



*Planning Proposal 18/004*

# » *Reservoir Hill Site, Lennox Head*

20 North Creek Road, Lennox Head

September 2019 (V4 Exhibition) 19/69384

**ballina**  
shire council



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# 1. Introduction

## 1.1 Summary of Planning Proposal

This planning proposal seeks to amend the Ballina Local Environmental Plan (LEP) 2012 in relation to land at Lot 1, DP 517111 and located at 20 North Creek Road, Lennox Head. The land is commonly referred to as the 'Reservoir Hill Site' as it adjoins a concrete reservoir structure that is located on the eastern boundary of the site within Lot 2, adjacent to North Creek Road.

The planning proposal seeks to rationalise existing LEP mapping boundaries which are irregular and the result of a planning scheme no longer supported by Council. The planning proposal seeks to facilitate the desired outcomes by:

- Amending the Ballina LEP 2012 Land Zoning Map to facilitate a minor realignment of the existing irregular shaped RU1 Primary Production zone boundaries;
- Amending the Ballina LEP 2012 Land Zoning Map to facilitate minor realignment of various R3 Medium Density Residential zone boundaries;
- Amending the Ballina LEP 2012 Lot Size Map to facilitate consistency with the zone boundary realignments; and
- Amending the Ballina LEP 2012 to permit the subdivision of land for drainage purposes within all RU1 and RU2 zones.

## 1.2 Background

The site was subject to a planning proposal in 2014. The original planning proposal was prepared in association with an indicative subdivision master plan as a guide to the type of development that could occur on the land if rezoned. The relevant LEP mapping was subsequently amended in accordance with the indicative subdivision master plan, resulting in the existing irregular shaped zone and minimum lot size boundaries of the RU1 Primary Production land within the site.

The original subdivision design included a planned road corridor for the realignment of North Creek Road and the extension of Hutley Drive along the northern boundary of the site, with both roads intersecting at a new 2 lane roundabout which was to connect with The Coast Road, Ballina Road and Byron Bay Road. These road works were to be located within the north-eastern corner of the site.

In February 2018 the applicant was advised that Council no longer requires the realignment of North Creek Road and Hutley Drive through the site and consequently a revised concept subdivision plan was submitted to Council, which also identified the requirement for minor rationalisation of existing zone boundaries.

Development application DA 2018/51, currently under assessment, comprises the first stage of development and includes the creation of super lots for future residential development in Stage 2. The applicant was advised that a minor LEP amendment would be required to facilitate the proposed Stage 2 development. A copy of the revised subdivision layout plan is provided at Appendix 3.

### 1.3 Land to Which the Planning Proposal Applies

This planning proposal relates to land at Lot 1 DP 517111, No 20 North Creek Road, Lennox Head as outlined in red, and adjacent road reserves as outlined in blue, as shown in Figure 1 below.



Figure 1: Site identification – 20 North Creek Road, Lennox Head

### 1.4 Council Resolutions

Council considered this planning proposal at its Ordinary Meeting held on 24 April 2019. The Council resolved as follows [Minute No. 240419/7]:

1. That Council endorses the planning proposal (BSCPP 18/004), as per Attachment 3 to this report.
2. That the planning proposal be forwarded to the Department of Planning and Environment for a Gateway determination.
3. That the Department of Planning and Environment be advised that Council seeks to exercise the functions of the local plan-making authority under section 3.36(2) of the Environmental Planning and Assessment Act 1979 for this LEP amendment.
4. That upon an affirmative Gateway determination being received from the Department of Planning and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.
5. That Council receive a further report on the matter following the completion of the public exhibition of the planning proposal.

A copy of the report considered by the Council is contained in Appendix 6.

## **1.5 Gateway Determination**

A Gateway determination allowing the planning proposal to proceed to public exhibition was issued on 12 August 2019. A copy of the Gateway determination is contained within Appendix Seven.

## 2. Objectives & Intended Outcomes

The objectives and intended outcomes of this planning proposal are to amend the Ballina LEP 2012 to:

- Rationalise existing mapping boundaries to enable the efficient use of land and provide consistency with a proposed revised subdivision layout; and
- Permit the subdivision of land for drainage purposes within all RU1 and RU2 zones.

## 3. Explanation of Provisions

### 3.1 The Proposal

The proposed outcomes will be achieved by:

- Amending the Ballina LEP 2012 Land Zoning Map in accordance with the proposed land zoning map extract shown in Figure 4;
- Amending the Ballina LEP 2012 Lot Size Map in accordance with the proposed minimum lot size map extract shown in Figure 6b to facilitate consistency with the zone boundary realignment; and
- Amending the Ballina LEP 2012 to include a new local provision to permit the subdivision of land for drainage purposes within all RU1 and RU2 rural zones.

### 3.2 Mapping Overview

The planning proposal proposes to amend the Ballina LEP 2012 to make minor zone boundary changes to the RU1, R2 and R3 zone boundaries to provide consistency with the revised subdivision layout proposed under DA 2018/51, with the exception of proposed Lots 6, 7 and 16 (located in the north eastern corner of the site) being rezoned from R2 to R3. A copy of the revised subdivision layout plan is provided at Appendix 3. It is also proposed to amend the minimum lot size map consistent with the proposed zone boundary realignment.

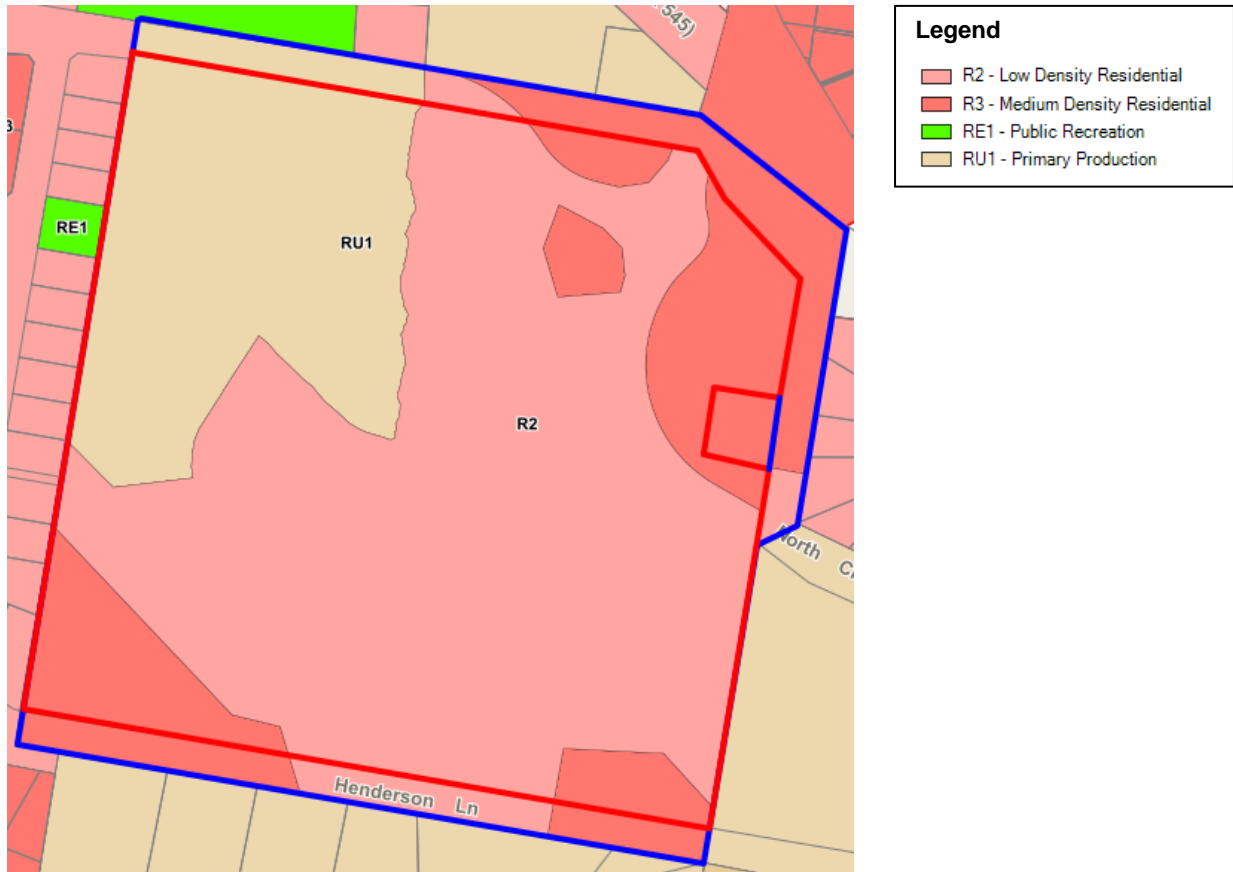
The proponent is seeking relatively minor zone boundary adjustments comprising the following:

