

ARDILL PAYNE & PARTNERS

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



PLANNING PROPOSAL/LEP AMENDMENT REQUEST

Submission to Ballina Shire Council

Lot 1 Sec 15 DP 759050
17 Bath Street, Wardell

for:
Rhonda Sly


November 2016

*Planning Proposal/LEP Amendment Request
Lot 1 Sec 15 DP 759050
17 Bath Street, Wardell*

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Job No.:	8274
Job Captain:	Dwayne Roberts
Author:	Paul Snellgrove
Client:	Rhonda Sly
File/Pathname:	

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	Name	Signed	Name	Signed
0	Dwayne Roberts		Paul Snellgrove	
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1 Introduction

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 amendment relates to land described as Lot 1 Sec 15 DP 759050, No. 17 Bath Street, Wardell and involves:

- rezoning the lot from RU2 – Rural Landscape Zone to R2 – Low Density Residential Zone; and
- replacing the 40ha minimum lot size with a 600m² minimum lot size for the lot.

The proposed R2 zone is the same zone as the adjoining/adjacent land to the east, west and south. The land is mapped as being a "Strategic Urban Growth Area" on the Strategic Urban Growth Area Map – Sheet SGA_003A of the BLEP 2012. The mapped minimum lot size standard for the adjoining R2 zoned land is 600m² on the Lot Size Map – Sheet LSZ_003A of the BLEP 2012.

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

- *Planning Proposals – A Guide to Preparing Planning Proposals* (Department of Planning and Environment, August 2016)
- *Planning Proposals and Local Environmental Plan Amendments: Process Guidelines v3.0* (Ballina Council, 23 June 2015)

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.

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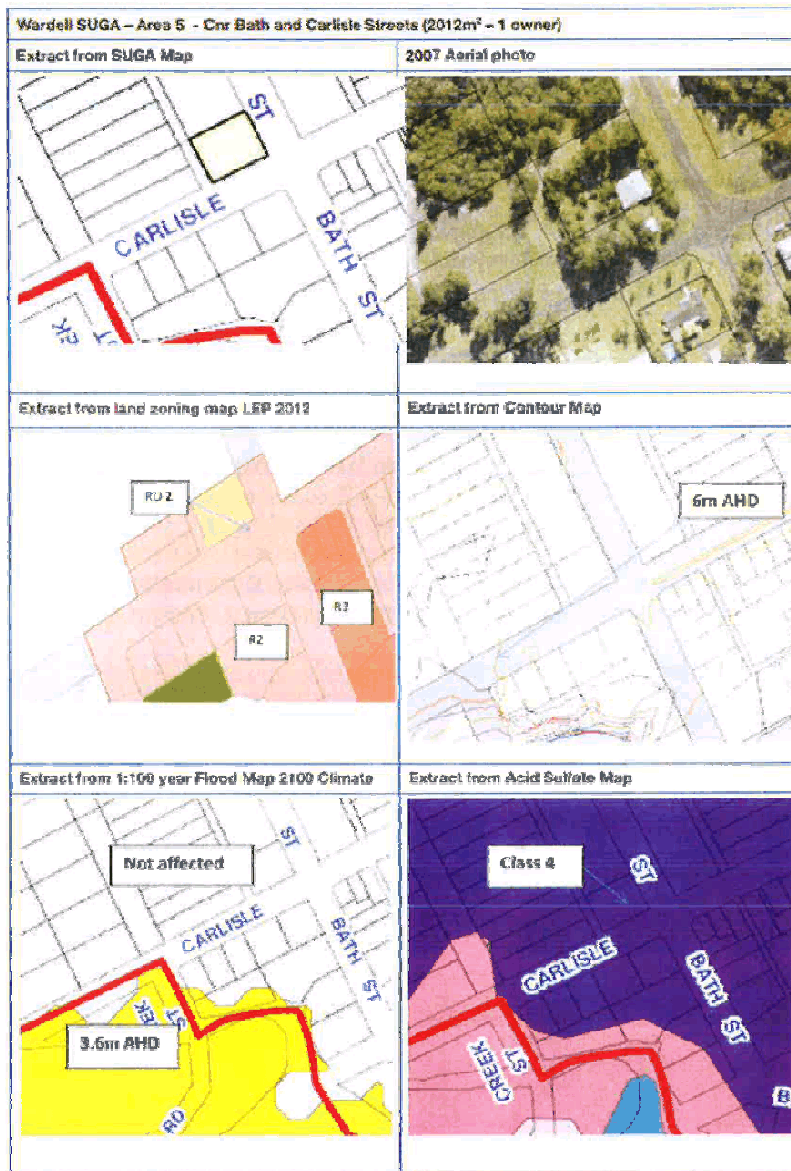
1.2 **Structure and Scope of Report**

