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ballina shire council
 geographical information system

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ASSESSMENT OF THE APPLICATION UNDER SECTION 4.15 (1) OF THE EP& A ACT 1979

4.15 (1) (a) (i) - the provisions of any environmental planning instrument

Local Environmental Plans (LEPs)

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

Ballina LEP 2012 – Zoning, Permissibility and Relevant Clauses	Comments/Is consistency with these provisions achieved?
Aims, objectives of BLEP (Clause 1.2)	This application is generally consistent with the aims and objectives of the Ballina Local Environmental Plan (BLEP) 2012.
Land use definition (Clause 1.4)	<p>Subdivision is not classified as a land use and is not defined in the BLEP 2012.</p> <p>Note: The subdivision of land is classified as a form of development and is defined under Part 6, Clause 6.2 of the Environmental Planning & Assessment Act 1979.</p>
Zoning under BLEP 2012, permissibility within zone and regard for zone objectives (Clause 2.3)	<p>The subject site is zoned R2 Low Density Residential under the BLEP 2012.</p> <p>The objectives of the R2 Low Density Residential zone are:</p> <ul style="list-style-type: none"> • <i>To provide for the housing needs of the community within a low density residential environment.</i> • <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> • <i>To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.</i> • <i>To provide for development that meets the social and cultural needs of the community.</i> • <i>To encourage development that achieves the efficient use of resources such as energy and water.</i> <p>The proposed Torrens Title subdivision, demolition existing garage and shed and construction of carport for existing dwelling is permitted with Council consent within the R2 zone.</p>

	The proposed Torrens Title subdivision will provide for additional land to suit the housing needs of the community. The subdivision layout is adequate in size and dimension for low density residential and is consistent with the existing subdivision layout in the immediate locality. The proposal is generally consistent with the objectives of the R2 Low Density Residential zone pursuant to the BLEP 2012.
Subdivision – Consent requirements (Clause 2.6)	Clause 2.6 provides that prior consent of Council is required for the subdivision of any land.
Demolition requires development consent (Clause 2.7)	Clause 2.7 provides that demolition of a building or work requires prior consent of Council. Consent is sought for the demolition of the existing garage and shed as part of this application.
Minimum subdivision lot size (Clause 4.1)	A detailed assessment of this clause is provided with the associated Council report.
Exceptions to development standards (Clause 4.6)	The applicant has sought a variation to a development standard and is therefore relying on Clause 4.6. A detailed assessment of this clause is provided with the associated Council report.
Essential services (Clause 7.7)	The objectives of Clause 7.7 are to ensure that development is supplied with adequate and appropriate levels of infrastructure servicing. Water Supply Servicing Water servicing can be provided by connection to the existing system. At the developer's expense, a new junction will need to be constructed on the existing line to service Proposed Lot 2. This is to be condition within any consent granted. Stormwater Servicing The proposed new lot currently contains a double garage with a driveway that has a combined impervious area of approximately 180m ² . The garage will be demolished as part of this development. It is therefore anticipated that a new dwelling (as part of future DA) will only result in a minor increase in impervious surfaces (less than 300m ²). As per Council's Stormwater Management Standards, attenuation will not be required as part of that application. However, the newly created lot will be required to connect to the existing stormwater system via kerb adaptor. This is to be conditioned within any consent granted. Sewer Servicing Sewer servicing can be provided by connection to the existing system. At the developer's expense, a new junction will need to be constructed on the

	<p>existing line to service Proposed Lot 2. This is to be conditioned with any consent granted.</p> <p>Power Supply Servicing The developer will be required as part of the terms of any consent granted to service the proposed additional lot with electricity.</p> <p>Existing Services The proposed development does not encroach on any easement or the zone of influence of any existing water, sewer or drainage mains.</p>
Strategic urban growth areas (Clause 7.8)	<p>The subject property is identified on the Strategic Urban Growth Area Maps as 'Land Adjoining Strategic Urban Growth Area'.</p> <p>The subject lot is within an established subdivision and is approximately 50 metres from land identified as Strategic Urban Growth Area (SUGA). The proposal to create one additional lot for residential purposes is not likely to preclude future urban or employment land uses within any land identified as SUGA. The proposal is unlikely to adversely impact on any matters identified in Clause 7.8(3) (a) – (e).</p>