- Realignment of the existing irregular shaped RU1 Primary Production zone boundary located on the southern side of the RU1 boundary; and
- Realignment of various R3 Medium Density Residential zone boundaries to incorporate additional R2 Low Density Residential zoned land.

In addition to the minor amendments sought by the proponent additional amendments to zone boundaries are considered to be warranted. These amendments, whilst more significant than what has been proposed by the proponent, are also essentially “housekeeping” in nature and serve to ensure consistency with the subdivision now proposed and zone boundaries.

The map extracts in Figures 2 to 7 below indicate the mapping outcomes proposed by this planning proposal. The proposed amendments to zone boundaries are intended to apply to the subject site as outlined in red and to adjacent road reserves as outlined in blue.

**Land Use Zoning**



**Figure 2: Existing Land Zoning Map Extract**



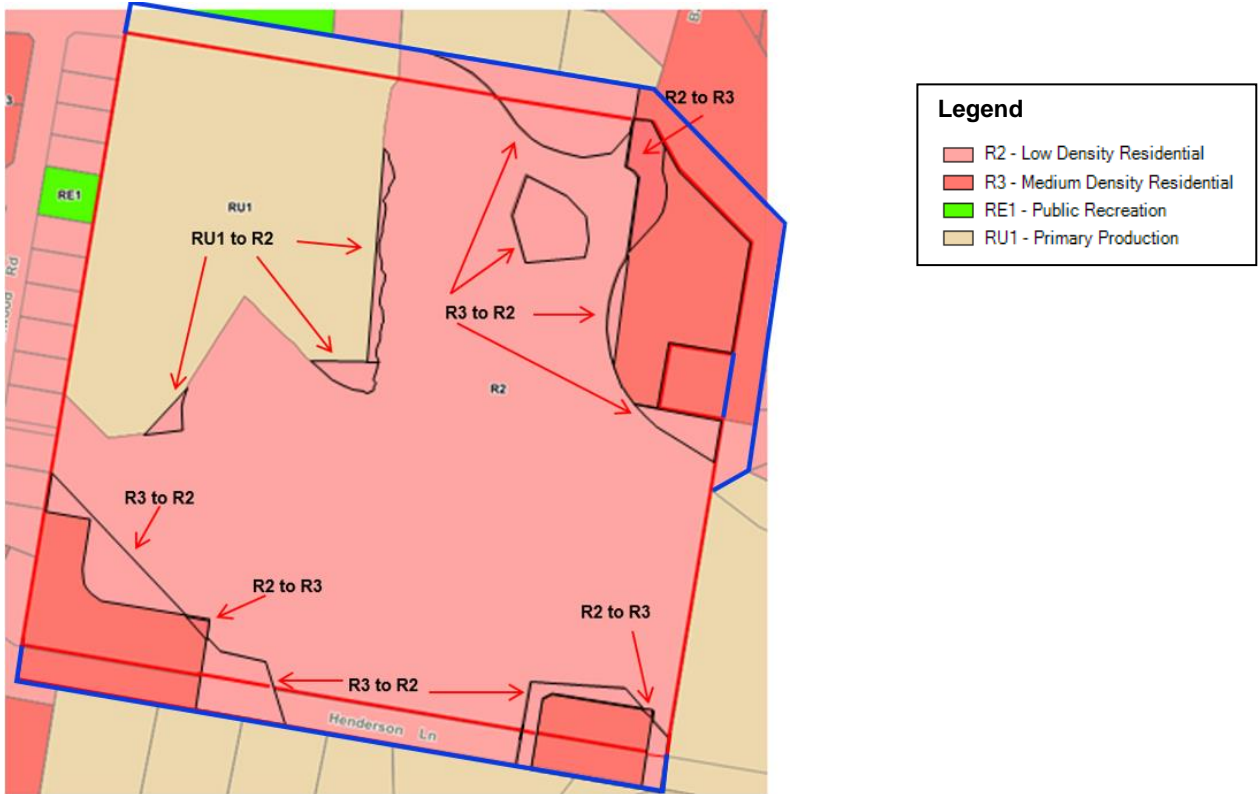


Figure 3: Proposed Land Zoning Map Extract showing changes

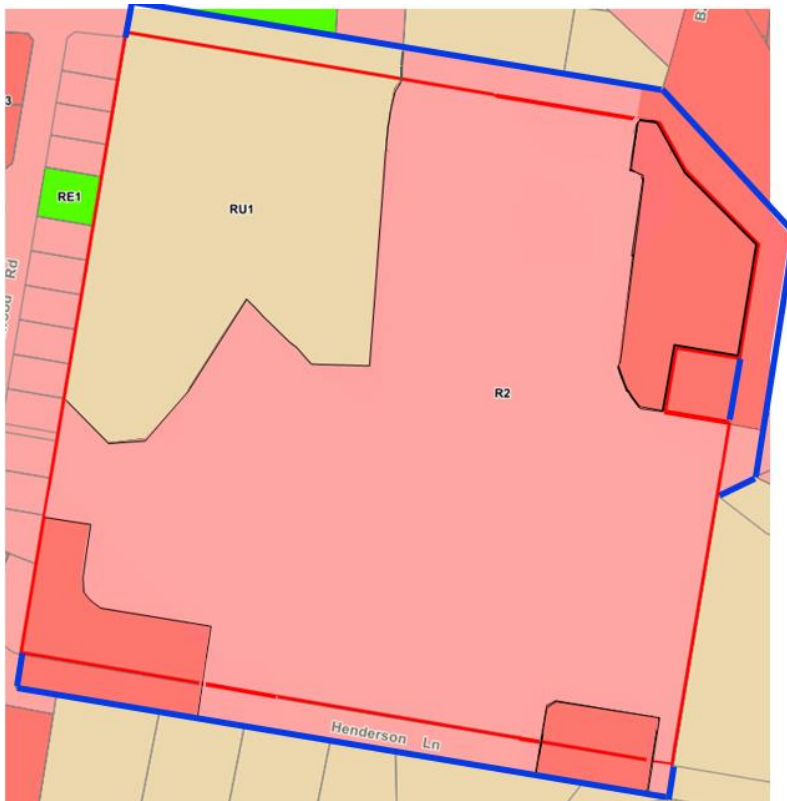
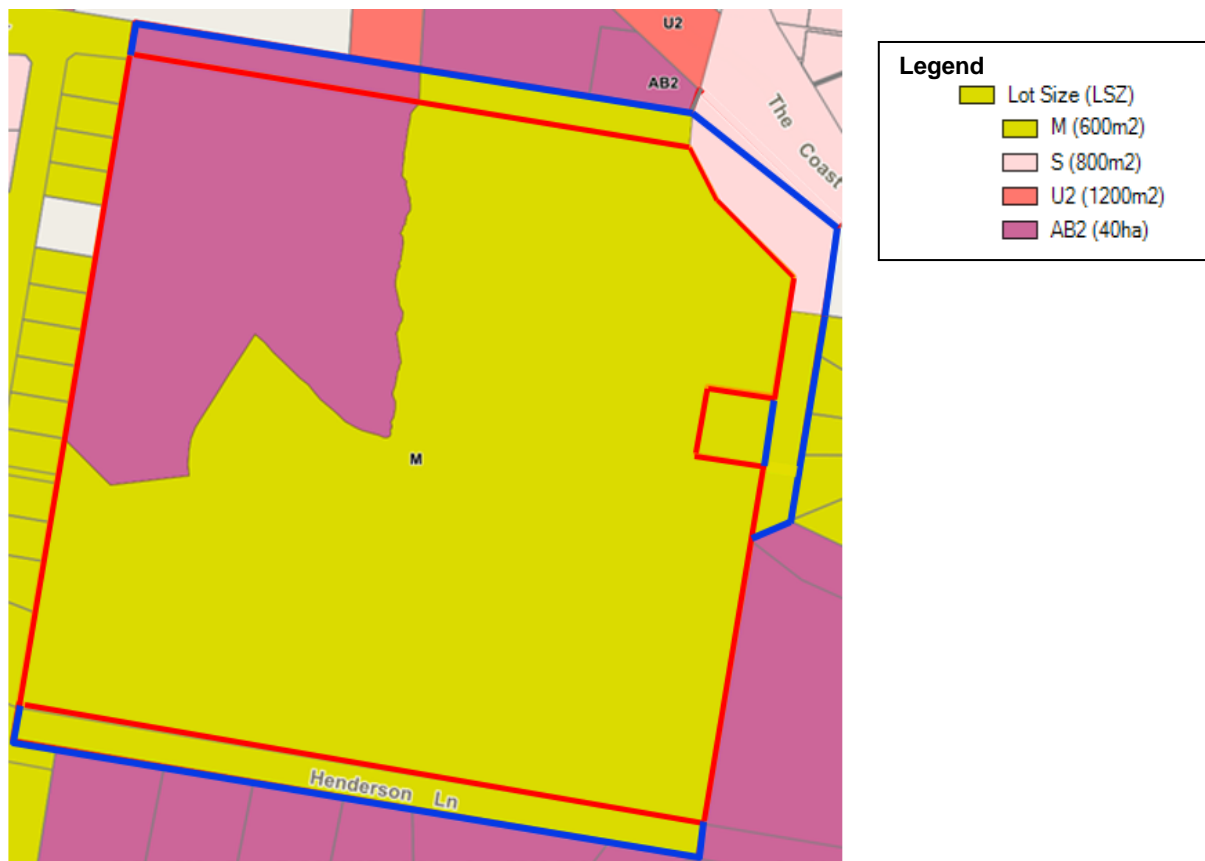


Figure 4: Proposed Land Zoning Map Extract

**Minimum Lot Size**



**Figure 5: Current Lot Size Map Extract**



**Figures 6 and 7: Proposed Lot Size Map Extracts showing changes**

## 4. Justification

### 4.1 Section A – Need for the Planning Proposal

#### Q1 Is the planning proposal a result of any strategic study or report?

The planning proposal is a result of a specific development application, currently under assessment, that seeks the approval of an amended subdivision layout plan. The planning proposal will provide consistency with the amended subdivision plan.

#### Q2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The planning proposal is the best way of achieving the proposed outcomes as the proposal relates to the amendment of zone boundaries and minimum lot size requirements as well as the addition of a new local clause.

Rather than seeking a site specific variation, the planning proposal seeks to permit land subdivision for drainage purposes within all of the RU1 and RU2 rural zones within the shire. This option will provide increased flexibility for future new release areas where drainage works located on rural zoned land are proposed to be transferred to Council.

