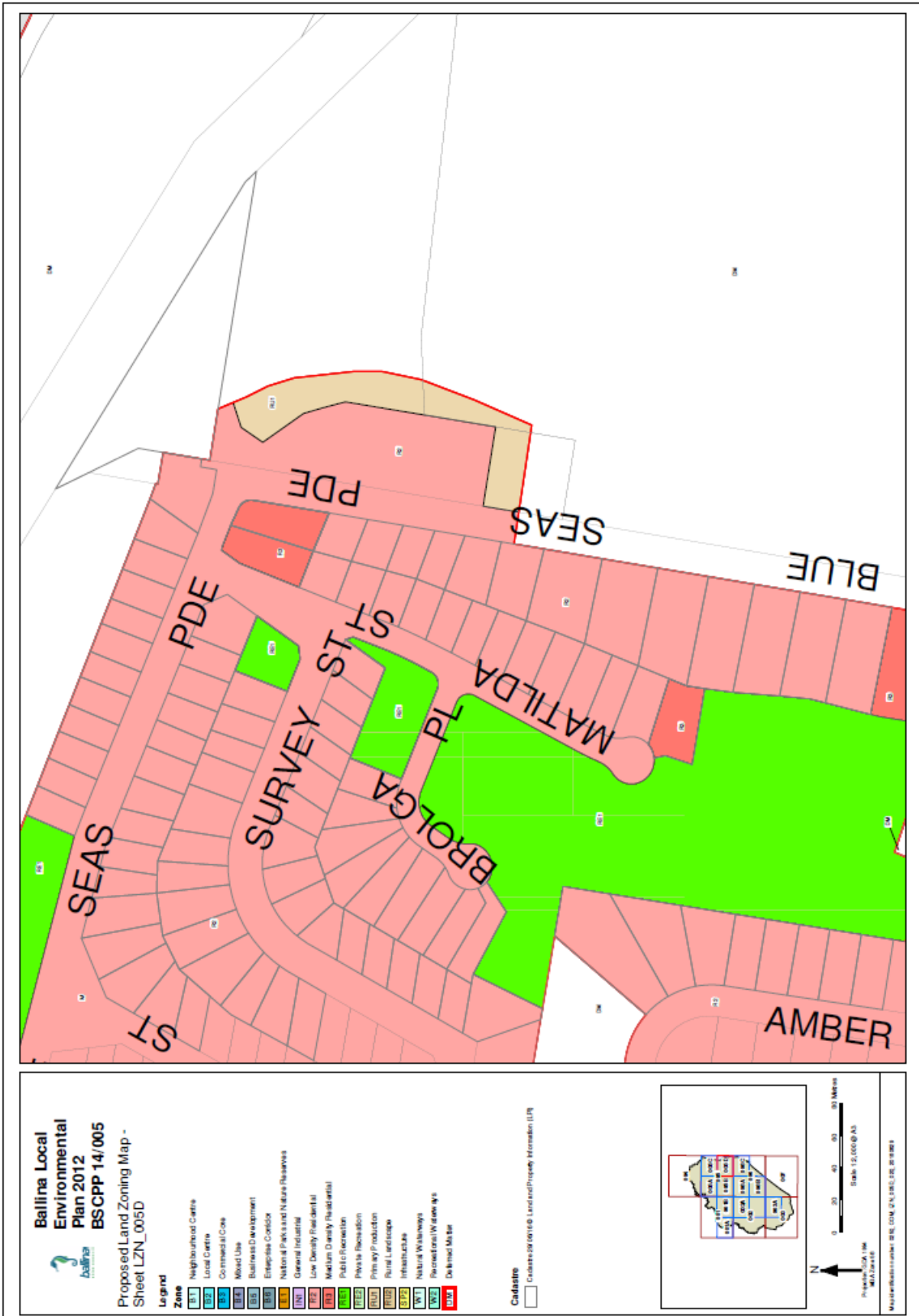
**Map 2 – Existing Combined Ballina LEP 1987 and Ballina LEP 2012 Land Zoning Map**



### Map 3 – Existing Land Zoning Map Ballina LEP 2012

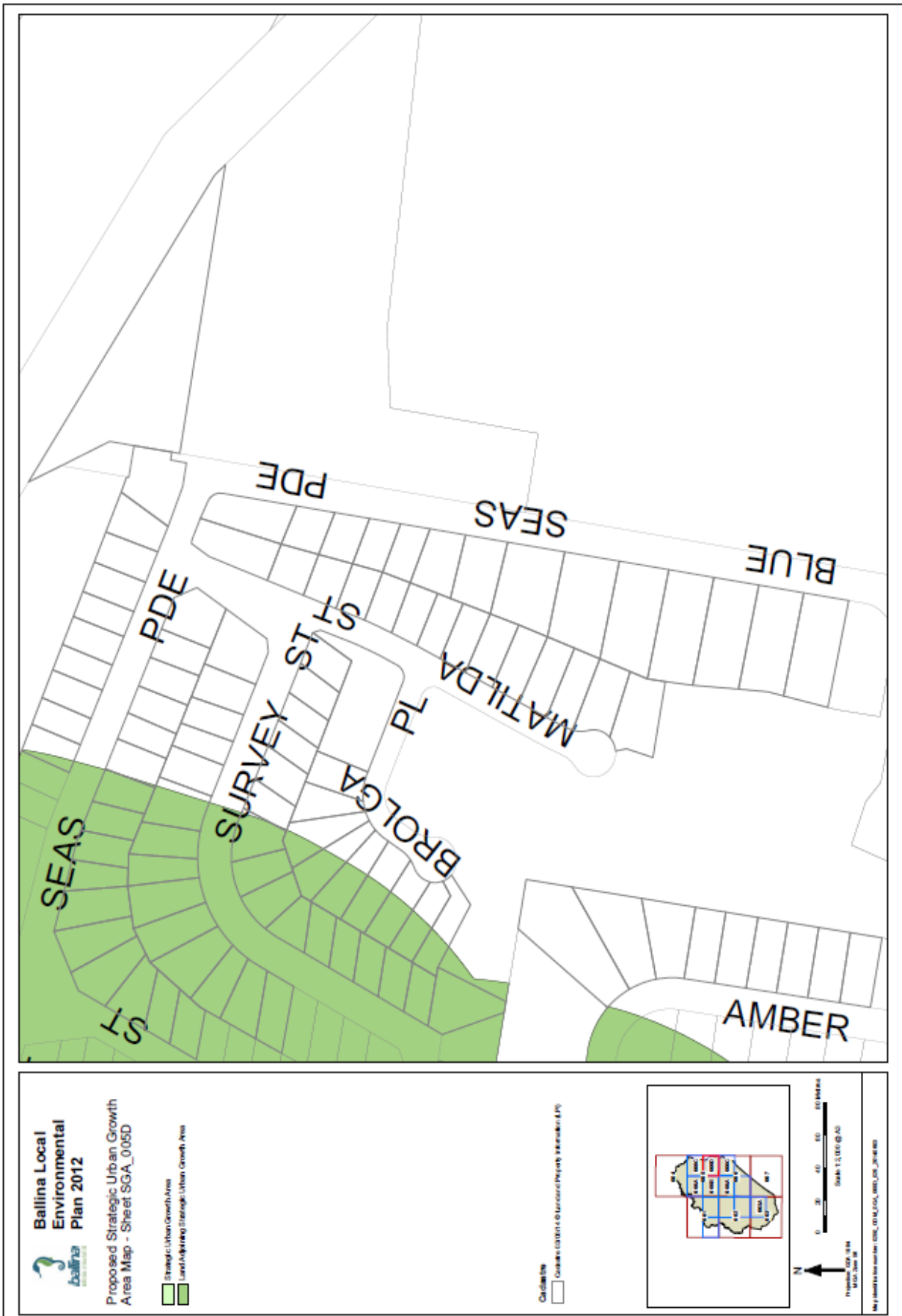


Map 4 – Proposed Zoning Map

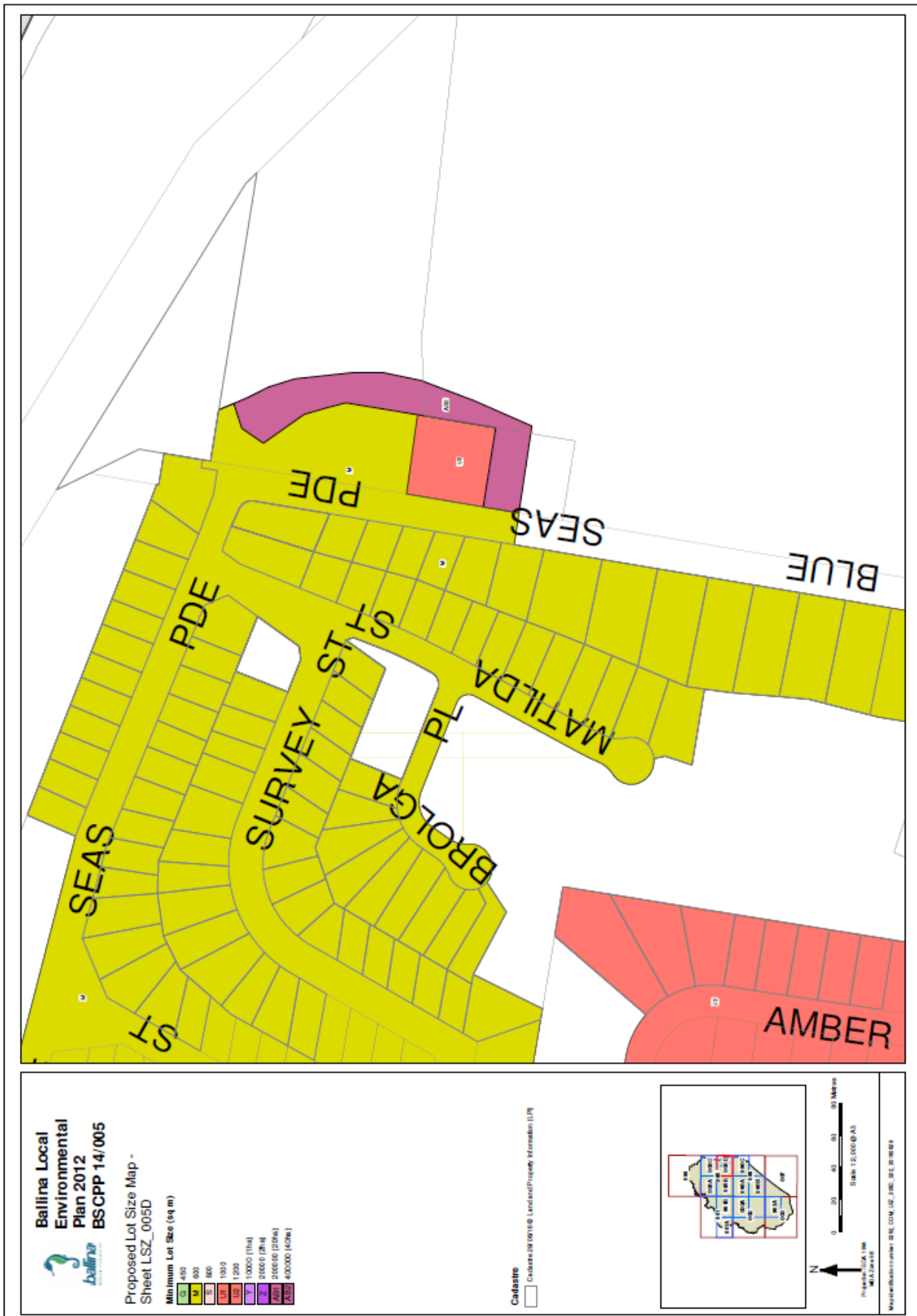




# Map 5 – Proposed Strategic Urban Growth Area Map



# Map 6 – Proposed Lot Size Map



Note: Amendment No.26 to the Ballina LEP 2012 involves change to the minimum lot size for subdivision for lots located on the western side of Blue Seas Parade (street no.s 51 – 65). This change is not shown in the above illustration as the amendment has not yet been completed.

## PART 5 – COMMUNITY CONSULTATION

It is proposed that this planning proposal will be exhibited for a minimum period of 28 days in accordance with the requirements of the Gateway determination and the terms of the *Environmental Planning and Assessment Act 1979*.

Consultation is also proposed with the Jali LALC and with the Office of Environment and Heritage during the 28 day public exhibition period.

## PART 6 – TIMELINE

The proposed timeline for completion of the planning proposal is as follows:

Plan Making Step	Estimated Completion
Original Gateway Determination	February 2015
Government Agency Consultation	March 2016
Public Exhibition Period	October 2016
Public Hearing	N/A
Submissions Assessment	November 2016
RPA Assessment of Planning Proposal and Exhibition Outcomes	November 2016
Submission of Endorsed LEP to DP&E for Finalisation	December 2016
RPA Decision to Make the LEP Amendment (if delegated)	NA
Forwarding of LEP Amendment to DP&E for Notification (if delegated)	NA

## APPENDICES

### Appendix A – Photos of Site and Surrounds



Central view of subject site from Blue Seas Parade. Large Norfolk Island pine tree on eastern most extremity of site.



Close up showing rock wall, and the power lines which traverses the site.



Existing entrance driveway from Blue Seas Parade located in north-eastern most section of site.



Looking south along Blue Seas Parade. Subject site on left and new Coastal Grove subdivision on right.



Site generally on right of centre looking south.



Large Norfolk Island Pine located near boundary of Lots 1 and 2.

## Appendix B – Section 117 Direction Checklist

Section 117 Direction Checklist Planning Proposal Lot 1 DP 1165957, 44 – 52 Blue Seas Parade, Lennox Head	
Direction No.	Compliance of Planning Proposal
<b>1. Employment and Resources</b>	
1.1 Business and Industrial Zones	Does not apply to planning proposal.
1.2 Rural Zones	<p>Justifiably inconsistent and of minor significance. Refer to the Gateway determination dated 3 February 2015.</p> <p>The proposed rezoning is consistent with local and State government urban planning policy as the land is identified as a potential urban growth area in the Far North Coast Regional Strategy and the Ballina Shire Growth Management Strategy. The land is located within the Lennox Head urban footprint area and has limited agricultural production values.</p>
1.3 Mining, Petroleum Production and Extractive Industries	Does not apply to planning proposal.
1.4 Oyster Aquaculture	Does not apply to planning proposal.
1.5 Rural Land	<p>Justifiably inconsistent and of minor significance. Refer to the Gateway determination dated 3 February 2015.</p> <p>The proposed rezoning and changes to minimum lot size standards for subdivision are consistent with local and State government urban planning policy as the land is identified as a potential urban growth area in the Far North Coast Regional Strategy and the Ballina Shire Growth Management Strategy. The land is located within the Lennox Head urban footprint area and has limited agricultural production values.</p> <p>Having regard for the above, the proposed LEP amendment will not adversely impact on any significant agricultural production on the land or in the immediate surrounds of the subject land through fragmentation or land use conflict.</p> <p>Assessment of site constraints post Gateway determination has been undertaken and has confirmed the lands general suitability for residential purposes. Land use conflict issues have been addressed through the reduction of the area proposed to be zoned for residential purposes within Lot 1 and the proposed 1200m<sup>2</sup> minimum lot size requirements at the southern end of Lot 1.</p>
<b>2. Environment and Heritage</b>	
2.1 Environmental Protection Zones	<p>Consistent.</p> <p>The land is not considered to be an environmentally sensitive area on the basis of current information.</p>
2.2 Coastal Protection	<p>Consistent.</p> <p>The application of coastal planning principles as established under the NSW Coastal Policy, the Coastal Design Guidelines and the NSW Coastline Management Manual will be required to be evaluated by the proponent after gateway determination.</p>
2.3 Heritage Conservation	<p>Consistent.</p> <p>There are no known items of environmental or Aboriginal cultural heritage value on the land. Heritage values will, however, be required to be further assessed by the proponent after Gateway determination.</p>
2.4 Recreation Vehicle Areas	<p>Consistent.</p> <p>The proposed LEP amendment relates to provision of residential housing and does not involve development for the purpose of a recreational vehicle area.</p>
2.5 Application of E2 and E3 Zones and Environmental Overlays in far North Coast LEPs	Not Applicable.

<b>3. Housing, Infrastructure and Urban Development</b>	
3.1 Residential Zones	<p>Consistent.</p> <p>The proposed LEP amendment seeks to provide for additional residential development opportunities in the Lennox Head locality. The subject land is located close to existing services and is within the existing Lennox Head urban footprint area.</p> <p>The proposal involves a rezoning from rural land (RU1) to residential (R2). The proposed zone will provide for a variety of permitted residential housing forms.</p> <p>The Ballina LEP 2012 include an existing provision (Clause 7.7) that requires that adequate servicing is in place, or suitable arrangements to have been made for such servicing, before development proceeds.</p>
3.2 Caravan Parks and Manufactured Home Estates	<p>Consistent.</p> <p>Caravan parks are not permitted under the current RU1 zoning of the land.</p> <p>The planning proposal does not specifically relate to the provision of caravan parks or manufactured home estates.</p>
3.3 Home Occupations	<p>Consistent.</p> <p>Home occupations are permitted in the R2 residential zone under the Ballina LEP 2012.</p>
3.4 Integrated Land Use and Transport	<p>Consistent.</p> <p>The application of the principles set out under Improving Transport Choice – Guidelines for planning and development and The Right Place for Business and Services – Planning Policy will be considered in the environmental assessment and planning report following submission of technical reports by the proponent.</p>
3.5 Development Near Licensed Aerodromes	<p>Consistent.</p> <p>The pre-Gateway Planning Proposal submission has previously indicated that the planning proposal was inconsistent with this direction. Council has now consulted with Ballina Byron Airport, Airservices Australia and CASA. On the basis of this consultation and the responses received it is considered that the planning proposal is consistent with this direction. Appendix L contains copies of correspondence received from relevant authorities.</p> <p>The subject land is not affected by ANEF contours of 20 or greater.</p> <p>Refer Appendix D for extracts from the Obstacle Limitation Surface Map and a site contour map.</p> <p>Refer Appendix E for the ANEF map.</p>
3.6 Shooting Ranges	Does not apply to planning proposal.
<b>4. Hazard and Risk</b>	
4.1 Acid Sulphate Soils	Does not apply to planning proposal.
4.2 Mine Subsidence and Unstable Land	<p>Justifiably inconsistent and of minor significance. Refer to the Gateway determination dated 3 February 2015.</p> <p>Lot 1 is located within an area identified as being susceptible to land slip (Coffey Partners Pty Ltd report and the Department of Mineral Resources mapping.) A further investigation was undertaken in 2008 by Coffey Geotechnics for a larger 3 hectare site which included the area proposed for rezoning now contained within Lot 1. Appendix T contains a copy of the Coffey Geotechnics 2008 <i>Preliminary Geotechnical Investigation Report</i>.</p> <p>MSP undertook an independent review of this documentation and concluded that 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. It was also advised that as slopes on part of the site are around 21–23%, there is a basis for imposing the slope sensitive design principles applicable for the adjoining Coastal Grove development to also be applicable to the development on the subject land.</p> <p>Council at its meeting on 23 June 2016 has resolved to prepare an amendment to Ballina DCP 2012 which provides for the application of slope sensitive design principles to the land as recommended by MSP.</p>
4.3 Flood Prone Land	Does not apply to planning proposal.



4.4 Planning for Bushfire Protection	<p>Consistent.</p> <p>The subject site is partly affected by Category 2 vegetation and is located within the 30 metre bushfire buffer area.</p> <p>A Bushfire Threat Assessment report has been prepared post Gateway determination and referred to the NSW Rural Fire Service (RFS) for comment.</p> <p>The RFS in correspondence to Council dated 16 March 2016 (Appendix L) has advised that it 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 s100B of the Rural Fires Act 1997.</p>
<b>5. Regional Planning</b>	
5.1 Implementation of Regional Strategies	<p>Consistent.</p> <p>The proposed rezoning is consistent with the FNCRS as it is identified as a proposed future urban release area under the policy. The proposed rezoning is also consistent with the Ballina Shire Growth Management Strategy.</p>
5.2 Sydney Drinking Water Catchments	Does not apply to planning proposal.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	<p>Justifiably Inconsistent</p> <p>The subject land is identified as significant regional non-contiguous farmland under the Northern Rivers Farmland Protection Project mapping. However, the subject land is identified as a proposed future urban release area under the Far North Coast Regional Strategy and is identified as a potential urban area under the Ballina Shire Growth Management Strategy. Accordingly it is considered that the planning proposal complies with the planning principles contained in Section 4 of the report titled Northern Rivers Farmland Protection Project – Final Recommendations, February 2005.</p> <p>Refer Appendix F for an extract from Final Map 4.</p>
5.4 Commercial and Retail Development	Does not apply to planning proposal.
5.5 Development in the vicinity of Ellalong Paxton and Millfield (Cessnock LGA).	Repealed
5.6 Sydney to Canberra Corridor	Repealed
5.7 Central Coast	Repealed
5.8 Second Sydney Airport: Badgerys Creek	Does not apply to planning proposal.
<b>6. Local Plan Making</b>	
6.1 Approval and Referral Requirements	<p>Consistent.</p> <p>The planning proposal does not introduce any new concurrence or consultation provisions or any additional designated development types.</p>
6.2 Reserving Land for Public Purposes	<p>Consistent. This planning proposal does not create, alter or reduce existing zonings or reservations of land public purposes.</p> <p>The planning proposal does not propose to reserve land for a public purpose.</p>
6.3 Site Specific Provisions	Does not apply to planning proposal.
<b>7. Metropolitan Planning</b>	
7.1 Implementation of the Metropolitan Strategy	Does not apply to planning proposal.