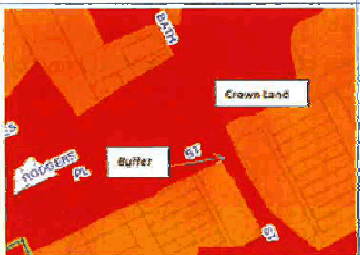

This LEP Amendment Initiation Request contains the following:

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

1.3 **Background**

The Wardell Planning and Environmental Study (WP&ES) was prepared in 2015 and was endorsed by Ballina Council at its Ordinary Meeting on the 27th August 2015. The WP&ES identifies the subject property as 'Wardell SUGA – Area 5' as shown below:



Extract from 2012 Bushfire Prone Land Map	Natural Areas and Habitat	
		
Wardell SUGA – Area 5 – Cnr Bath and Carlisle Streets (2812m² – 1 owner)		
Criteria	Score	Comments
Number of owners within SUGA 1 owner = 2, 2 to 5 owners = 4, more than 5 = 2	5	1 owner
Topography – General predict levels (General level across precinct at least 50% of lots meet minimum level) < AHD RL 3.0 metres = 0 AHD RL 3.0 metres to 3.7 metres = 2 AHD RL 3.7 metres to 4 metres = 3 AHD RL 4.0 to 4.9 metres = 4 AHD RL > 5 metres = 5	5	Site at approximate level of RL 6m AHD
Predict potential orientation North – South > 75% = 2 North – South 50 to 75% = 3 North – South up to 50% = 4	3	Estimated up to 75% of lots will have a north south orientation
Acid Sulfate soil affected Not affected = 5 Class 5 = 4 Class 4 = 3 Class 3 = 2 Class 1 or 2 = 1	5	Potential to be impacted by Class 4 Acid Sulfate Soil. Works more than 2 metres below the natural ground surface or works by which the water table is likely to be lowered more than 2 metres below the natural ground surface require development consent. Clause 7.1 of Ballina LEP 2012 applies and may require the preparation of an acid sulfate soil management plan to support the DA.
Bushfire Risk (General estimate applied to precinct at least 25% of lots affected) Not affected = 5 Within buffer area = 2 Within range zone and buffer = 0	2	All lots affected by bushfire buffer area. Future subdivision of lots will be classified as bushfire prone land. An assessment is required by 679A of the Environmental Planning and Assessment Act to ensure that proposed development complies with the Planning for Bush Fire Protection publication and a certificate has been provided in respect to compliance. Additional bushfire works may be required when building on bush the street land.
Flooding (At least 25% of site affected) Not Subject to 0-100 year flood = 5 Subject to 1-100 Year = 2 Subject to 1-50 year flood = 0 Subject to 1-20 year flood or within a floodway = 0	5	Not flood affected.
Natural Areas and Habitat Unaffected = 5 Buffer = 3 Significant Area = 0	5	Located within buffer area to natural and or habitat significant areas.
Total Area 5	25 of 74%	Good suitability for urban development. Potential for 2 to 3 lots, providing housing for 5 to 6 people.

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 a single lot which is described in real property terms as Lot 1 Sec 15 DP 759050 and is commonly known No. 17 Bath Street, Wardell. The lot is rectangular in shape with the following approx. dimensions and area:

- 50m northern boundary (to Lot 68 DP 755688)
- 40m eastern boundary (to Bath Street)
- 50m southern boundary (to Carlisle Street)
- 40m western boundary (to road reserve)
- 2012m² total area

As shown on the below aerial photograph, existing on the land is a single storey dwelling house and detached double garage which are both constructed of timber weatherboard with a metal roof.