The dedication of land for stormwater drainage purposes involves a land subdivision and is consistent with the approach taken by Council in other release areas. Typically the stormwater infrastructure is located on residential zoned land and subdivision is not impeded as a consequence of minimum lot size requirements, however many new release areas within the shire adjoin rural areas and there is the likelihood this situation may occur in the future.

### 4.2 Section B – Relationship to Strategic Planning Framework

#### Q3 Is the planning proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies)?

The planning proposal demonstrates strategic merit through its consistency with the objectives and actions set out in the North Coast Regional Plan 2036 and aligns with the following goals and objectives of the plan:

**Goal 3: Vibrant and engaged communities**

*Direction 15: Develop healthy, safe, socially engaged and well-connected communities*

**Goal 4: Great housing choice and lifestyle options**

*Direction 22: Deliver greater housing supply*

*Direction 23: Increase housing diversity and choice*

*Direction 24: Deliver well-planned rural residential housing areas*

**Q4 Is the planning proposal consistent with a council's local strategy or other local strategic plan?**

The planning proposal is consistent with the elements and outcomes contained within Council's Community Strategic Plan 2017-2027. The direction of most relevance to the proposal is:

***PE3 – Prosperous Economy***

*PE3.1 – Support residential development that delivers services close to home*

*PE3.2 – Facilitate and provide affordable infrastructure*

*PE3.3 – Improve connectivity within the shire*

The planning proposal is consistent with this direction as the objective of the proposal is to provide a more efficient subdivision layout for future residential development, facilitate the efficient delivery of stormwater infrastructure and improve connectivity to the shire by facilitating an alternative internal road network to Council's standards.