## Appendix C – Report to Council on 22 May 2014

### 9.1 LEP Amendment Request - 44 - 52 Blue Seas Parade, Lennox Head

### 9.1 LEP Amendment Request - 44 - 52 Blue Seas Parade, Lennox Head

**Delivery Program** Strategic Planning

**Objective** To present the Council with a proposal to amend the Ballina Local Environmental Plan 2012 to rezone land located at Lot 1 DP 1165957 known as No.s 44-52 Blue Seas Parade, Lennox Head and to seek direction in relation to the further progress of the matter.

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#### Background

Lot 1 DP 1165957 (Lot 1), known as No.s 44-52 Blue Seas Parade, Lennox Head, was created in July 2011 and has an area of 3.476 hectares. Lot 1 resulted from the re-subdivision of Lot 2 DP 587685 (Lot 2) and two other lots. Lot 2 which had an area of 31.52 hectares was the subject of a rezoning application submitted in May 2008.

The Council, at its Ordinary Meeting held in July 2010 [Minute No. 220710/7] resolved to initiate a stand alone LEP amendment for Lot 2. That LEP amendment proposed that a residential zone be applied to part of Lot 2. An indicative plan of subdivision showed 12 residential lots were proposed to be created at that time.

Following assessment of issues relevant to the rezoning and, in particular, visual amenity issues, 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 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.

Lot 2 was subsequently subdivided in July 2011 and its ownership changed. The Coastal Grove residential subdivision, which is located on land to the west of Lot 1, was created in February 2012.

Council received an LEP amendment request in February 2014 for the rezoning of part of Lot 1 from rural to residential purposes. The land the subject of this LEP amendment request is shown in the site plan contained at Attachment 1. The extent of this proposed rezoning reflects the reduced area resulting from Council's resolution in March 2011.

The proponent and landowner is Mr G Farley. The LEP amendment request, contained in Attachment 2, has been prepared by Mr Paul Snellgrove of Ardill Payne & Partners.

This report provides an overview of the LEP amendment request and seeks the Council's authorisation for the preparation of a planning proposal to progress the rezoning.

### Key Issues

- Suitability of land for residential zoning and development.
- Minimum applicable lot size.

### Information

#### *Zoning – Ballina LEP 2012 and Ballina LEP 1987*

The western most (front) section of Lot 1, which has a frontage to Blue Seas Parade is substantially zoned RU1 Primary Production under the provisions of the Ballina Local Environmental Plan 2012 (BLEP 2012). The eastern most (rear) and southern most sections of Lot 1 are designated as deferred matters under BLEP 2012 and retain their Ballina LEP 1987 zonings.

The eastern most (rear) section of Lot 1, which has a frontage to The Coast Road, is zoned 7 (d) Environmental Protection (Scenic/Escarpment) under the provisions of Ballina LEP 1987. In addition, a small section of Lot 1 at its southern most end, fronting Blue Seas Parade, is zoned 1(d) (Urban Investigation).

Attachment 3 contains a map which shows the zones that apply to Lot 1.

The LEP amendment request relates to part of the western most section of Lot 1, which is designated as a Strategic Urban Growth Area under the provisions of Ballina LEP 2012. This section of Lot 1, which is currently zoned RU1 Primary Production, has an approximate area of 1.1 hectares and a frontage of approximately 196 metres to Blue Seas Parade. It is this area that is proposed to be zoned R2 Low Density Residential. Lot 1 has a total frontage to Blue Seas Parade of 220.89 metres.

A minimum 40 hectare lot size is currently applicable to Lot 1. The applicant proposes to replace this with a 600m<sup>2</sup> minimum lot size for that part of Lot 1 the subject of the rezoning proposal. The proponent's submission indicates that the land could yield up to 13 lots.

A 600m<sup>2</sup> minimum lot size is applicable to the residential lots located on the western side of Blue Seas Parade opposite Lot 1. Whether such a minimum lot size is also suitable for residential lots resulting from a rezoning of a portion of Lot 1 is matter that will be determined (and reported to the Council) once detailed site assessment information has been submitted.

Attachment 4 contains a map which shows how Lot 1 is proposed to be zoned.

#### *Ballina Shire Growth Management Strategy (BSGMS)*

The BSGMS designates that part of Lot 1 the subject of the LEP amendment request as being a part of a strategic urban growth area.

#### *Lennox Head Structure Plan*

The Lennox Head Structure Plan (LHSP) includes the whole of Lot 1 within an area designated as *visually significant land*. This is land that was envisaged

## 9.1 LEP Amendment Request - 44 - 52 Blue Seas Parade, Lennox Head

would be retained and protected into the future. It should be noted, however, that the land the subject of the current LEP amendment request has been subject to some visual amenity assessment in association with the previous rezoning request over the land. The subject land is located generally below the top of the ridgeline on the landward side. As such, it was incorporated as a Strategic Urban Growth Area within Ballina LEP 2012. The LHSP was adopted in 2004, well before the BSGMS and Ballina LEP 2012.

### *Far North Coast Regional Strategy 2005 (FNCRS)*

The subject land is identified as being located within the existing urban footprint of Lennox Head and designated as a future urban release area. The application of a residential zone over part of Lot 1 is consistent with this strategy.

### *Site Assessment*

The proponent has submitted a brief overview of applicable land constraints with minimal detailed information being provided. The submission recognises the previous site history and the need for further investigative work relating to land contamination, visual impact and bushfire threat.

An examination of applicable land constraints has revealed that more detailed site investigations will be required. It is suggested that this information be sought post Gateway determination if the matter continues to proceed. This would include the various matters listed in the table below:

Issue	Investigation Required
Land Contamination	A Detailed Contamination Land Assessment and Remedial Action Plan were previously submitted in support of the 2008 rezoning proposal. The proponent will be required to assess the contamination status of the land in the context of the revised site area.
Coastal Zone Impacts and Visual Amenity Impacts	Consideration of relevant matters for consideration as specified in Clause 8 of <i>SEPP 71 - Coastal Protection</i> and Appendix C – Table 3 of the <i>NSW Coastal Policy</i> . This includes issues associated with visual impacts.  The <i>Coastal Zone Design Guidelines 2003</i> are also required to be considered. Consideration of potential building envelopes and subdivision lot design will be required.
Bushfire Threat	Lot 1 is partly affected by Category 2 vegetation and is located within the 30 metre bushfire buffer area. A Bushfire Threat Assessment Report will be required.
Land Slip	Lot 1 is located within an area identified as being susceptible to land slip (Coffee Partners Pty Ltd report and Department of Mineral Resources mapping.) More detailed investigation is required as to the degree of risk associated from landslip

	and its impact on any potential residential subdivision.
Access and Right of Carriageway (ROW)	A 10 metre wide ROW affects Lot 1 in favour of Lot 2 DP 1165957. The manner in which access is proposed to be obtained to the proposed subdivision and its relationship to the ROW will need to be detailed by the proponent. It may not be feasible to obtain access directly to proposed lots from Blue Seas Parade due to a significant retaining wall constructed along the boundary of Lot 1 with Blue Seas Parade.
Easement Relocation	A 20 metre wide easement for overhead powerlines affects lot 1 in favour of Essential Energy. The feasibility of relocating this infrastructure will need to be examined via consultation with Essential Energy.
Due Diligence Aboriginal Heritage Assessment	Investigation in relation to whether any items of Aboriginal cultural heritage are likely to be impacted by the proposed rezoning will be required.
Services and Stormwater Management Report	A report investigating the manner in which the site will be serviced, including connection to the sewer network, will be required.  A stormwater management report will be required which would examine issues related to on-site stormwater detention and location of bio filtration areas, if proposed.
Ecological Matters	Potential flora and fauna impacts require assessment, particularly given the site's proximity to vegetation communities contained within the adjoining Crown reserve to the north.

### Sustainability Considerations

- Environment**  
 The subject land is substantially cleared of trees and contains predominately grass and weed species. The significance of this vegetation, as well as the impact of the proposed subdivision on adjoining flora and fauna communities, would be assessed further if the planning proposal proceeds.
- Social**  
 Potential visual amenity impacts may be of concern to surrounding residents and the broader community. Consequently, this matter will be examined in further detail if the proposal proceeds.
- Economic**  
 There are no significant economic implications currently identified in relation to the proposed rezoning.

### Legal / Resource / Financial Implications

There are no significant resourcing or financial implications associated with the further processing of the LEP amendment. Subject to the Council's decision, the next step in the process would be to prepare a planning proposal suitable for submission to the Department of Planning and Environment (DoP&E) for Gateway determination.

Following a favourable Gateway determination the applicant would be requested to submit additional information which addresses identified land constraint issues, as generally referred to above.

Council's adopted fees and charges associated with LEP amendments would be applied to the further processing of the request.

### Consultation

There has been no consultation undertaken with either the community or government agencies in relation to this LEP amendment request to date as the matter is in the initial phases.

Should the matter proceed, an affirmative Gateway determination will advise of consultation requirements with government agencies and the community. Community engagement would then occur following assessment of the required additional information, and in accordance with the Gateway determination.

### Options

1. Proceed to prepare a planning proposal for the application of an R2 Low Density Residential zone to Lot 1.

This approach would authorise the preparation of a planning proposal for Gateway determination. The proposal would be reported to the Council for further consideration prior to its submission to the Gateway panel.

While it is considered that additional information is required to finally determine an appropriate future subdivision configuration, the land the subject of the LEP amendment request appears to be generally suitable for a low density residential zoning. The planning proposal submitted to DoP&E would identify the uncertainty regarding minimum lot sizes at this stage of the process and identify that the minimum lot sizes would be determined following the assessment of additional information.

This is the recommended approach.

2. Defer or amend the planning proposal.

This approach is not recommended given:

- the proposed rezoning is limited to an area of Lot 1 which has been designated as a Strategic Urban Growth Area in Ballina LEP 2012 and within the Ballina Shire Growth Management Strategy.
- the proposed LEP amendment is consistent with Council's strategic land use planning framework for the locality.

## 9.1 LEP Amendment Request - 44 - 52 Blue Seas Parade, Lennox Head

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- the proposed LEP amendment is confined to a part of Lot 1 which was subject to a previous land zoning suitability assessment associated with an LEP amendment request submitted in 2008. That assessment generally found the land the subject of this LEP amendment request (reduced land area from previous proposal) suitable for a residential zoning.

Staff will use its best endeavours to “recycle” as much of the formally prepared and submitted technical material as practically possible, to avoid duplication and unnecessary costs to the proponents.

3. Cease further action in relation to the planning proposal.

For the same reasons outlined in relation to Option 2, this approach is not recommended.

Importantly, the Council can elect to discontinue a planning proposal at other stages of the LEP amendment process if considered appropriate. That said however, certain recourse procedures are now available to proponents if they were dissatisfied with such a Council decision.

### RECOMMENDATIONS

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.

### Attachment(s)

1. Attachment One - Site Plan
2. Attachment Two - LEP Amendment Request
3. Attachment Three - Existing Zoning Map
4. Attachment Four - Proposed Zoning Map

## 9.1 LEP Amendment Request - 44 - 52 Blue Seas Parade, Lennox Head 220514/1 Resolved (Cr Paul Worth/Cr Ben Smith)

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

## 9.1 LEP Amendment Request - 44 - 52 Blue Seas Parade, Lennox Head

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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 m<sup>2</sup>.

FOR VOTE - Cr David Wright, Cr Sharon Cadwallader, Cr Keith Johnson, Cr Susan Meehan, Cr Ken Johnston, Cr Paul Worth and Cr Ben Smith

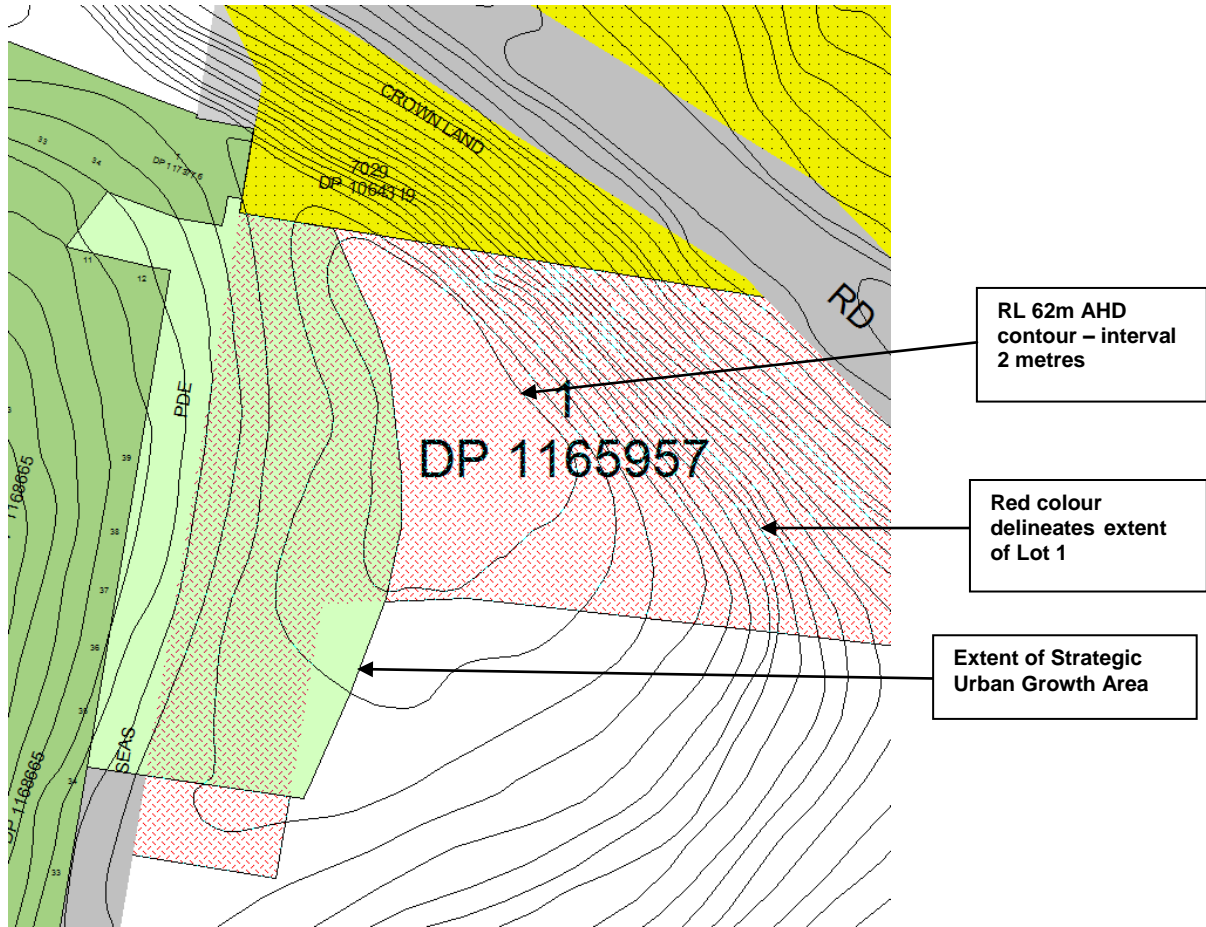
AGAINST VOTE - Cr Jeff Johnson and Cr Keith Williams