State Environmental Planning Policies (SEPPs)

Relevant SEPPs	Comments/Is consistency with these provisions achieved?
SEPP 55 – Remediation of Land	<p>The objective of SEPP 55 is to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.</p> <p>Clause 7 provides that Council must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated, and if so whether the land is suitable in its current state or subject to remediation for the intended land use.</p> <p>The subject site is not mapped on Council's Contaminated Land Register and the area of the proposed development is not impacted by a dip site or investigation area.</p> <p>The subject property contains an existing dwelling and associated structures. Dwelling houses and residential uses are not identified as being land contaminating uses.</p> <p>The proposal seeks consent to remove the existing garage and shed. Given the age of both structures, there is potential for the disturbance of asbestos</p>

	<p>materials. Conditions can be applied to any consent to adequately manage the removal of these structures.</p> <p>Nonetheless, the land is not likely to be contaminated therefore there is no requirement for any further contamination investigations over the land.</p>
SEPP (Coastal Management) 2018	<p>The subject site is mapped as being proximity to littoral rainforest area and is therefore subject to the provisions of SEPP (Coastal Management) 2018.</p> <p>The subject site is not mapped on the Coastal wetlands area, Coastal vulnerability area or the Coastal use area map. Therefore, Division 2, Division 3 and Division 4 do not apply to the proposal.</p> <p>Division 1 Coastal Wetlands and littoral rainforests area – The development site is mapped within proximity to littoral rainforests area. The subject property is approximately 70 metres from land mapped as littoral rainforest. The proposal relates to a two lot subdivision and demolition of a single storey brick garage.</p> <p>Prior to the original subdivision, the topography of the land resulted in site drainage to be directed due east towards the neighbouring properties (and potentially towards the mapped littoral rainforest). Under DA 2001/199, an overland stormwater flow path was constructed to direct stormwater generated from the subdivision to the south east corner of the site. The existing stormwater system (Gross Pollutant Trap) is wholly contained within Lot 13 DP 1041589 which manages and treats the stormwater generated from the surface and road runoff. A separate drainage pipe system was included to collect and remove all roofwater from the dwellings within the original subdivision which bypasses the gross pollutant trap within Lot 13. Proposed Lot 2 will be connected to the existing stormwater network via a kerb adapter and any future dwelling on Proposed Lot 2 will be required to connect to the separate stormwater system. All stormwater runoff is therefore directed away from the mapped littoral rainforest.</p> <p>Regard has been given to the relevant matters of Clause 11 and the proposed Torrens Title subdivision to create one additional lot is unlikely to significantly impact on:</p> <ul style="list-style-type: none"> • The biophysical, hydrological or ecological integrity of the adjacent littoral rainforest. • The quantity and quality of surface and ground water flows to and from the adjacent littoral rainforest.

	The proposed Torrens Title subdivision generally complies with Clause 15 and is generally consistent with the aims of SEPP (Coastal Management) 2018.
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4.15 (1) (a) (ii) – any proposed instrument that is or has been the subject of public consultation under the EP&A Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved)

Draft EPI/Planning Proposal	Comments/Is consistency with these provisions achieved?
<p>Draft Amendment to State Environmental Planning Policy 44 – Koala Habitat Protection.</p> <p>Draft State Environmental Planning Policy - Remediation of Land.</p> <p>Draft Amendment to State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007.</p> <p>Draft Amendment to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.</p>	<p>No issues raised in regard to any Draft SEPP.</p> <p>Note: prior to the determination of this application, Draft Amendment to State Environmental Planning Policy (Short-term Rental Accommodation) 2019 was placed on exhibition.</p>

4.15 (1) (a) (iii) – any development control plan (DCP)

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

Ballina Shire DCP 2012	Comments/Assessment of proposal against provisions of DCP
Chapter 2 – General and Environmental Considerations	<p>Part 2 Chapter Planning Objectives</p> <p>The proposal has addressed and generally complies with the overarching objectives of this chapter.</p> <p>The following relevant sections of the BDCP 2012 have been taken into consideration:</p> <p>3.4 Potentially Contaminated Land – Land contamination has been discussed previously, refer to SEPP 55 of this assessment for further comment.</p>