**Ballina 2035 – Ballina Major Regional Centre Strategy**

The proposal is consistent with the following objectives of the Ballina Major Regional Centre Strategy 2015-2035:

*Objective F1 – Ensure future housing stock is appropriate, accessible and affordable.*

*Objective C4 – Protect and enhance the qualities that contribute to the amenity and character of Ballina.*

The planning proposal will facilitate a residential development in close proximity to regional road networks, local amenities and services. The proposed boundary adjustment will ensure adequate separation between the proposed internal road network and the RU1 zoned land in the north-western corner of the site, allowing for the preservation of natural assets that contribute to the amenity of Ballina.

**Q5 Is the planning proposal consistent with applicable State Environmental Planning Policies?**

The planning proposal is generally consistent with applicable State Environmental Planning Policies (SEPPs).

**SEPP No. 55 – Remediation of Land**

Following a Court of Appeal decision (*Moorebank Recyclers Pty Ltd v Tanlane Pty Ltd* [2018] NSWCA 304) it is required that planning authorities must give specific consideration to whether the land included within a planning proposal is contaminated land under the provisions of State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55).

The issue of whether Lot 1 is contaminated land has been previously considered as part of the process associated with the 2016 amendment of Ballina LEP 2012. In this respect the whole of Lot 1 was the subject of a Phase 1 Site Contamination Assessment (SCA) undertaken by Coffey Geotechnics in 2013. The SCA identified no areas of environmental concern and concluded that further assessment is not required for this site. The conclusions were based on a review of site history as well as analysis of soil samples.



The diagram below is an extract from the 2013 Coffey report which shows the locations upon Lot 1 which were subject to soil sampling.



It is considered that land contamination issues have been previously assessed as required by SEPP 55 and the associated Land Contamination Guidelines and no further land contamination assessments are required to support the current planning proposal. A copy of the 2013 Coffey Site Contamination Report is included at Appendix Five.

**Q6 Is the planning proposal consistent with applicable Ministerial Directions (s9.1 directions)?**

The planning proposal is consistent with applicable Section 9.1 Ministerial Directions as outlined in Appendix Two.

**4.3 Section C – Environmental, Social and Economic Impact**

**Q7 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?**

The sites ecological attributes have been considered previously as part of the original planning proposal that rezoned the land (Ballina LEP 2012 Amendment No. 27).

A revised ecological assessment report dated March 2019 has been submitted as part of DA 2018/51 and is included at Appendix Four. The assessment of DA 2018/51 will consider the likelihood of any impacts on threatened species and ecological communities located on the site as a result of the amended subdivision layout plan.

Stormwater drainage infrastructure basins are proposed to be located within an area identified as containing a Freshwater Wetland Endangered Ecological Community (EEC) as well as Hairy-joint grass (HJG), located within the north western portion of the site that is zoned RU1. HJG is listed as vulnerable plant species under both Federal and State legislation. The mitigation of ecological impacts associated with proposed drainage works is subject to separate consideration as part of the DA (DA 2018/51) process. There are a number of options available to address this issue none of which are considered to impact the land zoning applied to the land.

No additional impacts are anticipated as a result of the minor boundary adjustments to the RU1 zone proposed by this planning proposal.

As the planning proposal seeks to permit the subdivision of land for drainage purposes within all RU1 and RU2 rural zones within the shire, it is likely that such works relating to future proposals may be located on sensitive land, thereby triggering the provisions of the *Local Land Services Act 2013* and *Biodiversity Conservation Act 2016*. Matters relating to the assessment of such impacts and any required offset strategies or compensatory measures would be required to be addressed within future development applications.

**Q8 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

No significant adverse environmental impacts are likely to arise as a result of the planning proposal.

The proposed local clause to permit the subdivision of land for drainage purposes within all RU1 and RU2 rural zones within the shire is likely to involve sensitive land affected by natural hazards such as flooding, bushfire hazard and the like. These matters would be required to be identified and addressed as part of the DA process where the proposed development involves land affected by such constraints.

**Q9 Has the planning proposal adequately addressed any social and economic effects?**

The social and economic effects of the planning proposal are considered to be positive. The proposal will facilitate the creation of additional residential zoned lots and a more functional and efficient subdivision layout. This will provide for increased social and economic outcomes through the provision of increased housing supply and improved accessibility whilst minimising impacts to RU1 zoned land.

#### **4.4 Section D – State and Commonwealth Interests**

**Q10 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. The proposal includes substantial new road infrastructure throughout the site.

Site drainage works are proposed to be located within the RU1 zoned portion of the site. Once drainage works have been satisfactorily completed it is proposed that the land occupied by such works be dedicated to Council for drainage purposes.

The dedication of land for drainage purposes involves a land subdivision and is consistent with the approach taken by Council in other release areas. Typically the

drainage works are located on residential zoned land and subdivision is not impeded as a consequence of minimum lot size requirements. In the subject case the minimum lot size for the RU1 zone is 40ha and presents a significant constraint to land subdivision which would require an LEP amendment to resolve.

It was initially proposed to apply a SP2 Infrastructure zone, which is not subject to minimum lot size restrictions, to that part of Lot 1 required for drainage purposes. Whilst feasible the difficulty with this approach relates to the extent of the land area required for drainage works not being able to be precisely determined until after works have been constructed. An alternative, and more favoured, option is to permit land subdivision for the purpose of drainage works within all of the RU1 and RU2 rural zones utilizing the mechanism of a special clause within Ballina LEP 2012.

The special clause mechanism could then be utilized on other sites in the future where drainage works located on rural zoned land are proposed to be transferred to the Council.

In the event that the special local clause option is not able to be implemented an alternative to limit the permissibility of land subdivision for drainage purposes to only that part of the site zoned RU1 is also included within the planning proposal.

The drainage infrastructure basins are proposed to be located within an area identified as containing a Freshwater Wetland Endangered Ecological Community (EEC) as well as Hairy-joint grass (HJG). HJG is listed as vulnerable plant species under both Federal and State legislation. The mitigation of ecological impacts associated with proposed drainage works is subject to separate consideration as part of the DA (DA 2018/51) process. There are a number of options available to address this issue none of which are considered to impact the land zoning applied to the land.

**Q11 What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?**

Consultation will be undertaken with relevant agencies as required by the Gateway determination during the public exhibition stage of the LEP amendment.

## 5. Mapping

The following maps will be prepared to support this planning proposal:

- Land Zoning Map – Sheet LZN\_005D
- Lot Size Map – Sheet LSZ\_005D

## 6. Community Consultation

This proposal will be exhibited in accordance with the Gateway determination and the terms of the *Environmental Planning and Assessment Act 1979*. A minimum public notification period of 14 days will be applied to this planning proposal.

## 7. Timeline

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

Plan Making Step	Estimated Completion (Before)
Gateway Determination	August 2019
Government Agency Consultation	September 2019
Public Exhibition Period	September 2019
Public Hearing	N/A
Submissions Assessment	November 2019
RPA Assessment of Planning Proposal and Exhibition Outcomes	December 2019
Submission of Endorsed LEP to DP&E for Finalisation	January 2020
RPA Decision to Make the LEP Amendment (if delegated)	January 2020
Forwarding of LEP Amendment to DP&E for Notification (if delegated)	January 2020



## 8. Appendices

# Appendix 1 – Maps

(To be prepared post-Gateway determination).