ABSENT. DID NOT VOTE - Cr Robyn Hordern

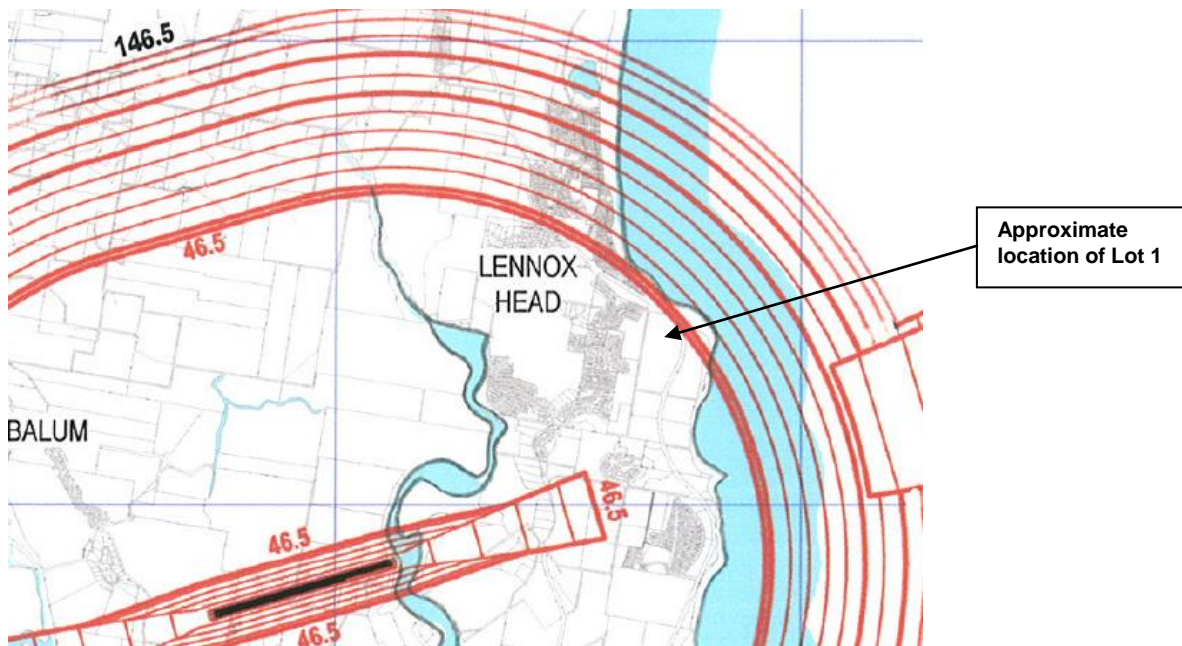


# Appendix D – Extract from Site Contour Map and Obstacle Limitations Map

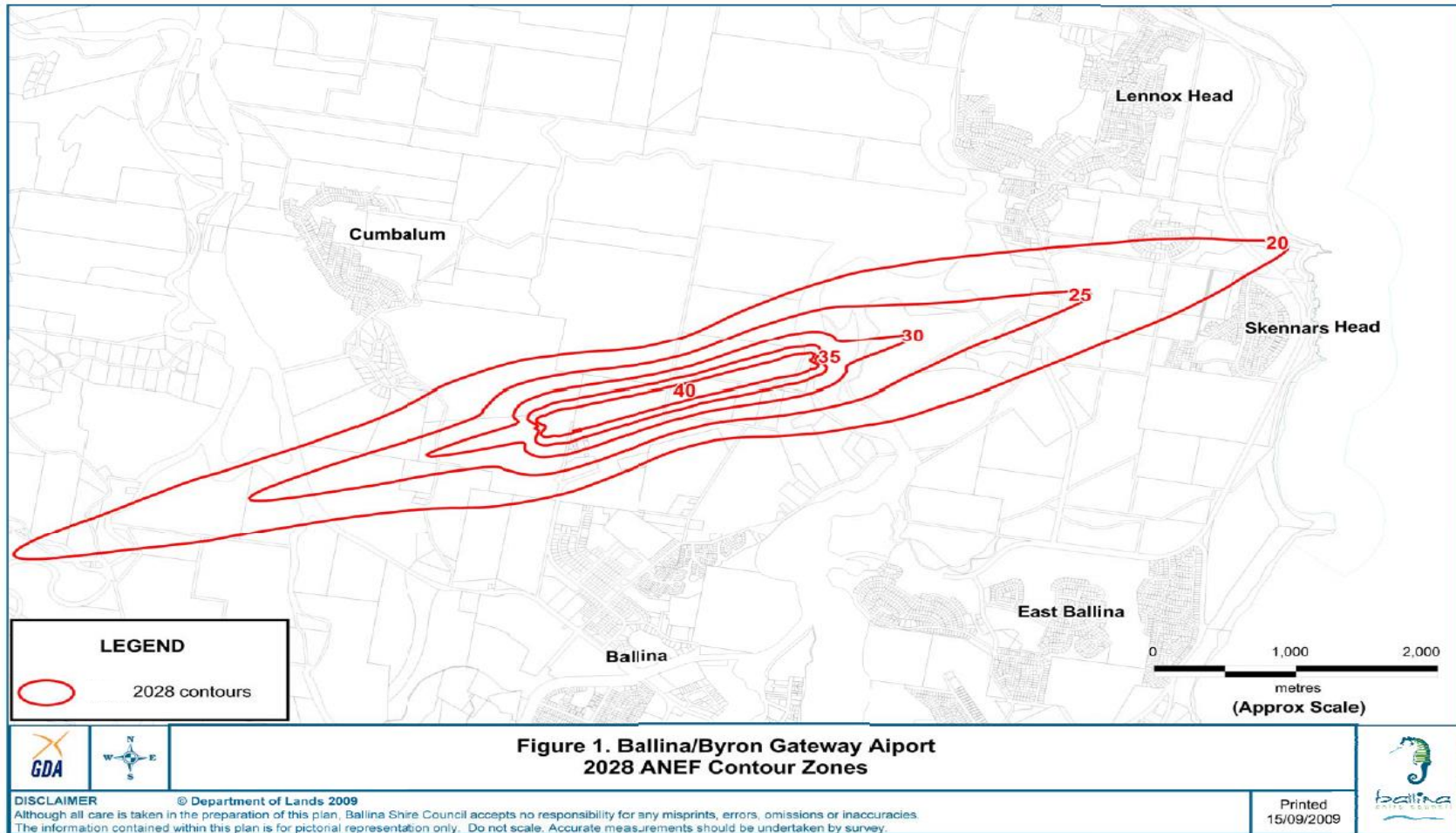
## Extract from Site Contour Map



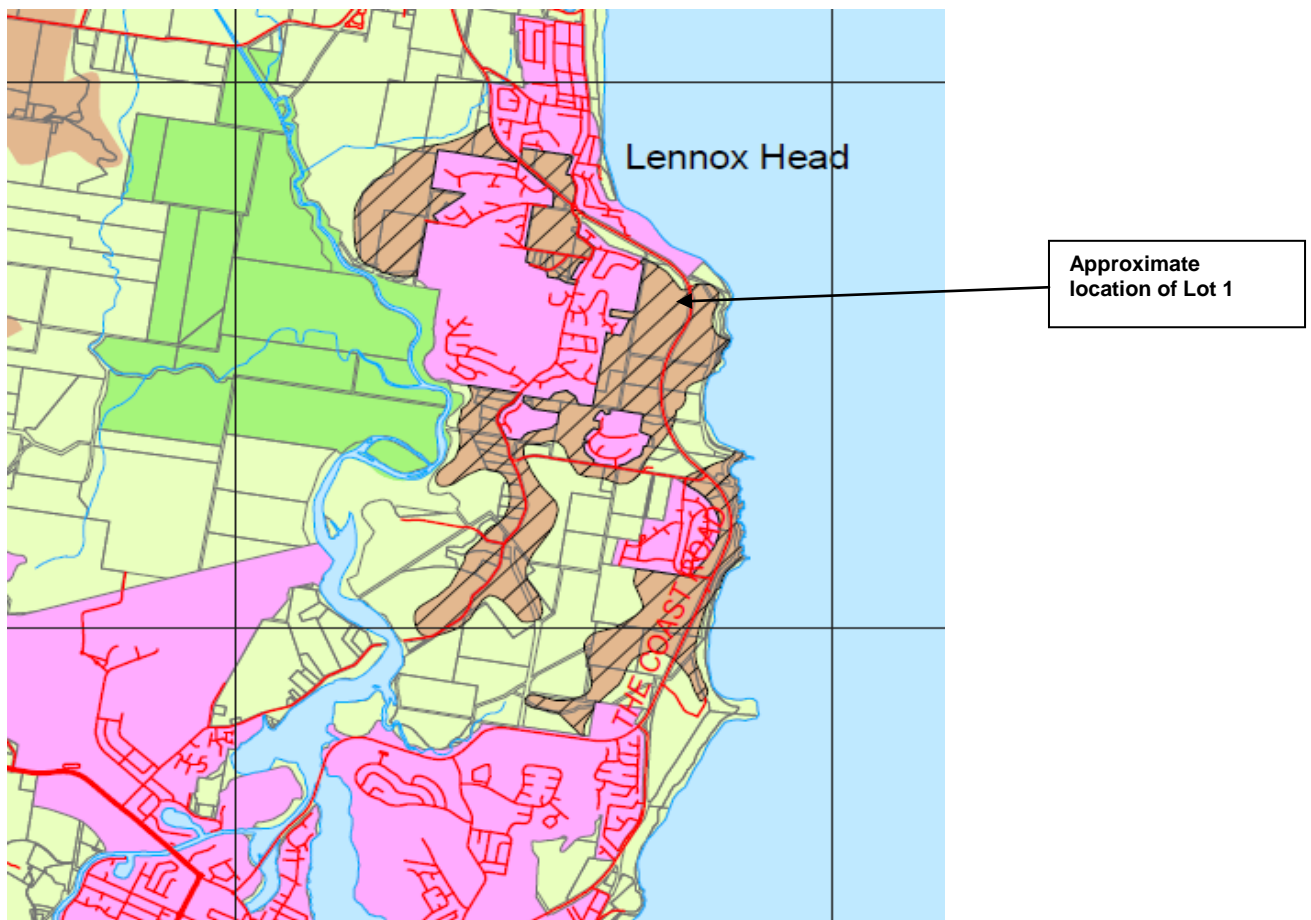
## Extract from Obstacle Limitations Map No 11















## Appendix E – 2028 ANEF Contour Map



## Appendix F – Extract from Northern Rivers Farmland Protection Project 2005



### LEGEND

- |   |  |   |                                     |
|---|--|---|-------------------------------------|
|  | State Significant Farmland                             |   |                                     |
|  | Regionally Significant Farmland                        |   |                                     |
|  | Significant Non-Contiguous Farmland                    |   |                                     |
|  | Other Rural Land                                       |   |                                     |
|  | Committed Urban Uses and Rural-Residential Zones       |   |                                     |
|  | National Parks, State Forests                          |   |                                     |
|  | Land outside Northern Rivers Catchment Management Area |   |                                     |
|  | Highways   |  | Land Parcel Boundary                |
|  | Major Roads  |  | Catchment Management Board Boundary |
|  | Railways   |  | Local Government Boundary           |
|  | Watercourses   |   |                                     |

## Appendix G – LEP Amendment Request

# ARDILL PAYNE

& P a r t n e r s  
[www.ardillpayne.com.au](http://www.ardillpayne.com.au) e:info@ardillpayne.com.au  
ABN: 51 808 558 977



7350 planning proposal cover letter (feb 2014).doc

26 February 2014

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

**Attn: Mr Matt Wood**

**Dear Matt**

**re: Planning Proposal/LEP Amendment Request  
Lot 1 DP 1165957, No. 44-52 Blue Seas Parade, Lennox Head**

I refer to prior communications in respect of the subject matter and in particular our meeting on the 20<sup>th</sup> February 2014.

Ardill Payne & Partners (APP) has been commissioned by Mr George Farley (owner of the subject land) to provide planning services in the preparation of a Planning Proposal/LEP Amendment Request to Ballina Shire Council.

Attached herewith is the following:

- signed landowner's authorisations enabling APP act on their behalf
- completed Planning Proposal/LEP Amendment Request Proponent & Proposal Information Form
- 2 x paper and 1 x CD copies of the planning proposal request
- cheque for \$2625.00 as advised in Mr Matt Wood's email dated 26<sup>th</sup> February 2014 (copy attached)

Should you have any questions in respect of this matter, please contact me on 6686 3280 or [pauls@ardillpayne.com.au](mailto:pauls@ardillpayne.com.au)

**Yours faithfully**

Paul Snellgrove

**ARDILL PAYNE & PARTNERS**

**Engineers | Planners | Surveyors | Environmental | Project Management**

**BALLINA**  
79 Tamar Street  
PO Box 20  
BALLINA NSW 2478  
Ph: 02-6686 3280

**BRISBANE**  
Level 1, The Designbank  
89 Grey Street  
SOUTH BRISBANE QLD 4101  
Ph: 07-3123 6675

**GUNNEDAH**  
Germane House,  
285 Conadilly Street,  
GUNNEDAH NSW 2380  
Ph: 02-6742 9955

# ARDILL PAYNE & PARTNERS

Civil & Structural Engineers - Project Managers - Town Planners - Surveyors

ABN 51 808 558 977

WE Payne BE, MIE Aust ET Eilford L & E S D TJ Cromack B, Tech (Eng), TMIE Aust PM Snellgrove BTP



APP Land Owner Authority.doc

## LAND OWNER AUTHORITY

This is to advise that Ardill Payne & Partners  
of 79 Tamar Street, Ballina NSW has been engaged by:

Landowner's name	George FARLEY
Landowner's address	117 Bayview Road, Merricks Beach VIC 3926

To prepare certain applications in respect of land known as:

Street	44-52 Blue Seas Parade
Town	Lennox Head
Real property description	Lot 1 DP 1165957

The owner(s) of the aforementioned land(s) hereby authorises Ardill Payne & Partners or its agents to:

1. Inspect all relevant Council records (DAs, BAs, CCs, etc).
2. Obtain copies of submissions made to Council or other government authorities.
3. Carry out searches and site inspections.
4. Lodge a Planning Proposal; Development, Construction Certificate, Subdivision Certificate, Section 68 or any other like application with Ballina Shire Council.

Signed	
Name	George FARLEY
Date	19 Feb 2014
Phone	0488 309 386

79 Tamar Street  
PO Box 20  
BALLINA NSW 2478

Phone: 02 6686 3280  
Fax: 02 6686 7920  
e-mail: info@ardillpayne.com.au

**Planning Proposal / LEP Amendment Request  
Proponent & Proposal Information Form**

Lodge Applications at Ballina Shire Council • 40 Cherry Street • Ballina (Mon-Fri 8:15am to 4:30pm)  
mail PO Box 450 Ballina 2478 • fax 27789 • f 02 6686 7035 • e council@ballina.nsw.gov.au  
t 02 6686 4444 • w www.ballina.nsw.gov.au • abn 53 929 887 369



This form is to be completed and submitted when a request for an LEP amendment or planning proposal is lodged with Council.

**Proponent Details**

All correspondence will be forwarded to this name and address unless alternative details are specified below.

Proponent's Name

Address

Postal Address

Telephone (w)  (h)  Mobile

Email Address  Fax

Signature  Date

**Consultant / Representative Details**

Details of consultants/representatives acting on behalf of the proponent are required. Please nominate whether the consultant/representative will be the principal contact for the proposal.

Name

Address

Telephone (w)  Mobile  Fax

Email Address

Please tick if consultant/representative is to be the principal point of contact with Council.

**Description of the Land**

Property descriptions of all land holdings the subject of the LEP amendment request/planning proposal are required. Additional properties the subject of the proposal should be documented in the additional information field at the end of the form.

Property Address

Lot/Portion  Section  DP

Property Address

Lot/Portion  Section  DP

Property Address

Lot/Portion  Section  DP

**Office Use Only**

Proposal Name:	Type: <input type="checkbox"/> Major <input type="checkbox"/> Minor	Pre-Lodgement Discussion: <input type="checkbox"/> Y <input type="checkbox"/> N
Fee Paid: <input type="checkbox"/> Y <input type="checkbox"/> N Amount: \$	Date Received:	Receipt No:
Code 5, Job No: 20001.1001.061		

**Landholder Details and Consent**

Details of all landholders are to be provided. If landholders do not sign this form, evidence of the consent of landholders for the nomination of their landholding as part of the LEP amendment/planning proposal is required in conjunction with this form. Space is provided at the end of this form for additional landholder details.

Owner's Name(s)

Address

Lot/Portion  Section  DP

Telephone (w)  (h)  Mobile

Email Address  Fax

I/we being the owner(s) of the property identified above, consent to the submission of this planning proposal/LEP amendment.

Signature  Date

**Summary of the LEP Amendment Request / Planning Proposal**

Brief outline of the concept or idea underpinning the LEP amendment request / planning proposal.



## PLANNING PROPOSAL/LEP AMENDMENT REQUEST

Submission to Ballina Shire Council

Part of Lot 1 DP 1165957  
44-52 Blue Seas Parade, Lennox Head

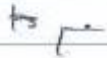
for:  
Mr George Farley

February 2014



**Document Control Sheet**

Filename:	7350 Planning Proposal/LEP Amendment Request
Job No.:	7350
Job Captain:	Paul Snellgrove
Author:	Paul Snellgrove
Client:	George Farley
File/Pathname:	

Revision No:	Checked By		Issued By	
	Name	Signed	Name	Signed
0			Paul Snellgrove	
1				
2				

Planning Proposal/LEP Amendment Request  
 Lot 1 DP 1165957  
 44-52 Blue Seas Parade, Lennox Head

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## 1 Introduction

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*This section introduces the proposal and provides a general overview of the project.*

### 1.1 Background

This submission comprises a Planning Proposal/LEP Amendment Request and explains the intended effect of, and provides justification for, a proposed amendment to the Ballina Local Environmental Plan 2012 (BLEP).

The proposed amendments relate to part of Lot 1 DP 1165957, No.s 44-52 Blue Seas Parade, Lennox Head and involve:

- rezoning that part of the lot zoned RU1 – Primary Production Zone and mapped as “Strategic Urban Growth Area” to R2 – Low Density Residential Zone; and
- replacing the 40ha minimum lot size with a 600m<sup>2</sup> minimum lot size for the proposed R2 zoned land.

The proposed R2 zone is the same zone as the adjoining/adjacent residential lots in Coastal Grove. The minimum lot size standard for other existing residential lots in Coastal Grove is 600m<sup>2</sup>.

This Planning Proposal has been prepared having regard to Section 55 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and:

- A Guide to Preparing Local Environmental Plans (Department of Planning & Infrastructure, April 2013)
- A Guide to Preparing Planning Proposals (Department of Planning, July 2009)
- Planning Proposals and Local Environmental Plan Amendments – Process Guidelines v2.0 (Ballina Council, 12 June 2013)

This submission comprises and supports the Phase 1: LEP Amendment Initiation process of the Planning Proposal and addresses all of the information on Council’s *Planning Proposal/LEP Amendment Request – Proponent & Proposal Information Form*.

There is no Political Donations and Gifts Disclosure required to accompany this request.

## 1.2 Structure and Scope of Report

This LEP Amendment Initiation Request contains the following:

<b>Section 2</b>	Context and characteristics of subject land.
<b>Section 3</b>	A statement of the <b>Objectives and Intended Outcomes</b> of the proposed LEP amendment (Section 2, Part 1).
<b>Section 4</b>	An <b>Explanation of the Provisions</b> that are to be included in the proposed LEP amendment (Section 2, Part 2).
<b>Section 5</b>	The <b>Justification</b> for those objectives, outcomes and provisions and the process for their implementation (Part 2, Section 3).
<b>Section 6</b>	Details of the <b>Community Consultation</b> in respect of the Planning Proposal (Part 2, Section 4).
<b>Section 7</b>	Conclusion

A number of appendices form part of this request being:

<b>Appendix A</b>	Aerial photograph of subject and adjoining land
<b>Appendix B</b>	Copy of deposited plan
<b>Appendix C</b>	Contour and detail survey
<b>Appendix D</b>	Strategic Urban Growth Area overlay

### 1.3 Background

A meeting was held on the 20<sup>th</sup> February 2014 between Council's Strategic Planner (Matthew Wood) and APP's Town Planner (Paul Snellgrove) to discuss the proposed LEP amendment.

An application was lodged with Council in 2008 seeking to rezone part of the land (previously described as Lot 2 DP 587685) that was then zoned 1(d) – Rural (Urban Investigation) Zone under the BLEP 1987.

Council resolved in June 2010 to prepare a Planning Proposal in relation to the 1(d) zoned part of the land.

As part of the Planning Proposal process, a consultant that was engaged on Council's behalf to peer review the Planning Proposal, recommended to Council that it proceed with the preparation of the Planning Proposal, but on the basis of a smaller footprint being considered for the application of a residential zone.

It is understood that the recommended smaller footprint is coincidental with that part of the site that is mapped as a "Strategic Urban Growth Area", which is the land that is subject of this request.

As a consequence of a period of inactivity in respect of the Planning Proposal, Council at its Ordinary Meeting in March 2011 resolved as follows:

1. *That Council cease processing of the current LEP amendment request relating to Lot 2 DP 587685 (prior lot description) Blues Seas Parade, Lennox Head.*
2. *That Council establish a land use zoning arrangement for Lot 2 DP 587658 under its new local environmental plan that reflects the recommendation of Darryl Anderson Consulting generally as contained in Attachment 4.*
3. *That Council incorporate a reduced footprint for potential urban development generally in accordance with the plan shown in Attachment 4 in its Local Growth Management Strategy.*
4. *That Council advise the Department of Planning of the change to the potential urban footprint for the land with respect to the Town and Village Growth Boundaries in the Far North Coast Regional Strategy.*

This prior Planning Proposal has therefore been discontinued.

3

*Planning Proposal/LEP Amendment Request  
Lot 1 DP 1165957  
44-52 Blue Seas Parade, Lennox Head*

---

## 2 Context and Characteristics of Subject Land

---

*This section describes the subject land and identifies the geographical context of the site and its relationship to the surrounding locality.*

### 2.1 Property Details

The Planning Proposal relates to part of a single lot which is described as Lot 1 DP 1165957, No. 44-52 Blue Seas Parade, Lennox Head and which has an area of 3.476ha.

An aerial photograph of the subject and adjoining land is provided at **Appendix A**. A copy of the deposited plan is provided at **Appendix B**. A contour and detail survey is provided at **Appendix C**.

Vehicular access to the site is via an existing concrete and bitumen driveway to Blue Seas Parade which is a constructed urban (residential) road with a bitumen seal.

It should be noted that the attached detail survey was undertaken in March 2012 and shows an existing dwelling that has since been demolished (per DA 2013/266). A new dwelling house is currently being constructed on the site (per DA 2012/421) and is not shown on the detail survey.

### 2.2 Other matters

Preliminary planning investigations (including reference to Section 149 Certificate No. 2653) in respect of that part of the subject land that is subject to this request confirm that the land is:

- **not** mapped as being subject to SEPP 14 or SEPP 26
- mapped as being bushfire prone (part Vegetation Category 2 and part 30m buffer)
- **not** likely to be contaminated as a consequence of existing or prior land uses
- **not** is mapped as being subject to the 1 in 100 year flood event or tidal inundation
- **not** mapped as being subject to acid sulfate soils (Sheet ASS\_005 – BLEP 2012)

4

*Planning Proposal/LEP Amendment Request  
Lot 1 DP 1165957  
44-52 Blue Seas Parade, Lennox Head*

- **not** identified as being or containing an item of environmental heritage (per Schedule 5 of the Ballina LEP 2012)
- **not** identified as including or comprising critical habitat as prescribed in the Threatened Species Conservation Act 1995 or (subject to section 5C) Part 7A of the Fisheries Management Act 1994
- **not** identified as being affected by the operation of Sections 38 or 39 of the Coastal Protection Act 1979
- **not** affected by any road widening or realignment proposal under either Division 2 of Part 3 of the Roads Act 1993, any environmental planning instrument or any resolution of Council
- **not** identified as being subject to acquisition by a public authority under the provisions of any environmental planning instrument, deemed or draft environmental planning instrument

An easement for overhead power lines (20m wide) exists on the land and is coincidental with the existing overhead power lines on the land, which are identified on the detail survey at **Appendix C**. Essential Energy is the prescribed authority that is benefitted by the easement.

Integral to the rezoning and development of the land for future urban residential purposes, would be a likely requirement for the power lines to be removed with the electricity supply being re-routed.

Such relocation would have to be undertaken in consultation with and the approval of Essential Energy.

### 2.3 Local Context

The subject lot is a partially developed rural residential type lot (which contains a dwelling house that is under construction) which adjoins urban residential estates of Lennox Head to the west.

Land to the north and east comprises coastal land (including coastal reserve) and to the south comprises rural land.

## **2.4 Strategic Planning Context**

### **2.4.1 Far North Coast Regional Strategy 2006-31 (FNCRS)**

The subject land is mapped in the Strategy as being a 'Proposed Future Urban Release Area'.

Under the circumstances, the proposed application of a residential zone is consistent with the Strategy.

### **2.4.2 Ballina Shire Growth Management Strategy 2012 (GMS)**

The subject land is mapped as a "strategic urban growth area" under the Strategy.

Under the circumstances, the proposed application of a residential zone is consistent with the Strategy.

### **2.4.3 Lennox Head Structure Plan (2004) (LHSP)**

The LHSP provides a framework to ensure that the growth and development of Lennox Head occurs in a co-ordinated and integrated manner. The subject land is contained in the Plan.

The land is not identified as a candidate release area under the Structure Plan, however it adjoins the existing and planned urban area in the vicinity of Blue Seas Parade.

This is not considered to be a significant inconsistency, particularly as a consequence of the land being identified for future urban purposes under both the FNCRS and the GMS.

## **2.5 Relevant Provisions of BLEP 2012**

That part of the subject land proposed for rezoning is mapped under the BLEP 2012 as follows:

- RU1 – Primary Production Zone
- AB2 – 40ha minimum lot size/subdivision standard

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- "Strategic Urban Growth Area"

### 3.1 Objectives of Planning Proposal

The objective of the Planning Proposal is to rezone part of the subject land to an urban residential zone and to apply a minimum lot size that will enable the land to be subdivided into minimum 600m<sup>2</sup> lots, and to enable the construction of a dwelling house on the vacant lots at some future time (and subject to a separate approval process).

### 3.2 Possible Future Subdivision

That part of the site that is proposed to be zoned R2 has an area of approximately 11,000m<sup>2</sup>. Provided at **Appendix D** is the detail survey which has been overlain by the "Strategic Urban Growth Area" which has been extracted from the Strategic Urban Growth Area Map (Sheet SGA\_005D of the BLEP 2012).