Vehicular access to the site is via an existing bitumen driveway to Bath Street which is a constructed urban (residential) road with a bitumen seal for the full property frontage.



Source: SixMaps (23 November 2016)

It should be noted that the cadastral overlay on the above is not accurate and is out by approx. 15m to the north.

2.2 Other matters

Preliminary planning investigations in respect of the subject land confirm that it is:

- **not** mapped as being subject to SEPP 14 or SEPP 26
- mapped as being bushfire prone, being 100m buffer to Vegetation Category 1 vegetation
- **not** likely to be contaminated as a consequence of existing or prior land uses (existing long-standing residential use – single dwelling house)
- **not** is mapped as being subject to the 1 in 100 year flood event
- mapped being subject to Class 4 acid sulfate soils
- **not** identified as being or containing an item of environmental heritage (per Schedule 5 of the Ballina LEP 2012)

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- **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

2.3 Local Context

The subject lot is a developed small rural residential type lot (which contains a dwelling house) and which has two formed road frontages. The land is adjoined by residential zoned land to the east, south and west and developed residential land to the south. The land to the north comprises bushland.

2.4 Strategic Planning Context

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

The subject land is mapped in the FNCRS 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 GMS.

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

2.4.3 The Wardell Planning and Environmental Study (WP&ES)

The subject land is identified as 'Wardell SUGA – Area 5 Cnr Bath and Carlisle Streets (2012m² – 1 owner)' and scored a 26 or 74% in the Strategic Urban Growth Area Evaluation Tool and is identified as "Good suitability for urban development. Potential to 2 to 3 lots providing housing for 5 to 9 people".

Under the circumstances, the proposed application of a residential zone is consistent with the WP&ES.

2.4.4 Draft North Coast Regional Plan 2016

The subject land is mapped on Figure 30: Urban Growth Area Map for Ballina LGA as 'Proposed Urban Land' under the DNCRP.

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

2.5 Relevant Provisions of BLEP 2012

The subject land is mapped under the BLEP 2012 as follows:

- RU2 – Rural Landscape Zone
- AB2 – 40ha minimum lot size/subdivision standard
- Strategic Urban Growth Area
- Class 4 acid sulfate soils
- 8.5m maximum building height

3 Objectives or Intended Outcomes of Proposed LEP

3.1 Objectives of Planning Proposal

The objective of the Planning Proposal is to rezone 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 600m² 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 lot has an area of approximately 2012m² and it is proposed to apply an R2 – Low Density Residential Zone with a 600m² minimum lot size.

Based purely on a 600m² lot size, the site could yield up to 3 lots. 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 Village of Wardell is serviced by all necessary reticulated public infrastructure services, including:

- potable water supply
- 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.

4 Explanation of Provisions

4.1 Explanation of Proposed Amendments

The proposed amendments to the BLEP 2012 involve:

- rezoning the lot from RU2 – Rural Landscape Zone to R2 – Low Density Residential Zone;
- applying a 600m² minimum lot size to the R2 zoned land

The proposed R2 zone is same zoning as the adjoining/adjacent land to the east, west and south. The existing adjacent residential lots have a 600m² minimum lot size.

Contingent upon the zoning change being affected, there will also 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 **Justification for the Proposed Amendments**

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 as:

- 'Proposed Future Urban Release Area' under the Far North Coast Regional Strategy
- 'Strategic Urban Growth Area' under the Ballina Shire Growth Management Strategy
- 'Wardell SUGA – Area 5 – good suitability for urban development. Potential to 2 to 3 lots providing housing for 5 to 8 people' under the Wardell Planning and Environmental Study
- 'Proposed Urban Land' under the Draft North Coast Regional Plan

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 as being appropriate for future urban development/use.

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

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 and the Draft North Coast REP.

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 and Draft NCREP. 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 the management of population and employment growth in Ballina Shire over the planning period of 2012-2031.

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.