# Appendix 2 – Section 9.1 Direction Checklist

Section 9.1 Direction Checklist Planning Proposal – Reservoir Hill Site, 20 North Creek Road, 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.</p> <p>The planning proposal involves a minor adjustment of rural zone boundaries consistent with the proposed residential allotment layout and the extent of roads proposed within the subdivision application currently being assessed by Council under DA 2018/51.</p> <p>The extent of rural land proposed to be rezoned to residential comprises approximately 1,000m<sup>2</sup> of land on the eastern and southern edges of the 3.68ha rural zoned area of the site and therefore is considered to be of minor significance.</p> <p>The Director, Regions Northern Planning Services, Department of Planning, Industry and Environment in his letter dated 12 August 2019 has advised that he has agreed, as a delegate of the Secretary, that the inconsistency is justified and that no further approval is required in relation to this Direction.</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 Lands	<p>Justifiably inconsistent.</p> <p>The planning proposal involves a minor adjustment of rural zone boundaries consistent with the proposed residential allotment layout and the extent of roads proposed within the subdivision application currently being assessed by Council under DA 2018/51.</p> <p>The extent of rural land proposed to be rezoned to residential comprises approximately 1,000m<sup>2</sup> of land on the eastern and southern edges of the 3.68ha rural zoned area of the site and therefore is considered to be of minor significance.</p> <p>The Director, Regions Northern Planning Services, Department of Planning, Industry and Environment in his letter dated 12 August 2019 has advised that he has agreed, as a delegate of the Secretary, that the inconsistency is justified and that no further approval is required in relation to this Direction.</p>
<b>2. Environment and Heritage</b>	
2.1 Environment Protection Zones	<p>Consistent.</p> <p>Environmental Protection zones are not proposed due to deferral of E zones from the Ballina LEP 2012. Areas within the site having ecological value are not proposed to be rezoned for urban purposes. Amendments to rural zone boundaries are essentially of a housekeeping nature.</p>

<b>Section 9.1 Direction Checklist</b>	
<b>Planning Proposal – Reservoir Hill Site, 20 North Creek Road, Lennox Head</b>	
<b>Direction No.</b>	<b>Compliance of Planning Proposal</b>
2.2 Coastal Protection	<p>Justifiably Inconsistent.</p> <p>The planning proposal in respect to the Reservoir Hill site relates to amendments that are generally of a housekeeping nature and are considered to be of minor significance.</p> <p>With respect to the proposed local clause to permit subdivision for drainage purposes within the RU1 and RU2 rural zones of the shire, the application of coastal planning principles as established under the Coastal Management Act 2016, the NSW Coastal Design Guidelines and the NSW Coastline Management Manual will be required to be considered as part of any future development application for such development.</p> <p>The Director, Regions Northern Planning Services, Department of Planning, Industry and Environment in his letter dated 12 August 2019 has advised that he has agreed, as a delegate of the Secretary, that the inconsistency is justified and that no further approval is required in relation to this Direction.</p>
2.3 Heritage Conservation	<p>Consistent.</p> <p>There are no known items of environmental or Aboriginal cultural heritage value on the land.</p>
2.4 Recreation Vehicle Areas	<p>Consistent.</p> <p>The planning proposal relates to the provision of residential housing and does not involve the development of land for the purpose of a recreation vehicle area.</p>
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	Does not apply to planning proposal.
<b>3. Housing, Infrastructure and Urban Development</b>	
3.1 Residential Zones	<p>Consistent.</p> <p>The planning proposal involves the realignment of RU1, R2 and R3 zone boundaries. The proposal is consistent with this direction as it will facilitate a large scale residential subdivision on which dwelling houses are to be constructed.</p> <p>The Ballina LEP 2012 includes an existing provision (Clause 7.7) that requires that adequate servicing is in place, or suitable arrangements have been made for such servicing, before development proceeds.</p>
3.2 Caravan Parks and Manufactured Home Estates	<p>Consistent.</p> <p>The planning proposal will not result in any reduction in the existing availability of land for caravan parks or manufactured home estates.</p>
3.3 Home Occupation	<p>Consistent.</p> <p>The planning proposal will not affect any existing permissibility or exemptions for home occupations.</p>
3.4 Integrating Land Use and Transport	<p>Consistent.</p> <p>The planning proposal relates to amendments that are generally of a housekeeping nature and are considered to be of minor significance.</p> <p>The proposal will facilitate an internal road network that will provide access to future residential lots within the subdivision.</p>



<b>Section 9.1 Direction Checklist</b>	
<b>Planning Proposal – Reservoir Hill Site, 20 North Creek Road, Lennox Head</b>	
<b>Direction No.</b>	<b>Compliance of Planning Proposal</b>
3.5 Development near Licensed Aerodromes	<p>Consistent.</p> <p>The planning proposal relates to amendments that are generally of a housekeeping nature and are considered to be of minor significance.</p> <p>The proposal does not involve any change to the allowable building heights on the site and therefore will not impact on the effective and safe operation of aerodromes.</p>
3.6 Shooting Ranges	Does not apply to planning proposal.
3.7 Reduction in non-hosted short term rental accommodation period	Does not apply to planning proposal.
<b>4. Hazard and Risk</b>	
4.1 Acid Sulfate Soils	<p>Justifiably inconsistent.</p> <p>This Direction does not apply to the Reservoir Hill site.</p> <p>With respect to the proposed local clause to permit subdivision for drainage purposes within the RU1 and RU2 rural zones of the shire, further assessment will be required to be undertaken as part of the DA process in accordance with the requirements of clause 7.1 of Ballina LEP 2012 where the proposed development involves land mapped as having a probability of containing acid sulfate soils.</p> <p>The Director, Regions Northern Planning Services, Department of Planning, Industry and Environment in his letter dated 12 August 2019 has advised that he has agreed, as a delegate of the Secretary, that the inconsistency is justified and that no further approval is required in relation to this Direction.</p>
4.2 Mine subsidence and Unstable Land	Does not apply to planning proposal.
4.3 Flood Prone Land	<p>Justifiably inconsistent.</p> <p>This Direction does not apply to the Reservoir Hill site.</p> <p>With respect to the proposed local clause to permit subdivision for drainage purposes within the RU1 and RU2 rural zones of the shire, further assessment will be required to be undertaken as part of the DA process in accordance with the requirements of clause 7.3 of Ballina LEP 2012 where the proposed development involves land identified as being flood prone land.</p> <p>The Director, Regions Northern Planning Services, Department of Planning, Industry and Environment in his letter dated 12 August 2019 has advised that he has agreed, as a delegate of the Secretary, that the inconsistency is justified and that no further approval is required in relation to this Direction.</p>