Based purely on a 600m<sup>2</sup> lot size and approximately 200m<sup>2</sup> of road/lot, the site could yield up to 13 lots. As a consequence of the existing rock wall along the eastern side of Blue Seas Parade, it is likely that a new road will have to be constructed on the subject land to service any future lots, as access will not likely be possible through the rock wall. It should be noted that this yield is a purely hypothetical number and has not been calculated having regard to any of the constraints that may exist on the site.

The broader locality is serviced by all necessary reticulated public infrastructure services, including:

- potable water supply (including hydrants within Blue Seas Parade road reserve)
- sewerage disposal
- electricity
- telecommunications
- constructed urban roads (including stormwater)

Any future new lots would be able to be connected to and serviced by such systems.

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## 4 Explanation of Provisions

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### 4.1 Explanation of Proposed Amendments

The proposed amendments to the BLEP 2012 involve:

- rezoning that part of the lot from RU1 – Primary Production Zone to R2 – Low Density Residential Zone;
- applying a 600m<sup>2</sup> minimum lot size to the R2 zoned land; and

The proposed R2 zone is same zoning as the adjoining/adjacent residential lots in Coastal Grove. The existing residential lots in Coastal Grove have a 600m<sup>2</sup> minimum lot size.

Contingent upon the zoning change being affected, there will have to be a consequential change to the Strategic Urban Growth Area map, such that the land is no longer mapped as a 'Strategic Urban Growth Area'.



**5.1 Section A – Need for the planning proposal**

**1. *Is the planning proposal a result of any strategy study or report?***

The subject land is identified in the Far North Coast Regional Strategy as being a 'proposed future urban release area' and as a "strategic urban growth area" under the Ballina Shire Growth Management Strategy.

**2. *Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?***

The proposed application of a residential zone is consistent with these strategic planning documents that identify the land for future urban investigation/use.

It is submitted that an LEP amendment is the best (and only) way in which to achieve the proposed outcomes, as the proposal relates expressly to land use zoning and subdivision potential.

**3. *Is there a net community benefit?***

The net community benefit that will result from the proposal is:

- additional economic activity generated by the development of the land for urban residential purposes
- additional land available for residential and related development

**5.2 Section B – Relationship to strategic planning framework**

**4. *Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?***

As detailed elsewhere in this Planning Proposal, the proposal is consistent with the Far North Coast Regional Strategy.

The Planning Proposal involves changes to the zoning and minimum lot size standards to enable future subdivision (and construction of new dwelling houses).

The Planning Proposal will provide for increased housing opportunities which will assist in accommodating the projected local and regional population increase.

The Planning Proposal is thus consistent with the FNCRS. The information contained in this Planning Proposal document confirms and supports the capability of the land to accommodate urban residential development, which is thus consistent with the regional planning framework.

**5. *Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?***

*Ballina Shire Growth Management Strategy 2012 (GMS)*

The purpose of the GMS is to provide the framework for management population and employment growth in Ballina Shire over the planning period of 2012-2013.

The subject land is mapped as a "Strategic Urban Growth Area" under the GMS, and as such, the application of a residential zone over the land is consistent with the Strategy.

**6. *Is the planning proposal consistent with applicable state environmental planning policies?***

There are a number of SEPP's that are of relevance to the proposal, details of which are as follows:

SEPP Title	Compliance of Planning Proposal
SEPP (Rural Lands) 2008	<p>The subject land is currently zoned RU1. The proposed rezoning of the lot to a residential zone will not compromise or prejudice the use of the subject and adjoining land for agricultural purposes, due primarily to the characteristics, existing use, adjoining use and small size of the lot.</p> <p>The application of a residential zone will not result in increased land use conflicts with adjoining agricultural land as a consequence of the siting of the existing and future dwellings, the character of the adjoining and surrounding land (being primarily urban residential) and the limited potential for agricultural use of the adjoining land.</p> <p>It is therefore submitted that the Planning Proposal is consistent with the provisions of this SEPP.</p>
SEPP 44 – Koala Habitat Protection	<p>The subject land is devoid of significant native vegetation and is not likely to contain any Koala food trees.</p> <p>It is therefore submitted that the Planning Proposal is consistent with the provisions of and is not contrary to the intent of the SEPP.</p>
SEPP 55 – Remediation of Land	<p>Clause 6(1) of this SEPP requires the planning authority when preparing a Draft LEP to consider whether the land is contaminated and whether the land is suitable for such purpose (as not being contaminated or requiring remediation to make it suitable). A contamination assessment would have to be undertaken should the Planning Proposal proceed to Phase 2.</p> <p>It is therefore submitted that the Planning Proposal is consistent with the provisions of and is not contrary to the intent of the SEPP.</p>
SEPP 71 – Coastal Protection	<p>The subject land is physically and spatially removed from any coastal foreshore area. The land is quite prominent/visible in the local landscape and streetscape and thus a visual setting and impact assessment would have to be undertaken should the Planning Proposal proceed to Phase 2. The future subdivision and residential development of the land will not have any adverse or tangible impacts on any part of the coastal foreshore or any public land.</p> <p>It is therefore submitted that the Planning Proposal is consistent with the provisions of and is not contrary the intent of the SEPP.</p>

## **7. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?**

Section 117 of the EP & A Act 1979 provides directions that relevant planning authorities must have regard to when preparing planning proposals for new LEPs. The following table identifies which of these directions are applicable to the proposed rezoning and how the Planning Proposal is consistent with their provisions.

Direction Number	Compliance of Planning Proposal
<b>1. Employment and Resources</b>	
1.1 Business and Industrial Zones	Does not apply to Planning Proposal.
1.2 Rural Zones	Complies – Part of the subject lot is contained within the 'Proposed Future Urban Release Area' (Town and Village Growth Boundary Map – Sheet 3 – Ballina) of the FNCRS and is thus able to be justified as a consequence of the FNCRS.
1.3 Mining, Petroleum Production and Extractive Industries	Does not apply to Planning Proposal.
1.4 Oyster Aquaculture	Does not apply to Planning Proposal.
1.5 Rural Lands	Complies – comments in respect of the Rural Lands SEPP are provided in <b>Section 5.2</b> of this Planning Proposal. Further, the proposed rezoning is of relatively minor significance and is consistent with the FNCRS 2006-31 in that part of the lot is mapped as a 'Proposed Future Urban Release Area'.
<b>2. Environment and Heritage</b>	
2.1 Environmental Protection Zones	Does not apply to Planning Proposal.
2.2 Coastal Protection	Complies – the proposal is considered to be of a relatively minor nature, resulting in a possible maximum of 13 lots (and future houses). The subject land is physically and spatially removed from any coastal foreshore area and is not subject to flooding, tidal inundation, acid sulfate soils, or any coastal processes. The proposal will not have any impact on any coastal foreshore land (public or private).
2.3 Heritage Conservation	Complies – the subject land is not identified as containing or comprising a heritage item or place (per Schedule 5 of the BLEP 2012).
2.4 Recreation Vehicle Areas	Does not apply to Planning Proposal.
<b>3. Housing, Infrastructure and Urban Development</b>	
3.1 Residential Zones	Complies – adequate public infrastructure is available in the immediate locality to service the existing lot and possible new lots (contingent upon consent being granted to future subdivision).  The proposal will facilitate urban development which is able to connect to and make use of existing infrastructure services.
3.2 Caravan Parks and Manufactured Home Estates	Does not apply to Planning Proposal.
3.3 Home Occupations	Complies – home occupations are permitted without consent in the R2 zone under the BLEP 2012.
3.4 Integrated Land Use and Transport	Complies – the land is identified in the 'Proposed Future Urban Release Area' of the FNCRS. The proposal will facilitate development which is able to make use of existing roads and transport services.
3.5 Development Near Licensed Aerodromes	Does not apply to Planning Proposal.
3.6 Shooting Ranges	Does not apply to Planning Proposal.

<b>4. Hazard and Risk</b>	
4.1 Acid Sulphate Soils	Does not apply to Planning Proposal.
4.2 Mine Subsidence and Unstable Land	Does not apply to Planning Proposal.
4.3 Flood Prone Land	Does not apply to Planning Proposal.
4.4 Planning for Bushfire Protection	<p>A Bushfire Hazard Assessment would have to be prepared in accordance with the provisions of Planning for Bushfire Protection 2006 to support of the proposed rezoning and future possible subdivision of the land should the Planning Proposal proceed to Phase 2.</p> <p>As evidenced on the aerial photograph, the subject land and broader locality is not heavily timbered and thus it is suggested that bushfire will not likely be a prohibiting factor to the Planning Proposal.</p>
<b>5. Regional Planning</b>	
5.1 Implementation of Regional Strategies	Complies – the land is identified as a 'Proposed Future Urban Release Area' under the FNCRS.
5.2 Sydney Drinking Water Catchments	Does not apply to Planning Proposal.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	<p>Complies – The land is mapped in the "Northern Rivers Farmland Protection Project – Final Recommendations, February 2005" as "significant non-contiguous farmland".</p> <p>Notwithstanding such, the land is mapped as a 'Proposed Future Urban Release Area' under the FNCRS 2006-31. Pursuant to Subclause (2) of Direction 5.3, land identified as such is excluded from the requirements of the Direction.</p> <p>The provisions of this Direction do not effectively apply to the Planning Proposal.</p>
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Does not apply to the Planning Proposal.
5.5 Development in the Vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	Revoked 18 June 2010.
5.6 Sydney to Canberra Corridor	Revoked 10 July 2008
5.7 Central Coast	Revoked 10 July 2010
5.8 Second Sydney Airport: Badgerys Creek	Does not apply to the Planning Proposal.
<b>6. Local Plan Making</b>	
6.1 Approval and Referral Requirements	Complies – does not introduce any new concurrence or consultation provisions or any additional designated development types.
6.2 Reserving Land for Public Purposes	Does not apply to the Planning Proposal.
6.3 Site Specific Provisions	Complies – seeks to apply the existing R2 land use zone and standards that are compatible with the residential development of the site and adjoining land.
<b>7. Metropolitan Planning</b>	



7.1 Implementation of the Metropolitan Plan for Sydney 2036	Does not apply to Planning Proposal.
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### 5.3 Section C – Environmental, social and economic impact

**8. *Is there any likelihood of critical habitat or threatened species, population or ecological communities, or their habitats, will be adversely affected as a result of the proposal?***

As evidenced from the aerial photograph at **Appendix A**, that part of the site that is subject of the proposed rezoning is largely cleared, containing managed grassland and domestic type landscaping.

The subject land is not likely to contain any critical habitat or threatened species, populations or ecological communities.

**9. *Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?***

The subject land is mapped as being bushfire prone. A Bushfire Threat Assessment Report would have to be prepared which addresses Planning Direction 4.4 (Section 117 Directions) and assesses the proposal in the context of:

- the provisions of Planning for Bushfire Protection (PBP) 2006
- introducing controls that avoid placing inappropriate developments in hazardous areas
- ensuring that bushfire hazard reduction is not prohibited in the APZ

The land is in a locality that is mapped as being high mosquito risk. The whole of the towns of Lennox Head and Ballina are situated in such an area and it has not been Council's practice to preclude urban residential development in such areas as a consequence of mosquito risk.

In accordance with Council's current controls and strategies (Section 3.6 – Mosquito Management, Chapter 2 – General and Environmental Considerations, DCP 2012), any future dwellings will be required to contain effective screening to all windows, external doors and other openings to habitable rooms (would be conditioned at DA stage for future houses).

**10. How has the planning proposal adequately addressed any social and economic effects?**

The proposed rezoning (and construction of future houses) may have impacts on the landscape and scenic character of the locality as well as possible amenity impacts on adjacent dwellings/residents. These matters would have to be addressed in more detail should the Planning Proposal proceed to Phase 2.

The subject land is already connected to all necessary reticulated public infrastructure services and thus there are no significant economic issues with the servicing of any future lots.

**5.4 Section D – State and Commonwealth interests**

**11. Is there adequate public infrastructure for the planning proposal?**

The existing locality is connected to and serviced by all necessary reticulated public infrastructure services. There is sufficient capacity for any proposed new lots to be efficiently and economically connected to and serviced by such services.

**12. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?**

The views of the Department of Planning & Infrastructure and other relevant Governmental bodies would be obtained should Council resolve to enable the Planning Proposal to proceed.

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## 6 Community Consultation

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There has not been any community consultation undertaken in respect of this Planning Proposal at this point in time.

It is likely that a requirement for community consultation will be contained in any Gateway Determination, with such community consultation and advertising having to be duly undertaken by Council in the further processing of this Planning Proposal.

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## 7 Scope of Engagement

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This Planning Proposal has been prepared by Ardill Payne & Partners (APP) on behalf of George Farley for lodgement with Ballina Shire Council and is not to be used for any other purpose or by any other person or corporation.

This report has been prepared from the information provided to us and from other information obtained as a result of enquiries made by us. APP accepts no responsibility for any loss or damage suffered howsoever arising to any person or corporation who may use or rely on this document for a purpose other than that described above.

No part of this report may be reproduced, stored or transmitted in any form without the prior consent of APP.

APP declares that it does not have, nor expects to have, a beneficial interest in the subject project.

To avoid this advice being used inappropriately it is recommended that you consult with APP before conveying the information to another who may not fully understand the objectives of the report. This report is meant only for the subject site/project and should not be applied to any other.

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**8 Appendices**

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<b>Appendix A</b>	Aerial photograph of subject and adjoining land
<b>Appendix B</b>	Copy of deposited plan
<b>Appendix C</b>	Detail and contour survey
<b>Appendix D</b>	Strategic Urban Growth Area overlay

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APPENDIX A

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**Appendix A**  
Aerial photograph of subject  
and adjoining land

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Aerial photograph of Lot 1 DP 1165957



Disclaimer: This report has been generated by various sources and is provided for information purposes only. Land and Property Information (LPI), a division of the Department of Finance and Services does not warrant or represent that the information is free from errors or omission, or that it is exhaustive. LPI gives no warranty in relation to the information, especially material supplied by third parties. LPI accepts no liability for loss, damage, or cost that you may incur relating to any use or reliance upon the information in this report.

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APPENDIX B

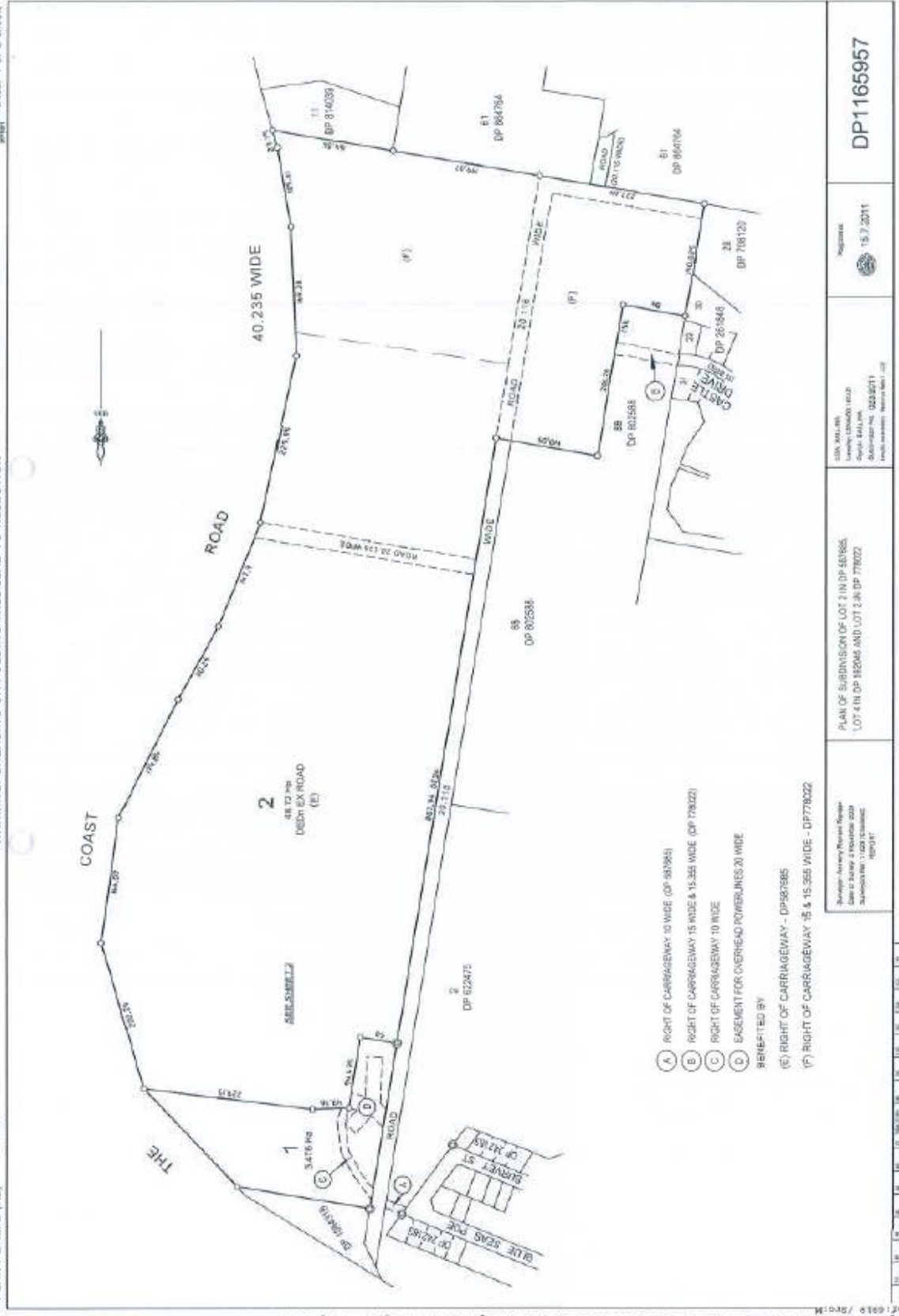
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**Appendix B**  
Copy of deposited plan

21

*Planning Proposal/LEP Amendment Request  
Lot 1 DP 1165957  
44-52 Blue Seas Parade, Lennox Head*





- (A) RIGHT OF CARRIAGEWAY 10 WIDE (DP 801944)
  - (B) RIGHT OF CARRIAGEWAY 15 WIDE & 15.365 WIDE (DP 778022)
  - (C) RIGHT OF CARRIAGEWAY 10 WIDE
  - (D) BASEMENT FOR OVERHEAD POWERLINES 20 WIDE
- BENEFITED BY
- (E) RIGHT OF CARRIAGEWAY - DP807885
  - (F) RIGHT OF CARRIAGEWAY 15 & 15.365 WIDE - DP778022

<p>DP1165957</p> <p>PLAN OF SUBDIVISION OF LOT 2 IN DP 681866, LOT 4 IN DP 182846 AND LOT 3 IN DP 778022</p>		<p>15/7/2011</p>	<p>DP1165957</p>
<p>Prepared by: <i>James Avery Project Group</i>                  Checked by: <i>James Avery Project Group</i>                  Approved by: <i>James Avery Project Group</i>                  Date: 15/7/2011</p>			
<p>Scale: 1:500                  Date: 15/7/2011                  Subdivision No: 0230211                  Draftsman: James Avery</p>			

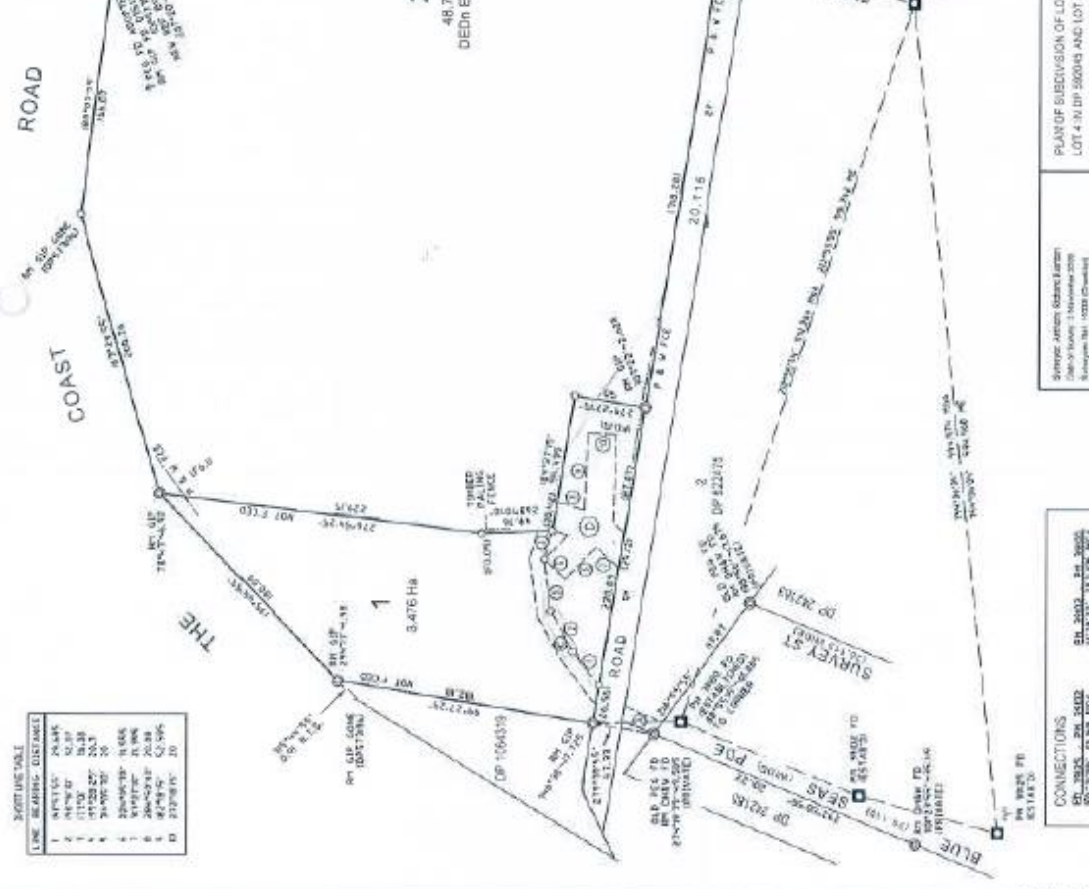
TABLE OF BEARING AND DISTANCE

LINE	BEARING	DISTANCE
1	N 87° 55' 00" E	52.37
2	N 87° 55' 00" E	52.37
3	S 87° 55' 00" E	52.37
4	S 87° 55' 00" E	52.37
5	S 87° 55' 00" E	52.37
6	S 87° 55' 00" E	52.37
7	S 87° 55' 00" E	52.37
8	S 87° 55' 00" E	52.37
9	S 87° 55' 00" E	52.37
10	S 87° 55' 00" E	52.37