	<p>3.6 Mosquito Management – The subject land is situated within Elevated Land under the Mosquito Management Map. Building constraints/controls are likely to be applied during the assessment of a future dwelling house. Conditions are not necessary under this proposal.</p> <p>3.7 Waste Management – The demolition of the garage and shed and construction of the new carport is likely to generate some waste materials. The applicant has proposed that a Waste Management Plan will be submitted to and approved by the PCA prior to the commencement of the demolition and carport construction. This will form part of the terms of consent and a Site Waste Minimisation and Management Plan is to be submitted and approved by the PCA prior to the commencement of demolition.</p> <p>3.9 Stormwater Management – Council's Development Engineer has provided the following:</p> <p>The proposed new lot currently contains a double garage with a driveway that has a combined impervious area of approximately 180m². The garage will be demolished as part of this development. It is therefore anticipated that a new dwelling (as part of future DA) will only result in a minor increase in impervious surfaces (less than 300m²). As per Council's Stormwater Management Standards, attenuation will not be required as part of that application. However, under this application, the newly created lot will be required to connect to the existing stormwater system via kerb adaptor, as conditioned.</p> <p>3.10 Sediment and Erosion Control – The applicant has proposed that the appropriate sediment and erosion controls will be implemented during the demolition and subdivision phase. Details are able to be provided prior to any works commencing on-site, as conditioned.</p> <p>3.11 Provision of Services – The subject site is connected to reticulated water, sewerage, electricity, telecommunication and stormwater services.</p> <p>The new Torrens Title lot is to be provided with a separate water supply service. Sewer servicing can be provided by connecting to the existing system. A new junction will be required to be cut in at full cost to the applicant to service the additional lot. The required additional services are able to be managed by way of conditions on any consent granted.</p> <p>3.19 Car Parking and Access – The development will result in the removal of the garage associated with the dwelling on Proposed Lot 1. The applicant has provided an amended plan that shows the location of a single car port and a designated car parking space to satisfy the car parking requirements of the BDCP 2012 for the existing dwelling on Proposed Lot 1. No objection raised and the development is capable of compliance.</p>
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	The requirement to provide the undercover car parking space will form part of the terms of any consent granted.
Chapter 3 – Urban Subdivision	<p>Chapter 3 Minor Subdivision Control Elements</p> <p>The overarching objectives have been considered in relation to the proposal. The proposal is for a two lot Torrens Title subdivision of an existing residential lot, zoned R2 Low Density Residential under the BLEP 2012.</p> <p>3.1.2 Minor Subdivision Control Elements.</p> <p>A. Modification of Landform – The subject land comprises one developed residential lot (containing a dwelling house, detached garage and shed). Council's mapping system shows that the subject site falls approximately 5m from west to east across the whole site. Each proposed lot will have an approximate fall of 2m respectively. As a result, any future development of Proposed Lot 2 is unlikely to result in a significant modification of landform to appropriately site a dwelling house. The applicant has submitted that there has not been any geotechnical issues with the existing lot/dwelling house or any adjoining land and therefore has requested there is no requirement for a geotechnical report. No issues have been raised by Council's Building Surveyor in this regard.</p> <p>The proposal will not result in lots that have a slope that exceeds 15%. Vehicle access will be assessed under future applications.</p> <p>B. Road Layout – There are no new roads proposed or required as a result of the subdivision. The existing road network is constructed to a suitable standard to service the proposed subdivision. The proposed lots will have separate vehicular access via Sapphire Court.</p> <p>C. Solar Access – The proposal relates to the Torrens Title subdivision of an existing allotment and the retention of the existing dwelling. The proposed new lot will be located on the higher portion land due to the gradual slope from west to east. The design of the house is unknown, however, due to the proposed lot layout, a reasonably sized dwelling can be erected that will provide for adequate solar access to private open spaces and living areas. To demonstrate this, the applicant has provided an indicative building envelope on the proposed vacant lot that indicates that the vacant lot is likely to achieve acceptable solar access. The potential impact on adjoining properties is unknown at this stage but would be minor at worst case given the slope and location of Proposed Lot 2 (i.e. down slope of the lots to the west). This will be a matter of consideration under any future application for a dwelling house.</p>