<b>Section 9.1 Direction Checklist</b>	
<b>Planning Proposal – Reservoir Hill Site, 20 North Creek Road, Lennox Head</b>	
<b>Direction No.</b>	<b>Compliance of Planning Proposal</b>
4.4 Planning for Bushfire Protection	<p>Consistent.</p> <p>This Direction does not apply to the Reservoir Hill site.</p> <p>With respect to the proposed local clause to permit subdivision for drainage purposes within the RU1 and RU2 rural zones of the shire, further assessment will be required to be undertaken as part of the DA process in accordance with the requirements of Planning for Bushfire Protection legislation and the relevant parts of the EP&amp;A Act for any future development application involving land mapped as bushfire prone land. Further assessment would also include consultation with the NSW Rural Fire Service.</p> <p>The planning proposal will be referred to the NSW Rural Fire Service for comment as required by the Gateway determination.</p>
<b>5. Regional Planning</b>	
5.1 Implementation of Regional Strategies (Revoked 17 October 2017)	Revoked.
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>Does not apply to planning proposal.</p> <p>The subject land is not mapped as State significant farmland, regionally significant farmland or significant non-contiguous farmland.</p>
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Does not apply to planning proposal.
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Revoked 18 June 2010)	Revoked.
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008)	Revoked.
5.7 Central Coast (Revoked 10 July 2008)	Revoked.
5.8 Second Sydney Airport: Badgerys Creek	Does not apply to planning proposal.
5.9 North West Rail Link Corridor Strategy	Does not apply to planning proposal.
5.10 Implementation of Regional Plans	<p>Consistent.</p> <p>The planning proposal is generally consistent with the North Coast Regional Plan 2036.</p>
5.11 Development of Aboriginal Land Council land	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.</p> <p>The planning proposal does not create, alter or reduce existing zonings or reservations of land reserved for public purposes.</p>
6.3 Site Specific Provisions	<p>Consistent.</p> <p>The planning proposal does not introduce any new site specific provisions.</p>
<b>7. Metropolitan Planning</b>	
7.1 to 7.10	These Directions do not apply to Ballina Shire.

# Appendix 3 – Revised Subdivision Layout Plan (DA 2018/51)



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**RESERVOIR HILL**  
DA Subdivision Plan  
Lennox Head

PROJECT NO: 18/004  
DRAWING NO: 02  
DATE: 01.02.18

# Appendix 4 – Revised Ecological Assessment (March 2019)

(Provided under separate cover)

# Appendix 5 – Site Contamination Assessment (Coffey 2013)

(Provided under separate cover)



# Appendix 6 – Council Resolutions

## 8.2 LEP Amendment Request - Reservoir Hill Site - North Creek Road

### 8.2 LEP Amendment Request - Reservoir Hill Site - North Creek Road

**Delivery Program** Strategic Planning

**Objective** To seek direction from Council in respect to a planning proposal to amend the Ballina Local Environmental Plan 2012 to make zone boundary adjustments to better reflect a proposed subdivision design and to permit subdivision for drainage purposes.

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#### **Background**

Council has received a request to amend the Ballina Local Environmental Plan (LEP) 2012. The proponent (Urbis Pty Ltd) has submitted a zoning amendment request on behalf of the owner of Lot 1 DP 517111 (Lot 1), 20 North Creek Road, Lennox Head. The owner of the land is Ballina Island Developments Pty Ltd.

The land (Lot 1) is commonly referred to as the Reservoir Hill site.

Attachment 1 to this report is the proponent's zoning amendment request.

The proposed amendment involves the rationalisation of existing LEP boundaries to facilitate the efficient use of land and provide consistency with a proposed subdivision layout plan (DA 2018/51). The proposed subdivision layout plan is provided in Attachment 2.

The subdivision concept plan submitted in 2016 as part of the then LEP amendment process included a planned road corridor for the realignment of North Creek Road and the extension of Hutley Drive. The then road design concepts influenced the manner in which the land was rezoned in December 2016 (Ballina LEP 2012 Amendment No 27).

The realignment of North Creek Road and Hutley Drive through the site is no longer required by Council. Consequently the original indicative subdivision layout plan upon which the 2016 LEP amendment was based is now obsolete.

A revised subdivision plan has been prepared and submitted with DA 2018/51 which also identifies the requirement for minor rationalisation of existing zone boundaries.

This report provides an overview of the relatively minor LEP amendments sought by the proponent as well as additional amendments considered to be warranted following more detailed assessment of the proposal.

#### **Key Issues**

- Processing of LEP amendment request
- Provision of land for residential development
- Mechanism to permit subdivision for drainage purposes

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### **Information**

A planning proposal has been prepared for Council's consideration (Attachment 3).

If endorsed, the planning proposal will be forwarded to the Department of Planning and Environment for a Gateway determination.

In summary the planning proposal seeks to make a number of minor zone boundary changes as well as facilitating the subdivision of rural land for drainage purposes into a lot below the 40ha minimum lot size.

#### *Proposed Zone Boundary Changes*

The planning proposal, as it relates to Lot 1 and adjoining sections of road, provides for an amendment to the Ballina LEP 2012 to make minor zone boundary changes to the RU1, R2 and R3 zone boundaries.

This is to ensure consistency with the subdivision layout proposed under DA 2018/51 (Attachment 2).

It is also proposed to amend the minimum lot size map consistent with the proposed zone boundary realignment.

The proponent is seeking relatively minor zone boundary adjustments as shown in the plan provided in Attachment 4, comprising the following:

- Realignment of the existing irregular shaped RU1 Primary Production zone boundary, located on the southern side of the RU1 boundary; and
- Realignment of various R3 Medium Density Residential zone boundaries to incorporate additional R2 Low Density Residential zoned land.

The proponent is also seeking to rezone proposed Lots 6, 7 and 16, located in the north eastern corner of the site, from R2 to R3 which is inconsistent with the subdivision layout proposed under DA 2018/51 (Attachment 2).

The majority of proposed Lot 16 is already zoned R3.

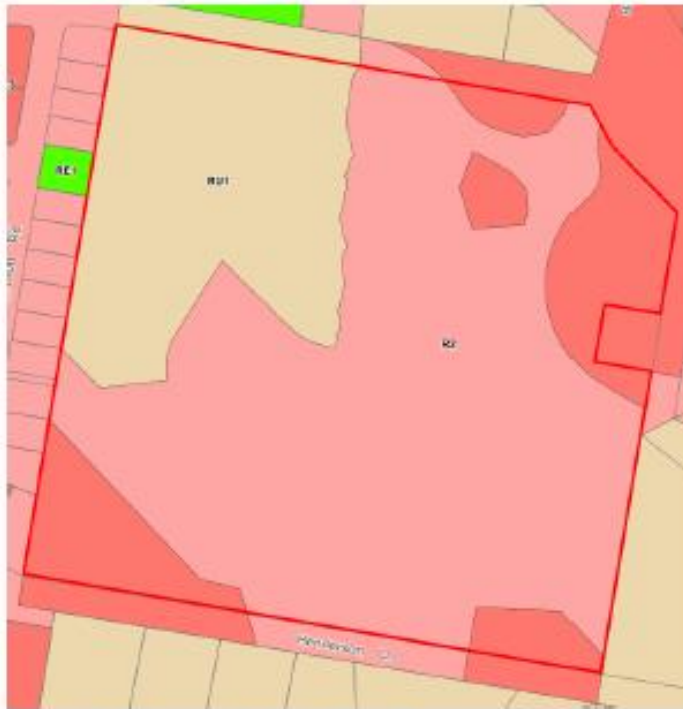
In addition, having regard to the extent of R3 land that is proposed to be rezoned to R2, the rezoning of the three lots as proposed appears a reasonable request.