MARKS

EASTING	NORTHING	CLAYS	ORIENT	METHOD	DATE
550 600 00	550 000 00	8817	889 420	4	1
550 600 00	550 000 00	8813	851 354	2	2
550 600 00	550 000 00	8813	453 104	2	2
550 600 00	550 000 00	8813	480 847	2	2

COMBINED SCALE FACTOR 0.999303  
 SOURCE: DEPARTMENT OF LANDS SURVEY SEARCH DATED 2/11/2009



- ① RIGHT OF CARRIAGEWAY 10 WIDE (DP 87008)
- ② RIGHT OF CARRIAGEWAY 10 WIDE
- ③ EASEMENT FOR OVERHEAD POWERLINES 3.0 WIDE

Red: 8725760 / Doc: DP 1165957 P / Rev: 15-01-2011 / SW: SC OK / P: 107-07-09-2011 14:49 / Pgm: ML / Req: 2 of 4

<p>CONNECTIONS</p> <p>DP 2018                  DP 2019                  DP 2020                  DP 2021                  DP 2022                  DP 2023                  DP 2024                  DP 2025                  DP 2026                  DP 2027                  DP 2028                  DP 2029                  DP 2030                  DP 2031                  DP 2032                  DP 2033                  DP 2034                  DP 2035                  DP 2036                  DP 2037                  DP 2038                  DP 2039                  DP 2040                  DP 2041                  DP 2042                  DP 2043                  DP 2044                  DP 2045                  DP 2046                  DP 2047                  DP 2048                  DP 2049                  DP 2050                  DP 2051                  DP 2052                  DP 2053                  DP 2054                  DP 2055                  DP 2056                  DP 2057                  DP 2058                  DP 2059                  DP 2060                  DP 2061                  DP 2062                  DP 2063                  DP 2064                  DP 2065                  DP 2066                  DP 2067                  DP 2068                  DP 2069                  DP 2070                  DP 2071                  DP 2072                  DP 2073                  DP 2074                  DP 2075                  DP 2076                  DP 2077                  DP 2078                  DP 2079                  DP 2080                  DP 2081                  DP 2082                  DP 2083                  DP 2084                  DP 2085                  DP 2086                  DP 2087                  DP 2088                  DP 2089                  DP 2090                  DP 2091                  DP 2092                  DP 2093                  DP 2094                  DP 2095                  DP 2096                  DP 2097                  DP 2098                  DP 2099                  DP 2100</p>	<p>PLAN OF SUBDIVISION OF LOT 2 IN DP 35366,                  LOT 4 IN DP 35004 AND LOT 2 IN DP 77822</p>	<p>DP 1165957</p>
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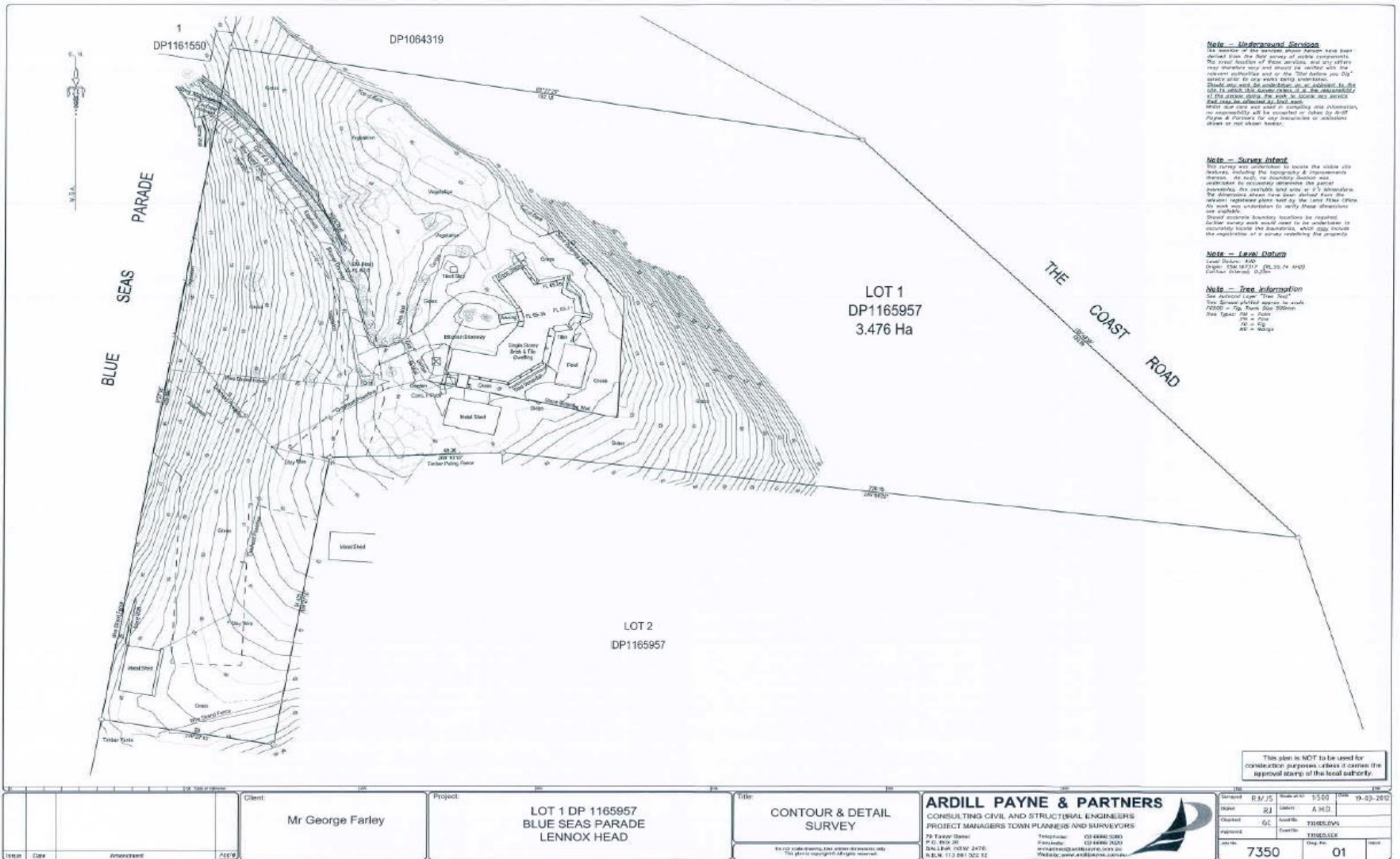
APPENDIX C

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**Appendix C**  
Contour and detail survey

22

*Planning Proposal/LEP Amendment Request  
Lot 1 DP 1165957  
44-52 Blue Seas Parade, Lennox Head*



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APPENDIX D

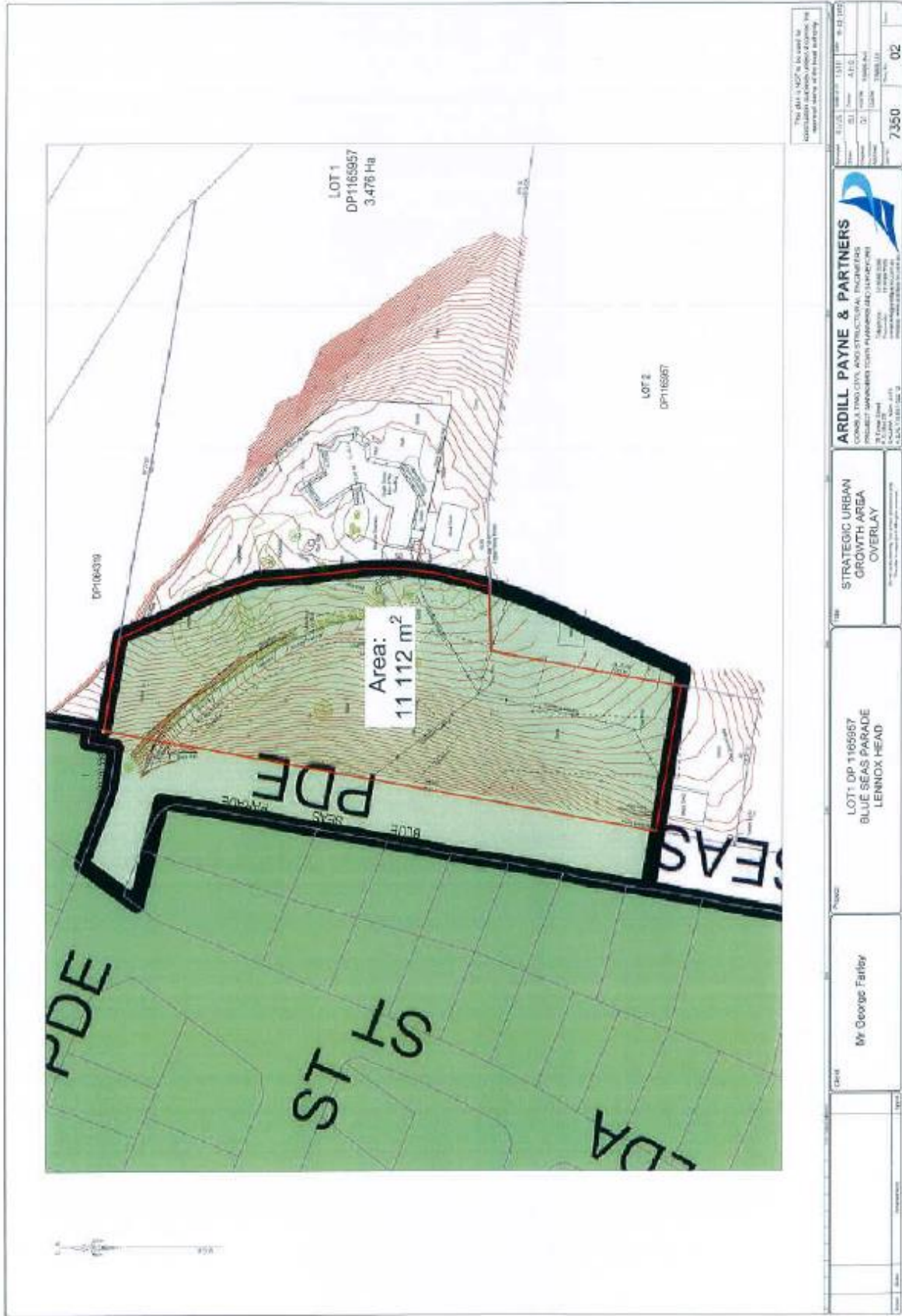
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**Appendix D**  
Strategic Urban Growth Area  
overlay

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*Planning Proposal/LEP Amendment Request  
Lot 1 DP 1165957  
44-52 Blue Seas Parade, Lennox Head*



This plan is NOT to be used for construction purposes without the approval of the Council.

Client:	Project:	Date:	Scale:	Sheet:	Drawn:	Checked:	Title:	Drawing No.:	Rev.:
	Mr George Farley						LOT 1 DP 1165957 BLUE SEAS PARADE LENNOX HEAD	7.350	02
 <b>ARDILL PAYNE &amp; PARTNERS</b> CONSULTING CIVIL AND STRUCTURAL ENGINEERS 27-29 WILSON ST, SYDNEY NSW 1585 AUSTRALIA Tel: (61) 2 9550 1111 Fax: (61) 2 9550 1112 Email: info@ardillpayne.com.au									
<b>STRATEGIC URBAN GROWTH AREA OVERLAY</b> <small>Planning Proposal No. 2016/0001</small>									

## Appendix H – Letters from Department of Planning and Environment re pre-Gateway Review



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

Ref: PGR\_2014\_BALLI-001\_00

Dear Mr Hickey

### Request for pre-Gateway review – PGR\_2014\_BALLI\_001\_00

I refer to the request for a pre-Gateway review (PGR\_2014\_BALLI-001\_00), lodged on 21 August 2014, for a proposal to amend Ballina Local Environmental Plan 2012 to rezone part of Lot 1 DP 1165957, 44-52 Blue Seas Parade, Lennox Head, from RU1 Primary Production to R2 Low Density Residential and replace the 40ha minimum lot size with a 600m<sup>2</sup> minimum lot size.

I have now determined that the proposal should proceed to Gateway determination stage. In making my decision, I considered the request for a pre-Gateway review, together with the recommendation of the Northern Joint Regional Planning Panel and advice provided by Council. Please find attached copy of the Panel's decision and report.

Consequently, Council is asked to advise if it would like to be the Relevant Planning Authority (RPA) for this proposal. Should Council agree to be the RPA, it will need to prepare a planning proposal under section 55 of the *Environmental Planning and Assessment Act 1979*, and submit it for a Gateway determination within 28 days of the date of this letter.

If Council does not wish to progress this matter, an alternate RPA may be appointed to prepare the planning proposal. Should Council not wish to be the RPA for this proposal, please contact the Department of Planning and Environment to discuss this matter further. You can view the progress of the pre-Gateway review at <http://pgrtracking.planning.nsw.gov.au/>

Should you have any further enquiries about this matter, please contact Ms Jenny Johnson of the Department's Northern Region Office on (02) 6641 6614.

Yours sincerely

  
Marcus Ray  
Acting Deputy Secretary *08/12/14*  
Planning Services

Encl: Northern Joint Regional Planning Panel, Recommendation Report

Department of Planning & Environment  
22-33 Bridge Street Sydney NSW 2000 | GPO Box 30 Sydney NSW 2001 | T 02 9228 6111 | F 02 9228 6455 | [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au)

**Joint Regional Planning Panel – Pre-Gateway Review – Recommendation Report Template**

The Northern Joint Regional Planning Panel (JRPP) has considered the request for a review of the proposal as detailed below.

**The Pre-Gateway Review:**

<b>Dept. Ref. No:</b>	PGR_2014_BALLI_001_00
<b>LGA:</b>	Ballina
<b>LEP to be Amended:</b>	Ballina LEP 2012
<b>Address / Location:</b>	44-52 Blue Seas Parade, Lennox Head (part of Lot 1 DP1165957) and adjoining road reserve
<b>Summary of Proposal:</b>	To rezone the subject site from RU1 Primary Production to R2 Low Density Residential under the Ballina LEP 2012 and apply a 600m <sup>2</sup> minimum lot size

<b>Reason for review:</b>	<input checked="" type="checkbox"/>	The Council has notified the proponent that the request to prepare a planning proposal has not been supported
	<input type="checkbox"/>	The Council has failed to indicate its support 90 days after the proponent submitted a request to prepare a planning proposal

In considering the request, the JRPP has reviewed all relevant information provided by the proponent as well as the views and position of the Department of Planning and Environment and the relevant local government authority. Based on this review the JRPP recommends the following:

<b>JRPP RECOMMENDATION:</b>	<input checked="" type="checkbox"/>	The proposed instrument <b>should</b> be submitted for a Gateway determination
	<input type="checkbox"/>	The proposed instrument <b>should not</b> be submitted for a Gateway determination
<b>Composition of Recommendation:</b>	<input checked="" type="checkbox"/> Unanimous <input type="checkbox"/> Not unanimous	<b>Comments:</b>
<b>JRPP Members:</b>	Garry West (Chair) John Griffin Pamela Westing John Truman David Wright	

**JRPP Advice and Justification for Recommendation:**

The Regional Panel agrees with the Assessment conducted by the Department and the Ballina Shire Council Staff for the planning proposal, which has strategic and site specific merit in regard to Ballina's Shire Growth Management Strategy.





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

RECORDS SCANNED  24 DEC 2014 Doc No..... Batch No.....
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Our ref: PGR\_2014\_BALLI\_001\_00  
Your ref: BSCPP 14/005

Dear Mr Hickey

**Pre-Gateway Extension Request - PGR\_2014\_BALLI\_001\_00**

I refer to your correspondence of 12 December 2014 seeking an extension of time to consider acceptance of the Relevant Planning Authority role for the proposed residential rezoning at 44-52 Blue Seas Parade, Lennox Head (PGR\_2014\_BALLI\_001\_00).

The timeframe for accepting or declining the Relevant Planning Authority role is non-statutory. It is open to me therefore to amend the timeframe beyond 28 days. Given the current situation of the holiday period I agree to your request.

I have been advised that the proponent has been notified of the delay and is satisfied that the issue will be considered at the earliest opportunity in January 2015.

Council should ensure that the matter is considered no later than the Ordinary Meeting on 22 January 2015.

If you have any questions in relation 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

**Marcus Ray**  
**Acting Deputy Secretary**  
**Planning Services**

17/12/14

## Appendix I – Report to Ballina Shire Council’s Ordinary Meeting on 22 January 2015

### 9.2 LEP Amendment - 44-52 Blue Seas Parade, Lennox Head

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### 9.2 LEP Amendment - 44-52 Blue Seas Parade, Lennox Head

**Delivery Program** Strategic Planning

**Objective** To advise Council of the outcome of the pre-Gateway review by the Department of Planning and Environment into the planning proposal which primarily relates to the application of an R2 Low Density Zone over part of Lot1 DP 1165957 known as 44 - 52 Blue Seas Parade, Lennox Head.

---

#### Background

The Council, at its Ordinary Meeting held on 22 May 2014, considered a request to amend the Ballina Local Environmental Plan 2012 (Ballina LEP 2012) relating to land at Blue Seas Parade Lennox Head. The request was made by Mr G Farley, the property owner and proponent. The request sought an amendment to the Ballina LEP 2012 to rezone part of Lot 1 DP 1165957 (Lot 1) from RU1 Primary Production to an R2 Low Density Residential zone.

The land the subject of the request is part of the property referred to locally as the “Newton Farm”, which includes part of the prominent escarpment located immediately west of Lennox Point.

In relation to this matter the Council resolved as follows [Minute No.220514/12]:

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 m<sup>2</sup>.

The planning proposal was subsequently prepared and considered by the Council at its Ordinary Meeting held on 24 July 2014. In relation to this matter the Council changed its position on progressing the rezoning and resolved as follows [Minute No.240714/1]:

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:
2. 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.
3. 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.

## 9.2 LEP Amendment - 44-52 Blue Seas Parade, Lennox Head

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A request for a pre-Gateway review was submitted to the Department of Planning and Environment on 19 August 2014 by Paul Snellgrove, Ardill Payne and Partners, on behalf of the proponent Mr George Farley. The review was undertaken by the Joint Regional Planning Panel, with the JRPP recommending in November 2014 that the matter should proceed to Gateway determination.

The Department of Planning and Environment (DP&E) 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. A copy of the Department's letter forms Attachment One to this report.

This report seeks direction from Council in relation to Council assuming the Relevant Planning Authority role for the further processing of the LEP amendment.

### Key Issues

- Consideration of the implications associated with accepting the role of RPA.
- Processing of LEP amendment request and submission of a planning proposal for Gateway determination.

### Information

The DP&E's letter dated 8 December 2014 requested advice within a 28 day period as to whether Council would like to be the RPA for this proposal. This period has now been extended so as to enable the Council to consider this matter at its Ordinary Meeting on 22 January 2015. The letter from the DP&E granting the extension of time forms Attachment Two to this report.

In the event that Council declines the role of RPA, and does not proceed to prepare a planning proposal for Gateway determination, then it is likely that the DP&E or JRPP will be appointed as the RPA.

To support the Council in progressing the matter should the role of RPA be accepted, a planning proposal has been prepared for consideration in relation to its submission for Gateway determination.

Council will recall that a planning proposal was previously prepared and accompanied the report to Council's Ordinary Meeting on 24 July 2014. This planning proposal has now been amended to make provision for a minimum lot size standard of 1200m<sup>2</sup> and to incorporate the more recent history relating to this proposal. The planning proposal forms Attachment Three to this report.

It is considered that a minimum lot size for subdivision of the land of 1200m<sup>2</sup> is appropriate for this site given the need for a buffer to the adjoining primary industry activity (Cattle grazing), and the impact of the existing electricity easement and rights of carriageway. Such a lot size standard may also assist in addressing scenic amenity, site access and other site constraints.