	<p>D. Engineering Design and Construction Requirements – The proposed subdivision satisfies the Northern Rivers Local Government Design and Development Manual and the Northern Government Construction Manual.</p> <p>E. Services and Infrastructure – The subject site is connected to reticulated water, sewerage, electricity, telecommunication and services, with the new lot to be duly connected to such.</p> <p>F. Retention of Significant Vegetation – The subject site is not mapped as containing environmentally or culturally significant vegetation. The proposal will not result in the removal of any vegetation to facilitate the proposed subdivision.</p> <p>G. Minimum Lot Size and Shape</p> <p>Control – Lot Size and Shape – The proposal is to create two Torrens Title lots sized 1321m² and 951m² from the existing residential 2272m² lot. Proposed Lot 1 will have an 11.79m width that fronts the street. This does not meet the 12m minimum lot width pursuant to Table 3.1. However, due to the lot shape, this is only a very small part of the proposed lot as the remainder of the allotment far exceeds 12m in width. This is considered to be acceptable in this instance. Proposed Lot 2 exceeds the minimum lot width pursuant to Table 3.1. The applicant has provided a concept 12m x 15m building envelope on Proposed Lot 2 to demonstrate that there will be sufficient room to construct reasonable sized dwellings.</p>
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4.15 (1) (a) (iiia) – any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

Planning Agreement (or draft)	Comments
	None Applicable

4.15 (1) (a) (iv) – any matters prescribed by the regulations

	Comments/Is consistency with these provisions achieved?
If the DA is for the demolition of a building, consider the provisions of AS 2601-1991: The demolition of structures (as in force 1 July 1993):	All demolition work is to be carried out in accordance with the SafeWork NSW Guidelines, as conditioned.

If the DA is only for a change of use or the use of an existing building as a place of public entertainment, is the fire protection and structural capacity of the building appropriate to the building's proposed use?	Not Applicable
If the DA involves the rebuilding/ alteration/enlargement/extension of an existing building, is the existing building required to be brought into total or partial conformity with the Building Code of Australia (BCA)?	Not Applicable
If the DA is for the erection of a temporary structure, is the fire protection and structural capacity of the structure appropriate to the proposed use of the structure?, and is the ground or other surface, on which the structure is to be erected, sufficiently firm and level to sustain the structure while in use?	Not Applicable

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

	Discuss whether or not the impact is acceptable or not? If not, then describe the adverse impacts and the steps taken to mitigate the impacts
Urban and Building Design	
i) Context and Settings	<p>The proposal seeks consent for a two lot Torrens Title subdivision and demolition of the existing garage, shed and erection of new carport on Lot 3 DP 1041589, No. 5-9 Sapphire Court, Lennox Head.</p> <p>Proposed Lot 1 will result in a total land area of 1321m² and Proposed Lot 2 having a total land area of 951m². The existing lot has a total area of 2272m² and has a stipulated minimum lot size of 1200m². As a result, Proposed Lot 2 does not comply with the development standard. The applicant has submitted a written request to vary this standard. This has been addressed in detail with the associated Council report.</p> <p>The proposed development is considered to be appropriate given the existing subdivision layout (lot configuration and area) within the immediate and surrounding locality. The proposal has reasonably demonstrated that objectives of the standard can be achieved despite the variation to standard.</p>