In addition to the minor amendments sought by the proponent additional amendments to zone boundaries are considered to be warranted.

These amendments, whilst more significant than what has been proposed by the proponent, are also essentially "housekeeping" in nature and serve to ensure consistency with the subdivision now proposed and zone boundaries.

The map extracts in Figures 1 to 3 below indicate the mapping outcomes proposed by this planning proposal.

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**Figure 1: Existing Land Zoning Map Extract**



**Figure 2: Proposed Land Zoning Map Extract showing changes**



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**Figure 3: Proposed Land Zoning Map Extract**

*Proposed Subdivision Provisions Relating to Drainage Works*

Stormwater drainage works are proposed to be located within the RU1 zoned portion of Lot 1. Once drainage works have been satisfactorily completed it is proposed that the land occupied by such works be dedicated to Council for drainage purposes.

The dedication of land for stormwater drainage purposes involves a land subdivision and is consistent with the approach taken by Council in other release areas.

Typically the stormwater infrastructure is located on residential zoned land and subdivision is not impeded as a consequence of minimum lot size requirements.

In the subject case the minimum lot size for the RU1 zone is 40ha and presents a significant constraint to land subdivision which requires an LEP amendment for resolution.

Another significant constraint is that the drainage infrastructure basins are proposed to be located within an area identified as containing a Freshwater Wetland Endangered Ecological Community (EEC) as well as Hairy-joint grass (HJG). HJG is listed as vulnerable plant species under both Federal and State legislation.

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The issue of avoidance and/or the mitigation of ecological impacts associated with proposed drainage works is subject to separate merit consideration as part of the DA (DA 2018/51) process.

It was initially proposed to apply a SP2 Infrastructure zone, which is not subject to minimum lot size restrictions, to that part of Lot 1 required for drainage purposes.

Whilst feasible the difficulty with this approach relates to the ecological significance, location and extent of the land area required and assessed to be suitable for drainage works, which can only be confirmed as part of the DA process (DA 2018/51).

An alternative, and more favoured, option is to permit land subdivision for the purpose of drainage works within all of the RU1 and RU2 rural zones utilising the mechanism of a special clause within Ballina LEP 2012.

The special clause mechanism could then be utilised on other sites in the future, subject to merit assessment, where drainage works located on rural zoned land are proposed to be transferred to the Council.

The special clause will be drafted post-Gateway determination and upon advice sought from the Parliamentary Counsel's Office.

In the event that the special local clause option is not able to be implemented an alternative to limit the permissibility of land subdivision for drainage purposes to only that part of the site zoned RU1 is also included within the planning proposal.

There are a number of options available to address this issue none of which are considered to impact the land zoning applied to the land.

### Proposed Zone Change Land Area Estimates

Lot 1 has an area of 15.17 ha.

The approximate land area proposed for rezoning is shown in Table 1 below.

**Table 1: Approximate land areas proposed for rezoning**

Zone Change	Proponent	Council	Total
RU1 to R2	599m <sup>2</sup>	405m <sup>2</sup>	1,004m <sup>2</sup>
R2 to R3	2,001m <sup>2</sup>	-	2,001m <sup>2</sup>
R3 to R2	-	12,296m <sup>2</sup>	12,296m <sup>2</sup>
<b>Total</b>	<b>2,600m<sup>2</sup></b>	<b>12,701m<sup>2</sup></b>	<b>15,301m<sup>2</sup></b> <b>(1.5301 ha)</b>

The attached planning proposal documents the degree to which the proposal complies with the strategic planning framework for the locality.

Consideration has been given to the planning proposal's consistency with the North Coast Regional Plan, Ballina Shire Council Community Strategic Plan, Lennox Head Structure Plan, the Ballina LEP 2012, applicable State Environmental Planning Policies and the Minister's Section 9.1 Directions.



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It has been concluded that the planning proposal is generally consistent with the framework provided by each of these documents.

Following a Court of Appeal decision (*Moorebank Recyclers Pty Ltd v Tanlane Pty Ltd* [2018] NSWCA 304) it is required that planning authorities must give specific consideration to whether the land included within a planning proposal is contaminated land under the provisions of State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55).

The issue of whether Lot 1 is contaminated land has been previously considered as part of the process associated with the 2016 amendment of Ballina LEP 2012.

In this respect the whole of Lot 1 was the subject of a Phase 1 Site Contamination Assessment (SCA) undertaken by Coffey Geotechnics in 2013. The SCA identified no areas of environmental concern and concluded that further assessment is not required for this site.

The conclusions were based on a review of site history as well as analysis of soil samples.

The diagram below is an extract from the 2013 Coffey report which shows the locations upon Lot 1 which were subject to soil sampling.



It is considered that land contamination issues have been previously assessed as required by SEPP 55 and the associated Land Contamination Guidelines and no further land contamination assessments are required to support the current planning proposal.

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At this stage it is not proposed to require any specific additional studies or assessments to support the planning proposal.

The 2013 Coffey Site Contamination Report is provided in Attachment 5 and the Ecological Assessment (March 2019) submitted as part of DA 2018/51 is provided in Attachment 6.

The Gateway determination may specify further investigations and information that the Department of Planning and Environment requires.

Such information will then be required to be submitted to Council by the proponent for incorporation within the planning proposal prior to the public consultation.

### **Sustainability Considerations**

- **Environment**

The proposal is considered to have positive environmental, social and economic effects.

The proposal will facilitate the creation of additional residential zoned allotments and a more functional and efficient subdivision layout.

This will provide for increased social and economic outcomes through the provision of increased housing supply and improved accessibility whilst minimising impacts to RU1 zoned land.

- **Social**

As above.

- **Economic**

As above.

### **Legal / Resource / Financial Implications**

There are no specific legal or financial implications associated with this proposed LEP amendment at this time. The matters arising from this report can be attended to within existing resources.

In the event that Council wishes to advance this proposal, the proponent will be required to meet various processing costs in accordance with the Council's adopted schedule of fees and charges, as well as providing any additional technical information, following Gateway determination.

Progression of this matter can be accommodated within the Planning and Environmental Health Division.

### **Consultation**

Should the matter proceed, an affirmative Gateway determination will specify government agencies consultation requirements and the minimum community consultation period.

At this stage no specific public agency consultation is proposed.

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Community consultation is proposed over a 14 day period.

**Options**

The following options are presented for Council's consideration.

1. Council may resolve to endorse the planning proposal for submission to the Department of Planning and Environment for Gateway determination.

This is the preferred and recommended option.

The proposal seeks minor amendments to zone boundaries, endorsed under a previous planning proposal BSCPP 14/002, to facilitate the efficient design and layout in accordance with the revised subdivision layout plan submitted with DA 2018/51.

In addition the planning proposal seeks to insert provisions within Ballina LEP 2012 which would permit subdivision for drainage purposes generally within the RU1 and RU2 rural zones or alternatively specifically within the RU1 zone located within Lot 1.

2. Council may resolve to amend the planning proposal prior to its submission to the Department of Planning and Environment for Gateway determination.