The planning proposal provides for the following amendments to Ballina LEP 2012:

## 9.2 LEP Amendment - 44-52 Blue Seas Parade, Lennox Head

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- The rezoning of that part of Lot 1 DP 1165957 designated as a Strategic Urban Growth Area (SUGA) from RU1 Primary Production to R2 Low Density Residential.
- Application of a 1,200m<sup>2</sup> minimum lot size to Lot 1 and a 600m<sup>2</sup> minimum lot size (consistent with land to the west and north) for the adjoining road reserve.
- Deletion of the SUGA affectation from a portion of Blue Seas Parade which adjoins Lot 1, and
- Deletion of the SUGA affectation from a triangular section of land (approximate area of 900m<sup>2</sup>) located on the adjoining Lot 2 DP 1165957 (Lot 2).

The DP&E in its assessment report related to the planning proposal has indicated that the subject land is identified in the Ballina Shire Growth Management Strategy as being within a future release area and in the far North Coast Regional Strategy as within the 'Town and Village Growth Boundary'. It is also indicated that the proposal is justified as it is consistent with local and state strategies and all SEPPs. In respect to identified inconsistencies with s117 Directives it is stated that these can be justified as of minor significance. This is consistent with the assessment undertaken by Council staff.

The JRPP's Recommendation Report states that the panel agrees with the Assessment conducted by the Department and the Ballina Shire Council Staff for the planning proposal, which has strategic and site specific merit in regard to the Ballina Shire Growth Management Strategy.

At this stage of the process a number of site specific studies and assessments have been identified as being required. These are listed below and should be required to be prepared post Gateway determination and prior to public exhibition of the proposal:

- Contaminated Land Assessment and Remediation Action Plan,
- Coastal Zone Impacts and Visual Amenity Impacts assessment,
- Bushfire Threat Assessment Report,
- Geotechnical Assessment (Landslip),
- Due Diligence Aboriginal Heritage Assessment,
- Services and Stormwater Management Report,
- Land Use Conflict Risk Assessment,
- Flora and Fauna Assessment,
- Access Arrangements and Electrical Easement Impact / Relocation Investigation.

Having regard to the history of this site, if Council agrees to be the RPA for this proposal, it is proposed that an independent third party be engaged by Council to review the proponent's technical reports and prepare an environmental assessment and planning report. The report would draw on the information provided by the proponent and Council staff to establish a recommended approach to the LEP amendment. The third party assessment would be undertaken at the proponent's cost in accordance with Council's endorsed fees and charges. The assessment and report would also form part of the material placed on public exhibition.

### Sustainability Considerations

- **Environment**  
The subject land contains various attributes of environmental value. These matters can be assessed in detail prior to public exhibition if the planning proposal proceeds further.
- **Social**  
There are a variety of social issues to consider in relation to the proposal, including implications for scenic and amenity values. These matters can be assessed in detail prior to public exhibition if the planning proposal proceeds further.
- **Economic**  
The proposal has the potential to result in a number of positive economic impacts associated with construction and infrastructure. These matters can be further considered prior to public exhibition.

### Legal / Resource / Financial Implications

There are no specific adverse legal implications associated with Council accepting or declining the RPA role or with the proposed LEP amendment at this time.

If Council agrees to accept the RPA role then the proponent will be required to meet the various processing costs, including the independent environmental assessment costs, in accordance with the Council's adopted schedule of fees and charges, as well as providing the necessary additional technical information, following Gateway determination.

Progress of this matter can be accommodated within the Strategic and Community Facilities Group work program.

### Consultation

Consultation with various Government agencies will be required post Gateway and following the submission of technical reports. Under a Council processing arrangement, the agencies proposed to be consulted at this stage include:

- NSW Rural Fire Services
- Civil Aviation Safety Authority
- Air Services Australia
- Ballina Byron Gateway Airport
- Essential Energy and
- Department of Primary Industries

Council will recall that preliminary consultation has already been undertaken with the owners of the adjoining property located at 54 Blue Seas Parade Lennox Head. This was in respect to the proposed deletion of the SUGA affectation from this property. A submission was received which objected to the rezoning proposal principally related to perceived land use conflicts. The submission did, however, indicate that the removal of the SUGA affectation from this property was supported should the rezoning proceed. It is noted that

## 9.2 LEP Amendment - 44-52 Blue Seas Parade, Lennox Head

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Mr Peter Small, one of the subject adjoining owners, addressed Council in support of his objection at Council's Ordinary Meeting on 24 July 2014.

### Options

1. 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.

The position of Council's planning staff remains unchanged from that conveyed in the reporting to Council in May and July 2014. That is, that the proposed LEP amendment is suitable for progression to Gateway determination and public exhibition. This option is consistent with the previous staff position.

If this option is preferred and Council is appointed the RPA to progress the matter, it is recommended that the planning proposal be based on application of a 1,200m<sup>2</sup> minimum lot size for subdivision over the potential development area to be clear about the potential subdivision potential of the land (as set out in the planning proposal contained in Attachment Three).

Under this approach, Council will be required to administer the third party review, technical assessment and public exhibition of the planning proposal. It should be noted that there is potential for significant objection to the proposal which Council would need to address as part of the public exhibition and reporting processes for the amendment.

Notwithstanding the progression of the planning proposal to public exhibition, Council will have a further opportunity to consider the proposal after the public exhibition process and prior to the proposal being finalised. It is open to Council to decline to progress the rezoning following the public exhibition period, although the final decision on the zoning will ultimately rest with the Minister for Planning.

If Council does not seek to progress the matter as the RPA, Council will not be able to direct and undertake the technical assessment and exhibition processes consistent with its approach to managing planning proposals. Essentially, Council will become a stakeholder in the process with the potential to make submissions to the appointed RPA.

For the reasons indicated in relation to option two below, this approach is not recommended. However, if Council wishes to accept the RPA role, it is recommended that the following resolution be applied:

1. That Council advise the Department of Planning and Environment that it is prepared to accept the role of Relevant Planning Authority for the planning proposal relating to 44 – 52 Blue Seas Parade, Lennox Head.
2. That Council authorises the submission of a planning proposal which provides for the application of an R2 Low Density Residential Zone to that part of Lot 1 DP 1165957 designated as a Strategic Urban Growth Area (SUGA) within Ballina LEP 2012 and the immediately adjoining road reserve to the Department of Planning and Environment for review and Gateway determination.

## 9.2 LEP Amendment - 44-52 Blue Seas Parade, Lennox Head

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3. That the planning proposal also provide for the removal of the SUGA affectation from Lots 1 and 2 DP 1165957 and the application of a minimum lot size of at least 1200m<sup>2</sup> to the proposed R2 zoned area and 600m<sup>2</sup> adjoining road reserve.
4. That the Department of Planning and Environment be advised that at this stage of the process it is the Council's intention to exercise its delegated plan making functions.
5. That upon an affirmative Gateway determination being received from the Department of Planning and Environment, the proponent be required to submit the technical documentation necessary to enable a comprehensive assessment of the proposal and potential environmental, social and economic implications.
6. That upon the requested information being submitted by the proponent, Council initiate a third party review including preparation of an environmental assessment and planning report relating to this planning proposal.
7. That the owners of Lot 2 DP 1165957, No. 54 Blue Seas Parade be advised of the Council's decision.
8. That the General Manager be authorised to exhibit the planning proposal for community comment following the completion of the third party review, with a further report being presented to the Council following the conclusion of the public exhibition period.

2. Decline the RPA role and advise the DP&E accordingly.

Given that the JRPP and DP&E have determined that this planning proposal has sufficient merit to proceed to Gateway determination rejection of the RPA role will effectively result in Council losing control of this rezoning process.

Information provided by the DP&E indicates that a rejection of the RPA role by Council will most likely see this role transferred to either the JRPP or the DP&E. Council's role would then be limited to making submissions during the public exhibition and consultation processes.

Such action will therefore result in Council having, at best, very limited opportunities to influence the process and ensure that any identified issues are resolved in a manner consistent with Council's policies and procedures.

Notwithstanding the above, this approach is consistent with the Council's July 2014 decision on this matter. Given this, it may be difficult for Council to explain an acceptance of the RPA role in that there has been no additional technical information provided to Council that changes the present circumstances of the proposal.

It is the JRPP's review and DP&E's subsequent request that has given rise to the request for Council to reconsider its approach to this proposal.

Option two is the recommended approach in order to be consistent with the Council's last formal position on the proposal in the absence of new technical information.

This option allows to Council make submissions to the process to ensure the community is strongly represented as part of the assessment.

## 9.2 LEP Amendment - 44-52 Blue Seas Parade, Lennox Head

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### *Delegation of Plan Making Functions*

If Council accepts the RPA role, Council's Gateway submission to the DP&E is also required to address whether the Council is proposing to exercise plan-making delegations in finalising the LEP amendment. This means Council staff would liaise directly with Parliamentary Counsel to finalise the drafting of the amendment for implementation.

Although there are resourcing implications for Council (more staff time in processing), it is recommended that the Council provide an indication at this stage that it is proposing to exercise its delegation in this instance. Under this approach, the Council would make its final decision on whether to exercise its delegations at the time of deciding on the finalisation of the amendment post public exhibition. This approach is embodied in the alternate resolution set out under option one.

### **RECOMMENDATIONS**

1. That Council affirms its July 2014 decision to discontinue processing of the LEP amendment request to apply a residential zone to part of Lot 1 DP 1165957, 44 - 52 Blue Seas Parade, Lennox Head.
2. That Council advise the Department of Planning and Environment that it declines the role of Relevant Planning Authority for the planning proposal relating to 44 - 52 Blue Seas Parade, Lennox Head.

### **Attachment(s)**

1. Attachment One - Letter from DP&E re outcome of pre-Gateway review
2. Attachment Two - Letter from DP&E re extension of time request
3. Attachment Three - Planning Proposal



**9.2 LEP Amendment - 44-52 Blue Seas Parade, Lennox Head**  
**220115/6 RESOLVED**

(Cr Paul Worth/Cr Ben Smith)

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.

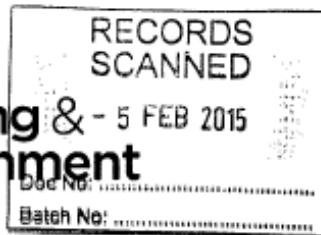
FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Jeff Johnson

## Appendix J – 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.



### 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**



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

Our ref: 15/02187  
Your ref: Planning Proposal – 44-52 Blue Seas  
Parade, Lennox Head (1592-02)

Attention: Mr Klaus Kerzinger

Dear Mr Hickey


**Planning Proposal PP\_2015\_BALLI\_002\_00 – Alteration of Gateway  
Determination**

I refer to your letter of 26 November 2015 seeking an extension of time to complete Planning Proposal PP\_2015\_BALLI\_002\_00 for the rezoning of land at Blue Seas Parade, Lennox Head to permit resident development.

I have determined as the delegate of the Minister, in accordance with section 56(7) of the *Environmental Planning and Assessment Act 1979* to alter the Gateway determination dated 3 February 2015 for PP\_2015\_BALLI\_002\_00. The Alteration of the Gateway Determination is enclosed.

If you have any questions in relation to this matter, I have arranged for Mr Luke Blandford to assist you. Mr Blandford can be contacted on (02) 6641 6612.

Yours sincerely

 30 November 2015  
**Stephen Murray**  
General Manager, Northern Region  
Planning Services

Encl:  
Alteration to Gateway Determination

## 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 30<sup>th</sup> day of November 2015

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

**Delegate of the Minister for Planning**

Ballina PP\_2015\_BALLI\_002\_00 (15/02187)

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

Our ref: 15/02187  
Your ref: BSCPP 14/005 – Blue Seas  
Parade (1592-03)

Attention: Leah Toole

Dear Mr Hickey

**Planning Proposal PP\_2015\_BALLI\_002\_00 – Revision of Proposal**


I refer to your correspondence of 23 August 2016 in relation to the revision of Planning Proposal PP\_2015\_BALLI\_002\_00 for the rezoning of land at Blue Seas Parade, Lennox Head to permit residential development.

I have noted the alterations to the Planning Proposal, for which a Gateway determination was issued on 3 February 2015 (as altered), which amends the boundary of the R2 Low Density Residential zone and applies a mixed minimum lot size regime of 600m<sup>2</sup> and 1200m<sup>2</sup> for the proposed R2 zoned land.

I have decided, as delegate of the Minister, that in accordance with s56(7) of the *Environmental Planning and Assessment Act 1979*, an alteration of the Gateway determination dated 3 February 2015 (as altered) is not necessary in this instance. I can also confirm that the requirements of condition No.2 of the Gateway determination have been satisfied. Council can now proceed with community consultation and its assessment of the proposal.

Should you have any further enquiries about this matter, I have arranged for Ms Gina Davis to assist you. Ms Davis can be contacted on (02) 6701 9687.

Yours sincerely

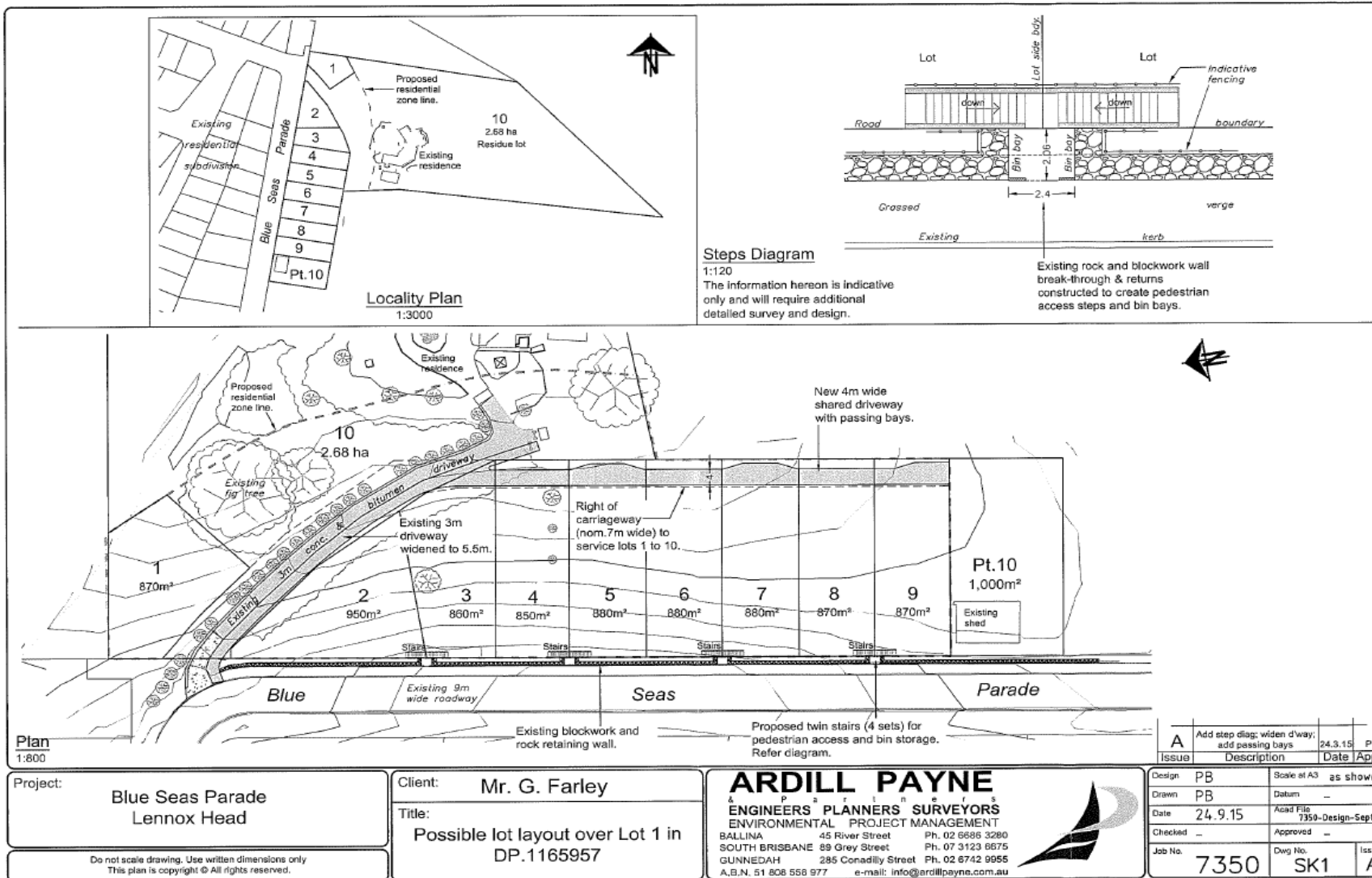


16 September 2016

**Craig Diss**  
**Acting Director Regions, Northern**  
**Planning Services**

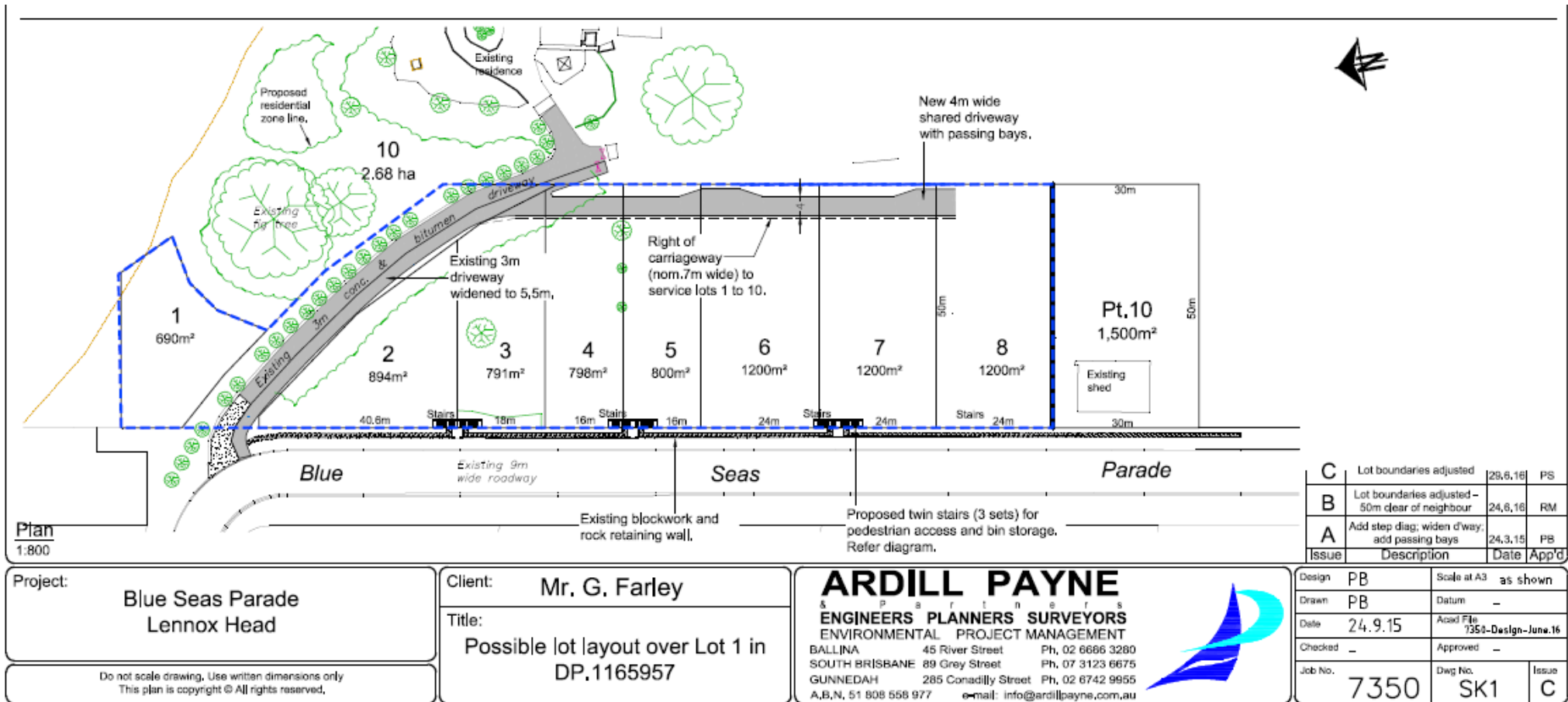
# Appendix K – Subdivision Concept Plans

## Proponent's Plan submitted in September 2015





**Amended Subdivision Concept Plan Submitted in July 2016**



## Appendix L – Public Authority and Agency Responses

### 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 600m<sup>2</sup> or a 1200m<sup>2</sup> 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](mailto: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](mailto:Pds.procs@airservicesaustralia.com)

Regards

**Graeme Gordon**  
Airport Operations Manager  
Ballina Byron Gateway Airport

## 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](mailto:chris.sepasspour@airservicesaustralia.com)

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**Australian Government**  
**Civil Aviation Safety Authority**

AIRSPACE AND AERODROME REGULATION

File Ref: EF 12/1 0657-5

02/04/2015

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

email: [klausk@ballina.nsw.gov.au](mailto: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 23<sup>rd</sup> 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,

A handwritten signature in black ink, appearing to read 'D. Eatock', with a stylized flourish at the end.