	<p>The proposed Torrens Title subdivision is not likely to have any unreasonable impacts on adjoining properties. Issues raised within public submissions in relation to view loss and amenity impacts have been considered and addressed within the associated Council report. In this regard, the development is considered to be appropriate and any amenity impacts will be addressed under future applications.</p>
<p>ii) Site Design and Internal Design</p>	<p>The subject lot is irregular in shape with frontage to Sapphire Court.</p> <p>Existing improvements comprise a single storey brick and tile dwelling and detached brick and tile garage and a small fibro shed. Access to the garage is via an existing driveway off Sapphire Court.</p> <p>The proposal will result in the creation of two Torrens lots, both with suitable street frontage. Proposed Lot 1 will retain the existing dwelling and have a total land area of 1321m². Proposed Lot 2 will be vacant land (subject to demolition of existing garage) with a total land area of 951m². The applicant has made Council aware that the proposed lot size and dimensions are a result of retaining the existing dwelling.</p> <p>The proposed lot layout is orientated appropriately to receive an acceptable level of solar access. However, further consideration to solar access will be required under a future application involving a dwelling.</p> <p>The applicant has submitted a plan with a concept 12m x 15m building envelope on Proposed Lot 2 to demonstrate that the lot is suitable for residential development. Proposed Lot 2 is of a size that can site an appropriately sized dwelling house that is capable of complying with Council's controls. The existing access will remain to service proposed lot 2. A new access will be required to service Proposed Lot 1 (existing dwelling lot).</p> <p>The development to create one additional residential lot within an established residential area is not likely to have unreasonable impacts on the existing amenity of the locality.</p>
<p>iii) Ecologically Sustainable Building Design</p>	<p>Not Applicable</p>

iv)	Access, Transport and Traffic	<p>The existing external road network is constructed to a suitable standard to service the proposed development.</p> <p>The proposal will require an additional access to be created to service proposed Lot 1. The existing cross-over will remain to service Proposed Lot 2.</p> <p>A new carport will be erected on Proposed Lot 1 to satisfy the BDCP 2012 car parking requirement.</p>
v)	Public Domain	The proposal is not expected have any adverse impacts on public domain. Under the Northern Rivers Local Government guidelines, footpaths are not required for Access Streets.
vi)	Utilities	The subject site is connected to reticulated water, sewerage, electricity, telecommunication and stormwater services, with the new lots to be connected to such. This has been addressed in further detail above, refer to sections, BDCP 2012 Chapter 2 and Chapter 3.
vii)	Heritage	An AHIMS basic search with 200m buffer was conducted 13 November 2019. The search concluded that there are no known heritage items on or within the vicinity of the subject site recorded.
viii)	Construction	<p>The proposal is for the demolition of the existing structures and Torrens Title subdivision only. Conditions can be imposed on any approval granted to mitigate potential impacts in relation to sediment and erosion control, hours of noise generating works and protection of adjoining properties.</p> <p>Waste generated from the demolition works has been addressed below. Construction requirements will be assessed as part of any future proposals</p>
Environmental Impacts		
ix)	Other Land Resources	No adverse impacts anticipated.
x)	Water	The subject site is not mapped as being subject to flooding. Each lot will be connected to a separate reticulated water system.
xi)	Soils	The subject site is not mapped as containing Acid Sulfate Soils. Land contamination has been addressed previously, refer to SEPP 55 of this assessment.
xii)	Air and Microclimate	No issues raised.
xiii)	Flora and Fauna	No vegetation management works proposed as part of this application.
xiv)	Waste	A Site Waste Minimisation and Management Plan (SWMMP) for the demolition works is to be

	provided and approved by the Principal Certifying Authority (PCA) prior to the issue of the Construction Certificate.
xv) Energy	Each lot will be required to connect to the available electricity system, as conditioned.
Hazards	
xvi) Noise and Vibration	Minor noise impacts are expected during the demolition works. Demolition noise can be managed by way of conditions.
xvii) Natural Hazards	The subject site is not mapped as being bushfire risk, flooding or affected by landslip and there is not likely to be any adverse natural hazard effects from the proposed subdivision.
xviii) Technological Hazards	Not Applicable.
xix) Safety, Security and Crime Prevention (CPTED)	No issues raised in relation to CPTED.
Social and Economic Impacts	
xx) Social Impacts in the Locality	The proposed development is considered to be consistent with the surrounding residential properties. The proposal is not likely to have any adverse impacts on the existing community structure and character of the locality.
xxi) Economic Impact in the Locality	The proposed Torrens Title subdivision is not expected to have an adverse economic impact on the locality.
Cumulative Impacts	
xxii) Cumulative Impacts	No cumulative issues raised as a result of the proposal. Refer to assessment via Clause 4.6 in the Council report.

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

	Comments
i) Does the proposal fit in the locality?	The proposed development is considered to be consistent with the character of the locality. The size and dimensions of the proposed allotments is consistent with the properties within the immediate and surrounding locality and are of a size to allow for a reasonably sized dwelling to be erected without significantly impacting on the surrounding properties.
ii) Are the site attributes conducive to development?	The attributes of the site are considered to be conducive of the development, particularly as there are no real identified site constraints.