Should Council wish to limit the proposal to permit subdivision for drainage purposes so that it only applies to the RU1 zoned portion of Lot 1 then it may do so.

It is however considered that attempting to broaden this aspect of the planning proposal to incorporate all RU1 and RU2 zoned land has merit and may overcome the need to consider this issue again in the future for other release area sites.

Council could under this option also resolve to make additional zone boundary changes as they apply to Lot 1.

In this respect the changes detailed in this report are considered to be all minor in terms of their impact and have been agreed with the proponent.

3. Council may resolve to reject the planning proposal and maintain existing zone boundaries.

This option is not recommended as the zone boundaries as they currently exist reflected a road design proposal which is now no longer being pursued.

Maintaining zone boundaries as previously determined will not prevent the subdivision of this land for residential purposes but will lead to the creation of many part zoned lots (part R2 and R3) which is considered to be undesirable.



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This option will not resolve a number of minor zoning anomalies which would normally be the subject of a housekeeping LEP amendment following subdivision.

In addition to the above the subdivision of RU1 land for drainage purposes would not be able to be approved if this planning proposal was not supported.

Alternatives to land subdivision such as easement and other restrictions on title are available but these alternatives are not favoured given the nature and size of the drainage infrastructure proposed.

4. Council may resolve to defer consideration of this matter for a further report or a briefing.

Should the Council require additional information then it is appropriate that this report be deferred for an additional report or a briefing.

### **RECOMMENDATIONS**

1. That Council endorses the planning proposal (BSCPP 18/004), as per Attachment 3 to this report.
2. That the planning proposal be forwarded to the Department of Planning and Environment for a Gateway determination.
3. That the Department of Planning and Environment be advised that Council seeks to exercise the functions of the local plan-making authority under section 3.36(2) of the *Environmental Planning and Assessment Act 1979* for this LEP amendment.
4. That upon an affirmative Gateway determination being received from the Department of Planning and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.
5. That Council receive a further report on the matter following the completion of the public exhibition of the planning proposal.

### **Attachment(s)**

1. Proponent's LEP Amendment Request (Under separate cover)
2. Proposed Subdivision Layout Plan (DA 2018/51)
3. BSCPP 18/004 - Planning Proposal (V1 Initiation/Gateway)
4. BSCPP 18/004 - Proponent's revised zoning map
5. 2013 Coffey Site Contamination Report (Under separate cover)
6. Revised Ecological Assessment March 2019 (Under separate cover)

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**8.2 LEP Amendment Request - Reservoir Hill Site - North Creek Road**

**240419/1 RESOLVED**

(Cr Sharon Cadwallader/Cr Nathan Willis)

1. That Council endorses the planning proposal (BSCPP 18/004), as per Attachment 3 to this report.
2. That the planning proposal be forwarded to the Department of Planning and Environment for a Gateway determination.
3. That the Department of Planning and Environment be advised that Council seeks to exercise the functions of the local plan-making authority under section 3.36(2) of the *Environmental Planning and Assessment Act 1979* for this LEP amendment.
4. That upon an affirmative Gateway determination being received from the Department of Planning and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.
5. That Council receive a further report on the matter following the completion of the public exhibition of the planning proposal.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Jeff Johnson and Cr Ben Smith



# Appendix 7 – Gateway Determination



PP\_2019\_BALLI\_001\_00/IRF19/4181

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

Dear Mr Hickey

**Planning proposal PP\_2019\_BALLI\_001\_00 to amend Ballina Local Environmental Plan 2012**

I am writing in response to Council's request for a Gateway determination under section 3.34(1) of the *Environmental Planning and Assessment Act 1979* (the Act) in respect of the planning proposal to make minor zone and minimum lot size changes to Lot 1 DP 517111 and adjoining road reserves, 20 North Creek Road, Lennox Head and include a new local provision to permit subdivision for drainage purposes on RU1 and RU2 zoned land.

As delegate of the Minister for Planning and Public Spaces, I have now determined that the planning proposal should proceed subject to the conditions in the enclosed Gateway determination.

I have also agreed, as delegate of the Secretary, the planning proposal's inconsistencies with section 9.1 Directions 1.2 Rural Zones, 1.5 Rural Lands, 2.2 Coastal Management, 4.1 Acid Sulfate Soils and 4.3 Flood Prone Land are justified in accordance with the terms of the Direction. 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 section 9.1 Directions 4.4 Planning for Bushfire Protection. Council should ensure this occurs prior to public exhibition / the plan being made.

It is noted that Council has requested to be authorised as the local plan-making authority. I have considered the nature of Council's planning proposal and have conditioned the Gateway for Council to be authorised as the local plan-making authority.

The amending local environmental plan (LEP) is to be finalised within nine months of the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office six

weeks prior to the projected publication date. A copy of the request should be forwarded to the Department of Planning, Industry and Environment.

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 3.32(2)(d) of the Act if the time frames outlined in this determination are not met.

Should you have any enquiries about this matter, I have arranged for Ms Kate Campbell to assist you. Ms Campbell can be contacted on 5778 1401.

Yours sincerely



12-8-2019

**Jeremy Gray**  
Director, Northern Region  
Planning Services

Encl: Gateway determination  
Authorised plan-making reporting template



## Gateway Determination

*Planning proposal (Department Ref: PP\_2019\_BALLI\_001\_00): to make minor zone and minimum lot size changes to Lot 1 DP 517111 and adjoining road reserves, 20 North Creek Road, Lennox Head and include a new local provision to permit subdivision for drainage purposes on RU1 and RU2 zoned land.*

I, the Director Regions, Northern at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Ballina Local Environmental Plan (LEP) 2012 to make minor zone boundary changes to Lot 1 DP 517111 and adjoining road reserves, 20 North Creek Road, Lennox Head and include a new local provision to permit subdivision for drainage purposes on RU1 and RU2 zoned land should proceed subject to the following conditions:

1. Prior to exhibition, the planning proposal maps are to be updated to clearly show that the road reserve adjoining the subject lot will also be affected by the proposed zoning changes.
2. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
  - (a) the planning proposal is classified as low impact as described in *A guide to preparing local environmental plans* (Department of Planning, Industry and Environment 2016) and must be made publicly available for a minimum of 14 days; and
  - (b) the planning proposal 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 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning, Industry and Environment 2016).
3. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:
  - NSW Rural Fire Service
  - Department of Planning, Industry and Environment (Environment, Energy and Science)
  - Department of Planning, Industry and Environment (Agriculture)

Each public authority/organisation 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. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the 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).
5. The planning proposal authority is authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the Act subject to the following:
  - (a) the planning proposal authority has satisfied all the conditions of the Gateway determination;
  - (b) the planning proposal is consistent with section 9.1 Directions or the Secretary has agreed that any inconsistencies are justified; and
  - (c) there are no outstanding written objections from public authorities.
6. The time frame for completing the LEP is to be 9 months following the date of the Gateway determination.

Dated 12 day of August 2019.



**Jeremy Gray**  
Director Regions, Northern  
Planning Services  
Department of Planning, Industry and  
Environment

**Delegate of the Minister for Planning  
and Public Spaces**