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](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](mailto:andrew.helman@industry.nsw.gov.au)

W: [www.trade.nsw.gov.au](http://www.trade.nsw.gov.au) | [www.resourcesandenergy.nsw.gov.au](http://www.resourcesandenergy.nsw.gov.au)





Contact Christie Jackson

Phone 02 6763 1426

Email [christie.jackson@dpi.nsw.gov.au](mailto:christie.jackson@dpi.nsw.gov.au)

OUT16/11623

Ballina Shire Council  
PO Box 450  
BALLINA NSW 2478

Email: [council@ballina.nsw.gov.au](mailto: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

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.

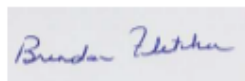
**Future Development Application:** Future development applications for the site should include information on the following issues, including, but not limited to:

- 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



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

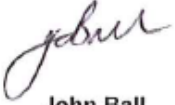
**Street address**

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](http://www.rfs.nsw.gov.au)

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Ball', written in a cursive style.

**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](http://www.rfs.nsw.gov.au) and search under 'Planning for Bush Fire Protection, 2006'.*



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](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



Ref: RM:SG 244404

30 March 2016

**By email: [klausk@ballina.nsw.gov.au](mailto: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](http://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](mailto:steve.gardoll@essentialenergy.com.au).

Yours sincerely

A handwritten signature in black ink, appearing to read "Raelene Myers". The signature is fluid and cursive, with a long, sweeping underline that loops back to the right.

Raelene Myers  
Conveyancing Team Leader

---

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

**Appendix M – Mike Svikis Planning Document Review and Gap Analysis Report  
(Incorporating Aboricultural Impact Assessment Report by Peter Gray)**

**(Under Separate Cover)**



## Appendix N – Report to Ballina Shire Council’s Ordinary Meeting on 23 June 2016

### 9.2 Planning Proposal (BSCPP 14/005) - Blue Seas Parade, Lennox Head

### 9.2 Planning Proposal (BSCPP 14/005) - Blue Seas Parade, Lennox Head

**Delivery Program** Strategic Planning

**Objective** To seek the Council's direction with respect to the further processing of a planning proposal to enable residential development on land at Blue Seas Parade (Part Lots 1 and 2 DP1165957), Lennox Head.

---

#### **Background**

The history of rezoning requests for this location extends back to 2010 when Council initiated a rezoning proposal which sought to apply a residential zone over part of Lot 2 DP 587685. The site considered at that time was much larger than the site that is the subject of the current proposal. The LEP amendment proposal initiated in 2010 was subsequently withdrawn as several issues remained unresolved. The Council formally resolved to cease processing of that LEP amendment request at its March 2011 Ordinary Meeting [Minute No. 240311/11].

The Council, at its Ordinary Meeting held on 22 May 2014 considered a fresh request to amend the Ballina Local Environmental Plan 2012 (Ballina LEP 2012) in relation to land at Blue Seas Parade, Lennox Head. The request was made by Mr G Farley, the property owner and proponent. The request sought an amendment to the Ballina LEP 2012 to rezone part of Lot 1 DP 1165957 (Lot 1) from RU1 Primary Production to a R2 Low Density Residential zone.

The land the subject of the request is part of the property referred to locally as the "Newton Farm", which includes part of the prominent coastal escarpment located immediately west of Lennox Point.

In relation to this matter the Council resolved as follows [Minute No.220514/12]:

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 m<sup>2</sup>.*

The planning proposal was subsequently prepared and considered by the Council at its Ordinary Meeting held on 24 July 2014. In relation to this matter the Council changed its position on progressing the rezoning and resolved as follows [Minute No.240714/1]:

1. *That Council discontinues 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.*
2. *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.*

## 9.2 Planning Proposal (BSCPP 14/005) - Blue Seas Parade, Lennox Head

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3. *That Council takes 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.*

A request for a pre-Gateway review was subsequently lodged by the proponent's consultant with the Department of Planning and Environment in August 2014. The review was undertaken by the Northern Joint Regional Planning Panel which recommended in November 2014, contrary to the Council's stated position, that the matter should proceed to Gateway determination.

The Council again considered this planning proposal at its meeting on 22 January 2015 together with advice from the Department of Planning and Environment that the planning proposal should proceed to the Gateway determination stage. The Department also sought advice from the Council on whether it would like to accept the Relevant Planning Authority role (RPA). The Council resolved as follows in respect to this matter [Minute No. 220115/6]:

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

The planning proposal considered by the Council related primarily to Lot 1 but also includes approximately 900m<sup>2</sup> of the adjoining Lot 2 DP 1165957 (part Lot 2) owned by Mr P R and Mrs J A Small and Ms J A Shelley, as well a section of Blue Seas Parade road reserve. In respect to part Lot 2, it is proposed to remove the Strategic Urban Growth Area (SUGA) affectation from this land. The owners of part Lot 2 have previously indicated that whilst they object to the rezoning of part Lot 1, if the rezoning proceeded then they would support the removal of the SUGA affectation from their land.

Attachment 1 contains a copy of the DP&E's Gateway determination dated 3 February 2015 together with an alteration dated 30 November 2015 relating to an extension of time for completion.

### Key Issues

- Consideration of an independent Document Review and Gap Analysis Report prepared by Mike Svikis Planning (MSP) relating to the adequacy of submitted technical reports.
- Further consideration of the merits of the planning proposal.

### Information

The land primarily the subject of this planning proposal, proposed for residential rezoning (part Lot 1), is located at the eastern end of Blue Seas Parade and has an approximate area of 1.1 hectares. This land is currently zoned RU1 Primary Production under the provisions of Ballina LEP 2012. The LEP also designates the land as a Strategic Urban Growth Area which implies that it may be suitable for urban development, subject to assessment of constraints.

The diagram below shows by red outline part Lot 1 which is subject to the planning proposal.

## 9.2 Planning Proposal (BSCPP 14/005) - Blue Seas Parade, Lennox Head

Diagram 1 – Site Map showing by red outline part Lot 1 DP 1165957



The planning proposal endorsed by Council in January 2015, and the subject of the February 2015 Gateway determination, made provision for the following amendments to Ballina LEP 2012:

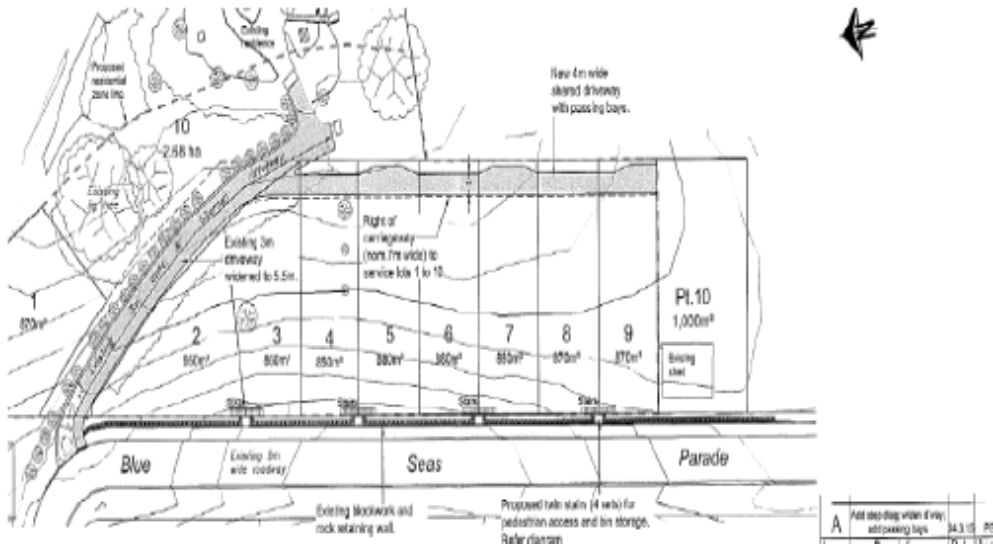
- The rezoning of part Lot 1 designated as a Strategic Urban Growth Area (SUGA) from RU1 Primary Production to R2 Low Density Residential.
- Application of a 1,200m<sup>2</sup> minimum lot size to part Lot 1 and a 600m<sup>2</sup> minimum lot size (consistent with land to the west and north) for the adjoining road reserve.
- Deletion of the SUGA affectation from a portion of Blue Seas Parade which adjoins Lot 1, and
- Deletion of the SUGA affectation from a triangular section of land (approximate area of 900m<sup>2</sup>) located on the adjoining Lot 2 DP 1165957 (part Lot 2).

It is noted that in respect to the 1,200m<sup>2</sup> minimum lot size issue, the planning proposal indicated that this would be examined for suitability by an independent third party. The planning proposal submitted for Gateway determination was intended to maintain flexibility with respect to zoning and lot size issues pending further technical assessment.

## 9.2 Planning Proposal (BSCPP 14/005) - Blue Seas Parade, Lennox Head

Diagram 2 below is an extract from the proponent's concept subdivision plan which makes provision for nine residential lots which range in size from 850m<sup>2</sup> to 950m<sup>2</sup>. Part Lot 10, located at the southernmost end of the site and containing an existing farm shed, is a residue lot on this concept plan and is not proposed to be zoned for residential purposes. The concept plan has no official status and provides an indication only of how the proponent may seek to further subdivide the land once the rezoning has been finalised.

Diagram 2 – Extract from Proponent's Subdivision Concept Plan



The Gateway determination required the following seven site specific studies and assessments to be prepared prior to public exhibition:

- Contaminated Land Assessment and Remediation Action Plan,
- Coastal Zone Impacts and Visual Amenity Impacts Assessment,
- Bushfire Threat Assessment Report,
- Geotechnical Assessment (Landslip),
- Due Diligence Aboriginal Heritage Assessment,
- Land Use Conflict Risk Assessment, and
- Flora and Fauna Assessment.

The proponent's consultant submitted technical reports during February and March 2016 which were then subject to staff assessment and external consultation as required by the Gateway determination. The reports were also independently reviewed for adequacy by Mike Svikis Planning (MSP). MSP was engaged by Council (at the proponent's cost) to prepare an initial Document Review and Gap Analysis Report followed by a Planning Assessment Report at the conclusion of the public exhibition phase.

*Mike Svikis Planning Document Review and Gap Analysis Report*

Attachment 2 contains a copy of the Document Review and Gap Analysis Report prepared by MSP.

## 9.2 Planning Proposal (BSCPP 14/005) - Blue Seas Parade, Lennox Head

The table below provides a brief summary of issues raised within the technical assessments, the conclusions reached by MSP as to whether issues identified have been adequately assessed, and officer comments.

Report / Issue	MSP Comments	Officer Comments
Ecological Attributes	<p>Vegetation across the majority of the site consists of mainly grassed areas. No Hairy Joint Grass was found on the site. No Endangered or Threatened Ecological Communities were found on the site.</p> <p>The site is located outside of the 100m buffer of nearby SEPP 26 Littoral rainforest and no areas of SEPP 14 Coastal wetland are likely to be affected.</p> <p>Two Moreton Bay fig trees located on the site have conservation value. A mature Norfolk Island pine on the site is also worthy of protection.</p> <p>So as to ensure the future retention of the Moreton Bay fig trees a recommendation is made that a 5 metre buffer be applied beyond the canopy of the trees. The 5 metre buffer was recommended in a specialist Arborist's report which was obtained to enable a determination to be made on the appropriate buffer area to be applied.</p> <p>In terms of other ecological issues, the report concludes that sufficient information has been submitted for Council to be able to make a decision on these matters.</p>	<p>The Moreton Bay fig trees have been estimated to be 120 years old. MSP has engaged a specialist Arborist to examine the trees and provide a recommendation as to the minimum buffer area required around the trees to encourage their future preservation.</p> <p>The Arborist's Report is contained as an Appendix to Attachment Two. The report recommends a minimum buffer of 5 metres beyond the trees' canopies.</p> <p>The areas occupied by the fig trees, as well as buffer areas, have been recommended to retain their current RU1 rural zone. This will require an amendment to be made to the land zoning plan the subject of the Gateway determination. It will also require an altered Gateway determination to be obtained prior to exhibition if Council supports this recommendation.</p> <p>Retaining the RU1 zone results in the trees not receiving the protection of the tree preservation provisions of the LEP. Zoning the area occupied by the trees for residential purposes creates pressure for their removal. On balance, retaining the trees and the associated buffers within the RU1 zone has been considered by MSP as the best long term option in an attempt to ensure the trees' continued survival. This view is supported.</p>
Bush Fire Threat Assessment	<p>It has been concluded that 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.</p>	<p>Noted.</p>

## 9.2 Planning Proposal (BSCPP 14/005) - Blue Seas Parade, Lennox Head

Report / Issue	MSP Comments	Officer Comments
Coastal Impacts and Visual Amenity Impacts	<p>Mike Svikis Planning has undertaken an assessment of the visual and amenity impacts of future residential development on lots shown within the subdivision concept plan.</p> <p>It has been concluded that 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.</p> <p>It has been concluded that development of the eastern most 20 metres of the subject land will have the potential to impact on the skyline when viewed from Pat Morton Lookout. A building height limit of 4.8 metres has been recommended to be imposed for land at or above the 60 metre contour level. A rear setback has also been recommended to prevent development on the eastern end of certain proposed lots.</p> <p>The proposed building height limit is an LEP control. The 20 metre rear setback is a proposed DCP control.</p> <p>It is noted that the Codes SEPP would permit the erection of a dwelling having a height of 8.5 metres despite the proposed 4.8 metre height limit.</p>	<p>An 8.5 metre building height currently applies to the land, which is consistent with the height applicable to R2 zoned areas elsewhere within the shire. MSP notes that under the provisions of the Codes SEPP it would be possible to build an 8.5 metres high dwelling despite the provisions of the LEP.</p> <p>Incorporating a 4.8 metre height limit into Ballina LEP 2012 for this site is not supported. There are already a number of structures built on the crest of the hill on the subject and adjoin site as well as elsewhere along the Lennox Head escarpment. In this context a reduced building height is not considered to provide any significant advantage, especially in the context of the Codes SEPP's ability to override the height restriction.</p> <p>The approach supported is to reduce the potential for multiple structures through adoption of a larger minimum lot size. The 1,200m<sup>2</sup> minimum lot size already endorsed by Council for this site is considered appropriate. It will assist to ensure that, whilst buildings will be visible from various vantage points, they will be surrounded by open unbuilt upon areas which will assist to reduce their overall visual impact.</p> <p>A rear building line to the 60 metre contour is also not supported as this will push development towards the Blue Seas Parade end of the site. This is also the steepest part of the impacted proposed lots upon which buildings will have greater visual impact when viewed from the street level. The issue of a rear setback is also further considered in the discussion concerning land use conflict issues below.</p> <p>If the land is to be rezoned for low density residential purposes then it is considered that issues of visual amenity can best be addressed by restricting the lot yield via a suitable larger minimum lot size applied to part of Lot 1 and limiting the extent of the residential zone, as has been recommended by MSP.</p>

## 9.2 Planning Proposal (BSCPP 14/005) - Blue Seas Parade, Lennox Head

Report / Issue	MSP Comments	Officer Comments
Contaminated Land Assessment and Remedial Action Plan	<p>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.</p> <p>A small part of one proposed residential lot (13m<sup>2</sup>) has been found to be contaminated with lead and pesticides. The RAP contains details of how the land may be remediated.</p> <p>It is concluded that there is sufficient information available for Council to make a decision in respect to this matter and no further technical information is required prior to this proposal proceeding to public exhibition.</p>	<p>Noted. The land has been included within Council's Contaminated Land Register. If rezoned, inclusion within the register will trigger specific requirements as part of a future DA and land development process.</p>
Aboriginal Heritage	<p>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.</p> <p>Consultation with Jali LALC is recommended as part of the public exhibition process.</p> <p>It is concluded that there is sufficient information available for Council to make a decision in respect to this matter and no further technical information is required prior to this proposal proceeding to public exhibition.</p>	<p>Noted. Consultation with Jali LALC is proposed as part of the public exhibition process, as recommended.</p>

## 9.2 Planning Proposal (BSCPP 14/005) - Blue Seas Parade, Lennox Head

Report / Issue	MSP Comments	Officer Comments
Land Use Conflict Risk Assessment	<p>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.</p> <p>Council should consider a site-specific DCP that requires 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.</p> <p>Imposing a large minimum lot size (say 1,200m<sup>2</sup>) 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.</p>	<p>It is agreed that the proposed 30 metre buffer at the southern end of the site and the RU1 zoning applicable to part Lot 10, as shown within Diagram 2, is acceptable in this case.</p> <p>As previously indicated, a 20 metre rear (eastern) setback is considered excessive for this site and will have some undesirable consequences in terms of pushing development further towards the Blue Seas Parade end of the site onto the steeper land.</p> <p>The proposed lots have a depth of 50 metres. If a 20 metre rear setback is applied this would be in addition to the standard 6 metre setback applicable to Blue Seas Parade. It would result in a maximum building envelope depth of 24 metres being available.</p> <p>Setbacks applicable under the provisions of the Codes SEPP for lots having an area of 1,200m<sup>2</sup> have been examined and are also considered suitable for development that may require consent. These setbacks are discussed in detail in the report below which deals with the specific recommendations made by MSP. These setbacks consider building height such that a building having a height of less than 4.5m is subject to a 5 metre minimum setback and a building having a greater height is subject to a 12 metre minimum setback.</p> <p>The primary control which will assist to reduce impacts associated with visual amenity and land use conflicts, in respect to lots at the southern end of the site, is considered to be the proposed 1,200m<sup>2</sup> minimum lot size. This lot size would apply irrespective of building height and setback controls. Height and setback controls in excess of these stipulated by the Codes SEPP have no impact if complying development (able to be approved by private certifiers) under the provisions of the Codes SEPP is proposed.</p>



## 9.2 Planning Proposal (BSCPP 14/005) - Blue Seas Parade, Lennox Head

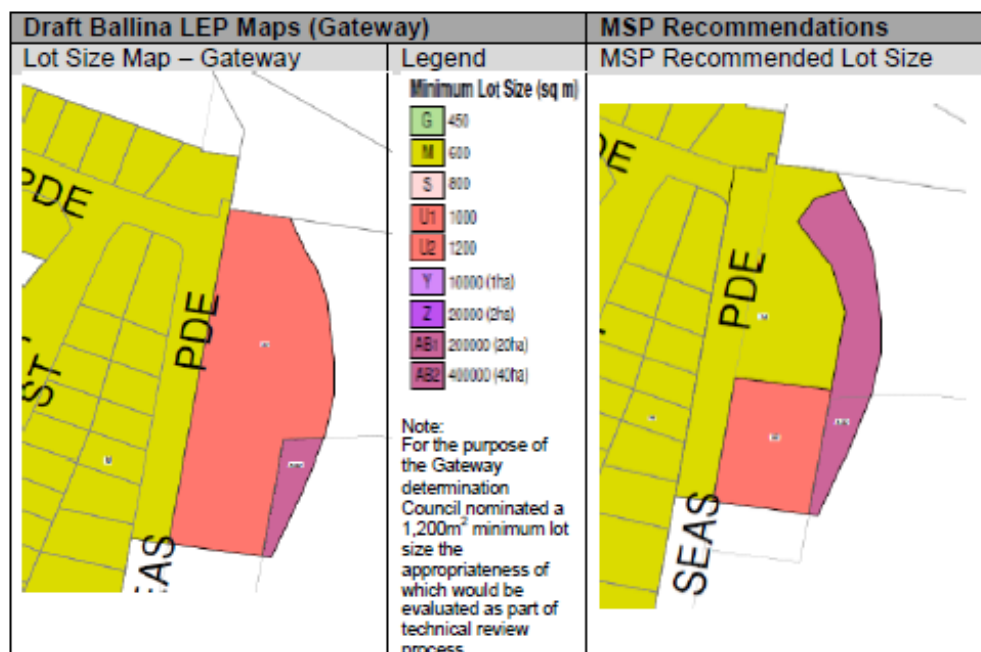
Report / Issue	MSP Comments	Officer Comments
Geotechnical Assessment	<p>The proponent has supplied a preliminary geotechnical study undertaken in 2008 by Coffey Geotechnics. Although undertaken for a larger area than the current subject site, it covers the proposed site adequately.</p> <p>The study also included a site walkover, soil tests and a slope hazard assessment.</p> <p>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.</p> <p>Given the slopes on part of the site are around 21–23%, there is a basis for imposing the slope sensitive design principles applicable for the adjoining Coastal Grove development to also be applicable to the development on the subject land.</p>	Noted. Amendments to Ballina DCP 2012 to impose slope sensitive design controls applicable to future building work are supported.
Obstacle Limitation Surfaces (OSL) and Aircraft Noise	<p>Future development on this site will penetrate the Inner Horizontal Surface (IHS) for Ballina Aerodrome (46.5m AHD). Natural ground on the site at its highest point (64m AHD) already penetrates the HIS, as do existing trees and structures.</p> <p>Consultation with CASA has been undertaken. Given the response received, OSL is not an issue that should affect the future rezoning of the subject land.</p> <p>Future development will require further consultation with airport authorities pursuant to clause 7.5 of Ballina LEP 2012.</p> <p>Aircraft noise modelling for the Ballina/Byron Gateway Airport shows that the site is not affected by any noise contours. No further information is required in respect to this issue.</p>	Noted.