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

Is advertising required because the development is designated or “advertised” development?	No
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Is advertising required in accordance with established Council policy and practice?	Yes
If YES, how many submissions were received?	Two

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

Comments relating to the public submission are contained within the Council report.

4.15 (1) (e) The public interest

Federal, State & Local Government interests and Community interests	The proposed development is considered to be in the interest of the Federal, State and Local Governments and in the interest of the wider community.
Section 64 Contributions and Section 7.11 Contributions	Contributions are applicable and are to be included as conditions of consent.

Application Form to vary a Development Standard
(per Varying Development Standards: A Guide – August 2011)

Lot 3 DP 1041589
No. 5-9 Sapphire Court, Lennox Head

To demolish an existing garage and to undertake a Torrens Title subdivision to create 1 x 1321m² lot (existing dwelling house) and 1 x 951m² lot (vacant)

1. What is the name of the environmental planning instrument that applies to the land?

Ballina LEP 2012 (came into effect 4th February 2013).

2. What is the zoning of the land?

R2 – Low Density Residential Zone

3. What are the objectives of the zone?

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.
- To provide for development that meets the social and cultural needs of the community.
- To encourage development that achieves the efficient use of resources such as energy and water.

4. What is the development standard being varied? eg FSR, height, lot size

Minimum lot size/subdivision standard – per Clause 4.1. The subject land is mapped as U2 – 1200sqm minimum lot size.

5. Under what circumstances is the development standard listed in the environmental planning instrument?

The development standard is a minimum numerical standard relating to the creation of new lots.

6. What are the objectives of the development standard?

The objectives of Clause 4.1 are:

- (a) *to ensure that subdivision is compatible with the character of the locality,*
- (b) *to ensure that in the case of urban areas:*
 - (i) *the subdivision pattern reflects and reinforces the current or planned subdivision pattern of the locality, and*
 - (ii) *lot configurations are suitable to enable development that is consistent with relevant development controls,*
- (c) *to ensure that in the case of rural areas:*
 - (i) *the subdivision pattern reflects and reinforces the agricultural, resource and environmental values of the land, and*
 - (ii) *the subdivision pattern minimises land use conflict.*

7. What is the numeric value of the development standard in the environmental planning instrument?

Clause 4.1 – Minimum lot size = 1200m²

8. What is the proposed numeric value of the development standard in your development application?

Proposed Lot 1 has an area of 1321m² and complies. Proposed Lot 2 has an area of 951m² which does not comply.

9. What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation proposed to the minimum lot size = 20.75%

10. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

It is considered that strict compliance with the minimum lot size/subdivision standard required by Clause 4.1 of BLEP 2012 is unreasonable and unnecessary in the circumstances of the case for the following reasons:

- the subject land is an existing developed urban residential lot in a developed urban residential area – the proposed subdivision is “in-fill” in nature
- it is understood that the subject land contains the original house that was on the lot/holding from which Lots 1-13 DP 1041589 were created
- excluding the subject land, the residential lots in Sapphire Court (per DP 1041589) range in size from 761.8m² – 1318m²
- excluding the subject land and Lot 13 DP 1041589 (public reserve), the residential lots in Sapphire Court (per DP 1041589) have an average size of 1017.11m²
- the proposed new lots will each have frontage to an existing constructed urban road and will be connected to all required public infrastructure services

- the size and shape of the proposed lots are consistent with the size, shape and subdivision pattern in the immediate and broader locality
- it has been demonstrated that both lots have sufficient dimensions and area to enable the existing dwelling house and a future dwelling house to be situated thereon
- there will not be any adverse impacts on the environment resulting from the creation of a marginally undersized residential lot, which is still a large residential lot in the context of Lennox Head and contemporary residential lot size standards
- for the reasons articulated above, it is submitted that Proposed Lot 2 is expressly consistent the objectives of Clause 4.1(1)(a) & (b) in that it is compatible with the character of the locality, will reflect and reinforce the current/planned subdivision pattern in the locality and its size and shape is suitable to enable the construction of a future dwelling house and any ancillary residential improvements/structures
- the land is not constrained and is physically suitable for the subdivision
- the subdivision will not have any adverse impact on the scenic amenity or character of the local environment

It is intended at this point in time to retain the existing dwelling house which will be situated on Proposed Lot 1, which has resulted in Proposed Lot 2 having the dimensions and area as currently proposed. If this dwelling house was to be demolished, there would be scope to modify the central lot boundary such that the lot areas could be more evenly distributed.