Wardell Planning and Environmental Study (11/2015)(WP&ES)

The purpose of the WP&ES is to provide the framework for the management of population growth, urban expansion and infrastructure servicing needs of the Wardell Village.

The subject land is identified as "Wardell SUGA – Area 5 – good suitability for urban development. Potential to 2 to 3 lots providing housing for 5 to 8 people" under the WP&ES.

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 RU2. 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 as there is no adjoining productive agricultural land and the adjoining land has limited potential for agricultural use.</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 a small (2012m²) rural residential lot that contains a dwelling house and associated improvements. The subject land is not mapped as containing core Koala habitat on Figure 8: Core Koala Habitat of the Ballina Shire Koala Management Strategy (March 2016).</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 8(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 either not being contaminated or requiring remediation to make it suitable). Based on the historical and current use of a small (2012m²) rural residential type lot for residential purposes and the fact that it does not adjoin and is not proximate to any intensive horticulture or other potentially contaminating uses, it is submitted that the land is not likely to be contaminated and that there would be no requirement for any detailed contamination investigation to support 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	The subject land is physically and spatially removed from any coastal foreshore land/area. 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. It is therefore submitted that the Planning Proposal is consistent with the provisions of and is not contrary the intent of the SEPP.
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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
1. Employment and Resources	
1.1 Business and Industrial Zones	Does not apply to Planning Proposal.
1.2 Rural Zones	Complies – The subject lot is mapped as being ‘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 Section 5.2 of this Planning Proposal. Further, the proposed rezoning is of relatively minor significance and is consistent with the FNCRS 2008-31 in that part of the lot is mapped as a ‘Proposed Future Urban Release Area’.
2. Environment and Heritage	
2.1 Environmental Protection Zones	Does not apply to Planning Proposal.
2.2 Coastal Protection	Complies – the proposal is considered to be of a minor nature, resulting in a possible maximum of 3 lots (and future houses). The subject land is physically and spatially removed from any coastal foreshore land/area and is not subject to flooding, tidal inundation 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.
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	Complies – adequate public infrastructure is available in the immediate locality to service the existing lot and any possible future lots. The proposal will facilitate future 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 as a 'Proposed Future Urban Release Area' in 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.
4. Hazard and Risk	
4.1 Acid Sulfate Soils	The site is mapped as containing class 4 acid sulfate soils. This is a minor classification and relates to works more than 2m below the natural ground surface or works by which the watertable is likely to be lowered more than 2m below the natural ground surface. If the land is rezoned and developed for urban residential purposes, there will not be any works that will result in any of the above and thus there is no requirement for any further investigation or assessment as there will not be any impacts on any acid sulfate soils.
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	A Bushfire Hazard Assessment would have to be prepared in accordance with the provisions of Planning for Bushfire Protection 2009 to support of the proposed rezoning and future possible subdivision of the land should the Planning Proposal proceed to Phase 2.
5. Regional Planning	
5.1 Implementation of Regional Strategies	Complies – the land is identified as a 'Proposed Future Urban Release Area' under the FNCRS. The land is mapped as 'Proposed Urban Land' under the Draft North Coast REP.
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	The land is identified as a 'Proposed Future Urban Release Area' under the FNCRS and thus provisions of this Direction do not effectively apply to the Planning Proposal.
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.
5.9 North West Rail Link Corridor Strategy	Does not apply to the Planning Proposal.
6. Local Plan Making	
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.
7. Metropolitan Planning	
7.1 Implementation of the Metropolitan Plan for Sydney 2036	Does not apply to Planning Proposal.
7.2 Implementation of Greater Macarthur Land Release Investigation	Does not apply to Planning Proposal.

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 in **Section 2.1**, the subject land is a developed small rural residential lot that contains some mature vegetation (effectively 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 Wardell 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 3.8 – 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 but would not likely have any amenity impacts on adjacent dwellings/residents due to the physical and spatial separation of the land from such. 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 future 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.

6 Community Consultation

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.

7 Scope of Engagement

This Planning Proposal has been prepared by Ardill Payne & Partners (APP) on behalf of Rhonda Sly 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.

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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.