## 9.2 Planning Proposal (BSCPP 14/005) - Blue Seas Parade, Lennox Head

Report / Issue	MSP Comments	Officer Comments
Access and Drainage	<p>Proposed lots are intended to be accessed by a private shared road along the eastern boundary as opposed to direct access from Blue Seas Parade. An argument has been put by Council staff (Development Services Planner) that this is not good practice, is inconsistent with Ballina DCP 2012, will create a scar on the landscape and make it difficult for emergency vehicles to access the site.</p> <p>The key issue at this stage is whether the site has access for likely future residential development. There are two access options; one from the private road and the other from Blue Seas Parade. Both options have some merit. Council does not need to have certainty about which option is best at the rezoning stage. Council engineers have not indicated a preference for either option.</p> <p>Council engineers have indicated that the development will require lot-based on-site detention and treatment in accordance with Council's Stormwater Standards and will not adversely impact on the existing stormwater infrastructure in the Coastal Grove Estate.</p> <p>Given the engineering response it is considered that access and stormwater should not affect zoning of the land.</p>	Noted.

Diagram 3 below contains extracts from the draft LEP maps relating to land zoning and minimum lot size, which were subject to the Gateway determination, together with amendments recommended in the report by MSP.

Diagram 3 – LEP Maps Gateway and MSP Recommended



**9.2 Planning Proposal (BSCPP 14/005) - Blue Seas Parade, Lennox Head**

Land Zoning Map - Gateway	Legend	MSP Recommended Land Zoning
		
Height of Building – Existing	Legend	MSP Recommended Height of Building
		

MSP has concluded that there are no additional studies or information that is required in order that this matter can proceed to either a revised Gateway determination or to public exhibition. The following matters have been identified by MSP for resolution by the Council.

1. Zoning applicable to the land on which the two Moreton Bay figs are located and a 5 metre curtilage beyond the drip line.

MSP has recommended that this land retain its current RU1 Primary Production zoning. This recommendation is supported.

*2. Visual Impact from Pat Morton Lookout can be addressed with a 4.8 metre building height restriction for the first 20 metres from the eastern boundary at the southern and an 8.5 metre height restriction on the balance.*

This recommendation is not supported as it relates to a 4.8m building height restriction. Ballina LEP 2012 does not currently contain a 4.8 metre height restriction. Its introduction for one small section of land (70m x 20m approx.) is unlikely to be effective as it is in conflict with the Codes SEPP complying development maximum height of 8.5 metres. The currently applicable building height for this land is 8.5 metres which is proposed to be retained.

Visual impact is able to be more effectively addressed by limiting the number of dwellings within the more sensitive section of the site through the proposed 1,200m<sup>2</sup> minimum lot size as well as rear setback requirements.

*3. Council should amend Ballina DCP 2012 to require a 20 metre rear setback for dwellings from the eastern boundary for part of the site (subject to the 1,200m<sup>2</sup> minimum lot size recommendation).*

This recommendation has not been supported for the reasons previously discussed (visual impact on Blue Seas Parade, building on steepest part of proposed lots and restrictive building envelope). Rear setbacks applicable under the Codes SEPP for lots having an area of 1,200m<sup>2</sup> are considered to be appropriate for this site as detailed below:

- a) Dwellings and attached carports, garages, balconies, decks, patios, pergolas, terraces and verandahs that are also attached to the dwelling house and which have a height up to 4.5 metres – 5 metre minimum rear setback.*
- b) Dwellings and attached carports, garages, balconies, decks, patios, pergolas, terraces and verandahs that are also attached to the dwelling house and which have a height greater than 4.5metres – 12 metre minimum rear setback.*
- c) Outbuildings not attached to dwellings with a height up to 3.8 metres – 1.5 metre minimum rear setback.*
- d) Outbuildings not attached to dwellings with a height greater than 3.8 metres – 1.5 metre minimum setback plus one quarter of the height of the building above 3.8 metres.*

The subdivision concept plan submitted with the planning proposal (Diagram 2) indicates access via a 7 metre wide rear Right of Way. If this subdivision is ultimately approved it will effectively result in a minimum rear setback of 7 metres for all lots burdened by the ROW.

Proposed amendments to Ballina DCP 2012, to make provision for the rear setbacks nominated above, are contained within the recommendations to this report. Such setbacks would then also be applicable to dwelling houses and outbuildings which are not complying development under the Codes SEPP.

*4. Impose a large minimum lot size of 1,200m<sup>2</sup> ( allows more room to setback to the rural zone) to the southern half of the land and a 600m<sup>2</sup> minimum lot size to the northern half of the land (consistent with land opposite in Blue Seas Parade).*

This recommendation is supported by staff and is reflected in the recommendations to this report.

## 9.2 Planning Proposal (BSCPP 14/005) - Blue Seas Parade, Lennox Head

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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.*

MSP has recommended a range of DCP controls and the adaption of the Coastal Grove slope sensitive design controls contained in Ballina DCP 2012 (Chapter 4 Clause 4.1.3) to suit the proposed site. This approach is supported and will require amendments to Ballina DCP 2012 to be prepared. It is considered that the most appropriate time for these controls to be publically notified is concurrently with the exhibition of the proposed LEP amendments.

The above recommendations have been discussed with the proponent's consultant who has advised that the proposed zones and lot sizes are acceptable from the proponent's perspective. Clarification was sought that the edge of the proposed R2 zone adjacent to the fig trees will align with the eastern edge of the existing paved driveway. This matter was discussed with Mike Svikis who advised that it was intended that the R2 zone align with the eastern edge of the existing paved driveway in the vicinity of the fig trees.

In respect to the proposed 20 metre setback from the eastern boundary for some lots, and 4.8 metre height limit, the proponent's consultant advised that these were considered to be inappropriate for reasons similar to those already discussed within this report.

### Sustainability Considerations

- **Environment**  
An ecological assessment of the site has found that the two existing Fig trees located on part Lot 1 have ecological value. The planning proposal is proposed to be amended to reduce the area subject to residential rezoning so as to better ensure that the future health of these trees is not compromised.
- **Social**  
Social issues to be considered include scenic and amenity impacts associated with future buildings located on a prominent escarpment site. These matters have been considered in detail in the report prepared by MSP.
- **Economic**  
The proposal has the potential to result in a number of positive economic impacts associated with construction and infrastructure.

### Legal / Resource / Financial Implications

Progress of this matter can be accommodated within the Strategic and Community Facilities Group work program. All costs associated with the processing of this planning proposal have been paid by the proponent as required by Council's adopted Fees and Charges.

It is noted that the Department of Planning and Environment has not delegated the Minister's functions under section 59 of the Environmental Planning and Assessment Act to Council in this instance. This will mean that

## 9.2 Planning Proposal (BSCPP 14/005) - Blue Seas Parade, Lennox Head

the finalisation of this LEP amendment, after public exhibition, will be a matter for the Department.

### Consultation

Attachment 3 contains copies of correspondence received from the public authorities consulted under the terms of the Gateway determination. A summary of comments received, together with relevant Officer comments, is contained in the table below.

Authority	Summary of Authority Comments	Officer Comments
Ballina Byron Gateway Airport	No objection raised in principle subject to conditions which include a maximum building height of 8.5 metres above natural ground level.	Noted
Air Services Australia	Indicate that the property development will not affect any sector or circling altitude, nor any instrument approach or departure procedure at Ballina aerodrome.	Noted
Civil Aviation Safety Authority	Indicate that proposal has been assessed. Proposed structures would normally be classified as hazardous objects because of height, location and lack of obstacle lighting. Note that proposal surrounded by existing developments which at night are lit. Indicate that Council could consider Obstacle Lighting on the highest most practicable point of the land to be developed.	Noted. Future development applications will require referral to airport authorities under the provisions of clause 7.5 Ballina LEP 2012. Specific requirements may be imposed at that time should the circumstances so warrant.
Department of Primary Industry - Water	Council to ensure that water supply to this area is secured (quality and quantity). Council should consider increase in Basic Landholder Rights to access water supply. Council should consider the impact of development on groundwater. Specify a range a matters that future development applications should consider.	Noted. Comments are general in nature.
Department of Primary Industries – Agricultural Land Use Planning	Rezoning land identified as an Urban Growth Area under the Far North Coast Regional Strategy and the Ballina Growth Management Plan is supported in principle. Council should give due consideration to the cumulative impacts from the loss of important agricultural land within the LGA. Planning proposal increases potential for land use conflicts with the adjoining agricultural land despite the LUCRA statement to the contrary. Indicate that the "Living and Working in Rural Areas Handbook" recommends a minimum buffer between residential areas of 50m for grazing of stock and 200m for cattle yards. Indicate that site factors play a role in determining most appropriate separation distances. Indicate that the proposed 1,200m <sup>2</sup> minimum lot size is supported in consideration of scenic amenity and potential land use conflict factors.	Noted. Buffer areas which take into account site factors have been considered in determining the proposed approach to the LEP amendment.
NSW Rural Fire Service	NSWRFS raises no objection to the planning proposal proceeding, noting that any future subdivision of the land would be subject to further assessment.	Noted.

## 9.2 Planning Proposal (BSCPP 14/005) - Blue Seas Parade, Lennox Head

Authority	Summary of Authority Comments	Officer Comments
Essential Energy	Provide requirements for the developer to remove or alter Essential Energy infrastructure.	Noted.
NSW Department of Industry – Division of Resources and Energy	Advise they have no issues to raise with respect to proposed rezoning. Neither significant mineral resources nor any mineral or petroleum titles exist in the vicinity of the subject site.	Noted

Additional consultation is proposed with the Office of Environment and Heritage and the Jali Local Aboriginal Land Council once this matter proceeds to public exhibition.

### Options

When giving consideration to this matter, options available to the Council include the following:

1. That Council proceed to exhibit the planning proposal without amendment for the minimum 28 day period specified in the Gateway recommendation.

This option is not supported as it may result in the rezoning of areas (Fig trees and curtilage), which have been found through subsequent assessment to be better dealt with through the retention of the currently applicable RU1 zoning. Issues such as those related to DCP amendments which provide for rear setbacks and slope sensitive design controls can be accommodated if this option is adopted.

2. That the Council submit the planning proposal, as amended based on the recommendations arising from this report, to the Department of Planning and Environment for an altered Gateway determination and then proceed to public exhibition.

This is the preferred option.

Adopting this option will result in a reduction of the area proposed to be zoned for residential purposes. It will also result in a mixed 600m<sup>2</sup> and 1,200m<sup>2</sup> minimum lot size regime being applied to the land. Alternatively Council could determine that the minimum lot size should remain at 1,200m<sup>2</sup>. An independent assessment has, however, not recommended that a minimum lot size of 1,200m<sup>2</sup> be applied to the whole of the area recommended to be zoned R2 Low Density Residential.

3. That the Council requires additional technical reports or examination of issues prior to committing to seek an altered Gateway determination and/or exhibiting the planning proposal.

The assessment of submitted technical information by MSP has not identified a need for additional technical reports and therefore this option is not supported.

4. That the Council defers or discontinues the planning proposal.

## **9.2 Planning Proposal (BSCPP 14/005) - Blue Seas Parade, Lennox Head**

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Should Council consider that specific issues raised in this report require further discussion and information then this report could be deferred to enable a briefing to be arranged.

Discontinuing this matter is not recommended having regard to the history of this matter and the recommendations made by MSP.

### **RECOMMENDATIONS**

1. That the planning proposal relating to land comprising part Lot 1 and part Lot 2 DP 1165957, Blue Seas Parade, Lennox Head be amended to make provision for the altered zoning and minimum lot size regime as shown in Diagram 3 within this report.
2. The existing maximum building height of 8.5 metres applicable to the site be retained.
3. The amended planning proposal be submitted to the NSW Department of Planning and Environment for an altered Gateway determination.
4. A draft amendment to Ballina DCP 2012 be prepared which incorporates the rear setback provisions applied by the Codes SEPP to lots having an area of 1,200m<sup>2</sup> as detailed in this report, as well as appropriate slope sensitive design principles as recommended in the Mike Svikis Planning report.
5. Upon an altered Gateway determination being received, Council authorise the public exhibition of the planning proposal and draft amendments to Ballina DCP 2012 for a minimum period of 28 days.
6. That the matter be reported for further consideration by Council following the mandatory public exhibition period.

### **Attachment(s)**

1. Attachment One - Gateway Determination
2. Attachment Two - Document Review and Gap Analysis Report
3. Attachment Three - Government Authority Correspondence

## **9.2 Planning Proposal (BSCPP 14/005) - Blue Seas Parade, Lennox Head**

A Motion was moved by Cr Paul Worth and seconded by Cr Ben Smith

1. That the planning proposal relating to land comprising part Lot 1 and part Lot 2 DP 1165957, Blue Seas Parade, Lennox Head be amended to make provision for the altered zoning and minimum lot size regime as shown in Diagram 3 within this report.
2. The existing maximum building height of 8.5 metres applicable to the site be retained.
3. The amended planning proposal be submitted to the NSW Department of Planning and Environment for an altered Gateway determination.



## 9.2 Planning Proposal (BSCPP 14/005) - Blue Seas Parade, Lennox Head

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4. A draft amendment to Ballina DCP 2012 be prepared which incorporates the rear setback provisions applied by the Codes SEPP to lots having an area of 1,200m<sup>2</sup> as detailed in this report, as well as appropriate slope sensitive design principles as recommended in the Mike Svikis Planning report.
5. Upon an altered Gateway determination being received, Council authorise the public exhibition of the planning proposal and draft amendments to Ballina DCP 2012 for a minimum period of 28 days.
6. That the matter be reported for further consideration by Council following the mandatory public exhibition period.

An **Amendment** was moved by Cr Keith Williams and seconded by Cr Sharon Cadwallader

1. That the planning proposal relating to land comprising part Lot 1 and part Lot 2 DP 1165957, Blue Seas Parade, Lennox Head be amended to make provision for the altered zoning and minimum lot size regime as shown in Diagram 3 within this report, with the proposed residential zone being no closer than 50 metres from the common property boundary to the south (Mr and Mrs Small's property).
2. The existing maximum building height of 8.5 metres applicable to the site be retained.
3. The amended planning proposal be submitted to the NSW Department of Planning and Environment for an altered Gateway determination.
4. A draft amendment to Ballina DCP 2012 be prepared which incorporates the rear setback provisions applied by the Codes SEPP to lots having an area of 1,200m<sup>2</sup> as detailed in this report, as well as appropriate slope sensitive design principles as recommended in the Mike Svikis Planning report.
5. Upon an altered Gateway determination being received, Council authorise the public exhibition of the planning proposal and draft amendments to Ballina DCP 2012 for a minimum period of 28 days.
6. That the matter be reported for further consideration by Council following the mandatory public exhibition period.

The **Amendment** was **CARRIED**.

FOR VOTE - Cr David Wright, Cr Sharon Cadwallader, Cr Keith Williams and Cr Ken Johnston and Robyn Hordern

AGAINST VOTE - Cr Susan Meehan, Cr Paul Worth, Cr Ben Smith and Cr ABSENT. DID NOT VOTE - Cr Jeff Johnson and Cr Keith Johnson

The **Amendment** then became the **Motion** and was **CARRIED**.

FOR VOTE - Cr David Wright, Cr Sharon Cadwallader, Cr Keith Williams, Cr Ken Johnston, Cr Ben Smith and Cr Robyn Hordern

AGAINST VOTE - Cr Susan Meehan and Cr Paul Worth

## **9.2 Planning Proposal (BSCPP 14/005) - Blue Seas Parade, Lennox Head**

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ABSENT. DID NOT VOTE - Cr Jeff Johnson and Cr Keith Johnson

**230616/1 RESOLVED**

(Cr Keith Williams/Cr Sharon Cadwallader)

1. That the planning proposal relating to land comprising part Lot 1 and part Lot 2 DP 1165957, Blue Seas Parade, Lennox Head be amended to make provision for the altered zoning and minimum lot size regime as shown in Diagram 3 within this report, with the proposed residential zone being no closer than 50 metres from the common property boundary to the south (Mr and Mrs Small's property).
2. The existing maximum building height of 8.5 metres applicable to the site be retained.
3. The amended planning proposal be submitted to the NSW Department of Planning and Environment for an altered Gateway determination.
4. A draft amendment to Ballina DCP 2012 be prepared which incorporates the rear setback provisions applied by the Codes SEPP to lots having an area of 1,200m<sup>2</sup> as detailed in this report, as well as appropriate slope sensitive design principles as recommended in the Mike Svikis Planning report.
5. Upon an altered Gateway determination being received, Council authorise the public exhibition of the planning proposal and draft amendments to Ballina DCP 2012 for a minimum period of 28 days.
6. That the matter be reported for further consideration by Council following the mandatory public exhibition period.

FOR VOTE - Cr David Wright, Cr Sharon Cadwallader, Cr Keith Williams, Cr Ken Johnston, Cr Ben Smith and Cr Robyn Hordern

AGAINST VOTE - Cr Susan Meehan and Cr Paul Worth

ABSENT. DID NOT VOTE - Cr Jeff Johnson and Cr Keith Johnson

## **Appendix O – Bushfire Threat Assessment Report**

**(Under Separate Cover)**

## **Appendix P – Visual Assessment**

**(Under Separate Cover)**

## **Appendix Q – Archaeological Assessment**

**(Under Separate Cover)**

## **Appendix R – Ecological Assessment**

**(Under Separate Cover)**

## **Appendix S – Detailed Contaminated Land Assessment and Remedial Action Plan**

**(Under Separate Cover)**

## **Appendix T – Preliminary Geotechnical Investigation Report**

**(Under Separate Cover)**



## **Appendix U – Landuse Conflict Risk Assessment (LUCRA)**

**(Under Separate Cover)**

## Appendix V – Report to Council dated 28 July 2016

### 13.2 Rescission Motion - Planning Proposal - Blue Seas Parade

5. *Upon an altered Gateway determination being received, Council authorise the public exhibition of the planning proposal and draft amendments to Ballina DCP 2012 for a minimum period of 28 days.*
6. *That the matter be reported for further consideration by Council following the mandatory public exhibition period.*

#### Councillor Comment

The Council resolution from the June 2016 Ordinary meeting has been discussed with Council staff, and the concerns we have, as Councillors, are as follows:

- a) the increase to 50 metres is unreasonable when it is considered that there are residential lots immediately across the road that are far closer than the 50 metres proposed
- b) the applicant is allowed to ask for this decision to be reviewed by the Department of Planning, which means that the Department or the Joint Regional Planning Panel can review the Council decision and overturn it. This outcome is highly likely considering that 50 metres was not recommended in the independent review undertaken by Mike Svikis Planning or by Council staff, particularly when the residential lots across the road are so close.
- c) the recommendation, as proposed by Council staff, and supported by the independent assessment of the proposal, achieves a number of positive outcomes such as larger 1,200m<sup>2</sup> lots at the southern end of the site, retention of parts of Lot 1 as rural buffer areas, retention of the fig trees upon rural zoned land and 12 metre minimum rear setbacks to the larger 1,200m<sup>2</sup> lots and on balance is considered to be the right decision.

#### Staff Comment

The proposed replacement motion is consistent with the original staff recommendation, which was supported by the independent review undertaken by Mike Svikis Planning.



#### COUNCILLOR RECOMMENDATION

That resolution 230616/8, as follows, be rescinded:

1. *That the planning proposal relating to land comprising part Lot 1 and part Lot 2 DP 1165957, Blue Seas Parade, Lennox Head be amended to make provision for the altered zoning and minimum lot size regime as shown in Diagram 3 within this report, with the proposed residential zone being no closer than 50 metres from the common property boundary to the south (Mr and Mrs Small's property).*
2. *The existing maximum building height of 8.5 metres applicable to the site be retained.*
3. *The amended planning proposal be submitted to the NSW*

*Department of Planning and Environment for an altered Gateway determination.*

4. *A draft amendment to Ballina DCP 2012 be prepared which incorporates the rear setback provisions applied by the Codes SEPP to lots having an area of 1,200m<sup>2</sup> as detailed in this report, as well as appropriate slope sensitive design principles as recommended in the Mike Svikis Planning report.*
5. *Upon an altered Gateway determination being received, Council authorise the public exhibition of the planning proposal and draft amendments to Ballina DCP 2012 for a minimum period of 28 days.*
6. *That the matter be reported for further consideration by Council following the mandatory public exhibition period.*

If successful we intend to move the original staff recommendation, as follows:

1. *That the planning proposal relating to land comprising part Lot 1 and part Lot 2 DP 1165957, Blue Seas Parade, Lennox Head be amended to make provision for the altered zoning and minimum lot size regime as shown in Diagram 3 within this report.*
2. *The existing maximum building height of 8.5 metres applicable to the site be retained.*
3. *The amended planning proposal be submitted to the NSW Department of Planning and Environment for an altered Gateway determination.*
4. *A draft amendment to Ballina DCP 2012 be prepared which incorporates the rear setback provisions applied by the Codes SEPP to lots having an area of 1,200m<sup>2</sup> as detailed in this report, as well as appropriate slope sensitive design principles as recommended in the Mike Svikis Planning report.*
5. *Upon an altered Gateway determination being received, Council authorise the public exhibition of the planning proposal and draft amendments to Ballina DCP 2012 for a minimum period of 28 days.*
6. *That the matter be reported for further consideration by Council following the mandatory public exhibition period.*

**Attachment(s)**

Nil