If the house was to be removed, it would be possible to create 1 x 1200m² and 1 x 1072m² vacant lots, with the 1072m² lot involving a 10.67% variation.

However, on the basis that the proposal involves the retention of the existing house, Proposed Lot 2 has a resultant area of 951m².

11. How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act?

Strict compliance with the development standard would hinder the attainment of the objects specified in Section 1.3 of the Act particularly:

- (c) *to promote the orderly and economic use and development of land*
- (d) *to promote the delivery and maintenance of affordable housing*
- (g) *to promote good design and amenity of the built environment*
- (h) *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants*

12. Is the development standard a performance based control?

No the development standard is not a performance based control. The standard to be varied is numerical based development standard as defined in Clause 1.4 of the *EP & A Act 1979* viz:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) the area, shape or form of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,
- (b) the proportion or percentage of the area of a site which a building or work may occupy,
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,
- (d) the cubic content or floor space of a building,
- (e) the intensity or density of the use of any land, building or work,
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,
- (h) the volume, nature and type of traffic generated by the development,
- (i) wind patterns,
- (j) drainage,
- (k) the siting out of earthworks,
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,
- (m) the provision of services, facilities and amenities demanded by development,
- (n) the emission of pollution and means for its prevention or control or mitigation, and
- (o) such other matters as may be prescribed.

13. Would strict compliance with the standard, in your particular case, be unreasonable or unnecessary? Why?

Strict compliance with the standard having regard to the particular circumstances of the case is considered unreasonable and/or unnecessary due to the fact that:

- The proposal as submitted is compliant with all other applicable controls contained within BDCP 2012 and BLEP 2012.
- The subject land is not constrained.
- The proposed subdivision and any future dwelling house on Proposed Lot 2 will not have any adverse impacts on the natural or man-made environment and will not result in any land use conflicts.
- The proposed subdivision is permitted with consent and is consistent with the objectives of the R2 zone.
- Proposed Lot 2 is consistent with the objectives of clause 4.1 of BLEP 2012 in that it:
 - is compatible with the character of the locality
 - will reflect and reinforce the current/planned subdivision pattern in the locality
 - is of a size and shape that is suitable to enable the construction of a future dwelling house and any ancillary residential improvements/structures (concept/indicative 12m x 15m building envelope shown)

14. Are the sufficient environmental planning grounds to justify contravening the development standard? Give details.

It is submitted that there are sufficient environmental planning grounds to justify contravening the minimum lot size development standard, with details of such being provided above. It is submitted that the proposed subdivision and particularly Proposed Lot 2:

- is not contrary to the objects of the *EP & A Act 1979* (per Section 1.3)

- is not contrary to the aims of the BLEP 2012 (per Clause 1.2)
- is permitted with consent and is consistent with the objectives of the R2 zone
- is not contrary to the objectives of Clauses 4.1 of the BLEP 2012
- is not contrary to the public interest

Further, it is considered that there are sufficient environmental planning grounds to justify contravening the development standards for the following additional reasons:

- The proposed subdivision will provide a fully serviced "in-fill" lot in an existing urban (residential) area.
- Proposed Lot 2 is of a size, character and nature that is compatible with the urban character and environmental capabilities of the land.
- Proposed Lot 2 will have no adverse impacts on the use or amenity of the subject or adjacent properties.
- Both lots will have frontage to an existing constructed urban public road.
- The land is physically suitable for the subdivision.
- Proposed Lot 2 will have no adverse impact on the scenic amenity or character of the urban environment.

15. Whether contravention of the development standard raises any matter of significance for state or regional environmental planning; and

The contravention of the minimum lot size does not raise any matters of significance in respect of any state or regional planning matters.

16. The public benefit of maintaining the development standard

The public benefit of maintaining the standard is dependent upon the environmental and social impacts of approving the proposed variation. It

is considered that the circumstances of this particular subdivision have been assessed and identified in detail to conclude no adverse impacts to the public would result from the grant of development consent of this 951m² vacant residential lot.

To conclude, the proposal is in full compliance with all other development standards contained within BLEP 2012 and complies with all applicable design elements contained within BDCP 2012. The proposal will not create any adverse impacts on surrounding properties or the streetscape which would suggest that there are sufficient environmental planning grounds to justify contravening the subject development standard.

As per P&E Circular PS 17-006, when assuming the Director-General's concurrence, the full Council is to determine the application due to the fact that the proposed departure from compliance with the minimum lot size for Proposed Lot 2 is greater than 10% (being 20.75%).

Saxon Irvine

From: Murray Saul <murray.saul@finance.nsw.gov.au>
Sent: Wednesday, 24 July 2019 11:45 AM
To: Ballina Shire Council
Subject: Objection to DA 2019/382 Proposed two lot subdivision - 5-9 Sapphire Court LENNOX HEAD

To:
The General Manager
Ballina Shire Council

Subject: Objection to DA 2019/382 Proposed two lot subdivision - 5-9 Sapphire Court LENNOX HEAD

We are writing to object to the two lot subdivision on the above property.

We are the owners of neighbouring property on the western boundary, 3 Sapphire Court Lennox Head.

The proposed two lot subdivision is a non-compliant development under current Ballina Shire Council LEP, 2012.

The current LEP states: **Consent must not be granted** to subdivision of any land, unless the size of each lot created complies with the minimum size shown on the Lot Size Map, which in this instance is 1200 m2.

Clearly this proposed subdivision does not meet the current LEP, with proposed Lot 2 being 951m2.

DA 2019/382 also states that if the owners choose to demolish the current aged and deteriorating dwelling on proposed Lot 1, they may choose to do a boundary adjustment with both proposed lots 1 and 2 being **smaller than the allowed minimum of 1200 m2**. Given the age and condition of the existing dwelling, there is high probability that this may be the case.

This proposed subdivision will significantly impact on our amenity and lifestyle. Currently key living areas of our home, overlook to the east through trees and to the ocean. With a subdivision in place and another home on this property, we will be looking straight into dwellings.

We understand that you are not guaranteed a view, however our outlook to the East will be severely impacted should the requirements of the Ballina Shire Council LEP, 2012 not be upheld in this instance. With the current LEP in place, we were at least assured that our view was secure.

We made formal enquiry to Council earlier this year, when this neighbouring block was on the market, as we had concerns about a potential subdivision. We were advised that with this block being 2272 m2, no further subdivision (either Torrens or Strata Title) could occur on the subject property.

It is not unreasonable to expect that Ballina Shire Council will ensure compliance with its own LEP.

I therefore request that Council adhere to and enforce the requirements of the current LEP and reject the application of DA 2019/382.

Your sincerely

Murray and Jan Saul

Saxon Irvine

From: Steve Callum <Stevenupl@outlook.com>
Sent: Thursday, 25 July 2019 7:46 PM
To: Ballina Shire Council
Subject: Attn Saxon Irvine Ref DA 2019/382

Dear Sir,

I refer to the above DA application for DP 1041589 5-9 Sapphire Court Lennox Head. I'm assuming this email constitutes "submission in writing" as I've been out of the country and realised the closing date for submissions is today being the 25th July.

I'm writing to object to the two-lot subdivision on the aforementioned property as we reside in No 1 Sapphire Court, Lennox Head

One of the aspects we saw when purchasing our property some two years ago was the ambience of the street given the openness of the surrounding dwellings. This would however be compromised with the proposed subdivision and would be in conflict with the current LEP, something we checked on and swayed our decision prior to us purchasing in that street. It's unlikely we would have purchased knowing that the current LEP would not have been adhered to, rendering somewhat of an unknown going forward in our remaining retirement years!

I see this as an erosion of our intended lifestyle for our retirement and sets the precedent for others to follow suit. We have a view of the ocean from the upper level of our house and enjoy the openness of the street something that if removed would greatly impact our desire in remaining in Sapphire Court.

SR & PACallum

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