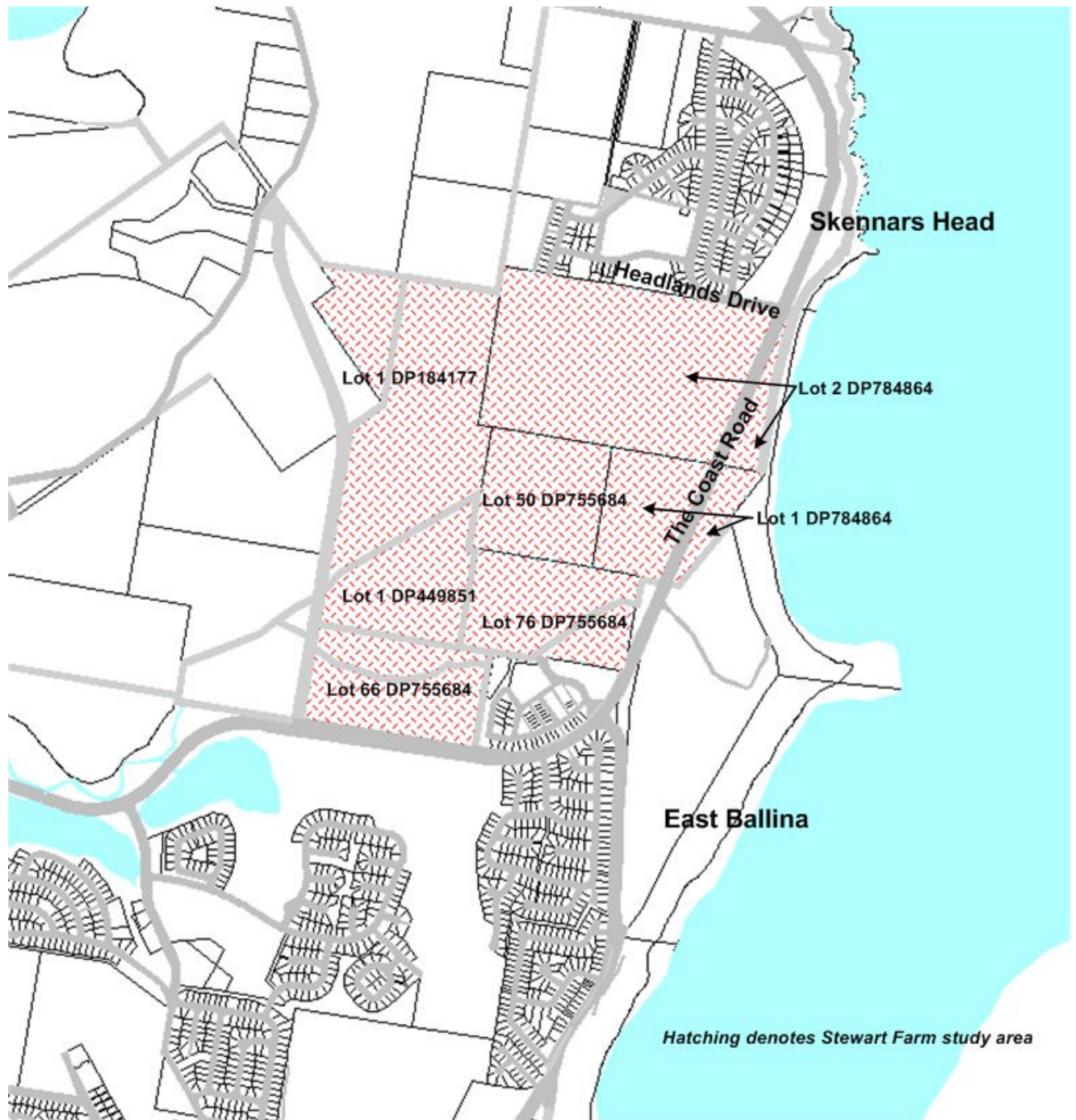
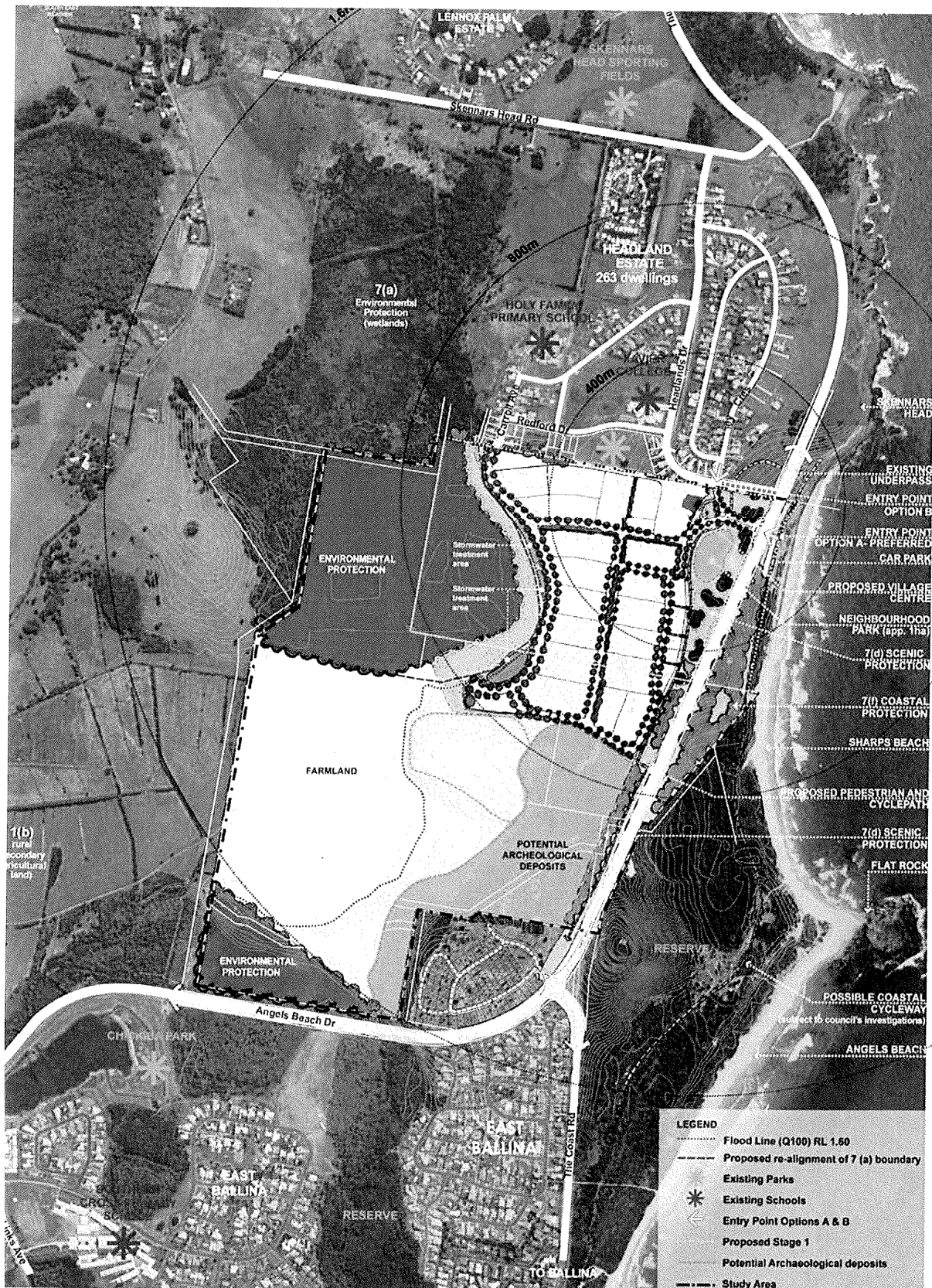


9.3 Ballina LEP - Amendment No.90 - Stewart Farm, Skennars Head

Attachment 1. Stewart Farm Study Area - Draft LEP Amendment No.90

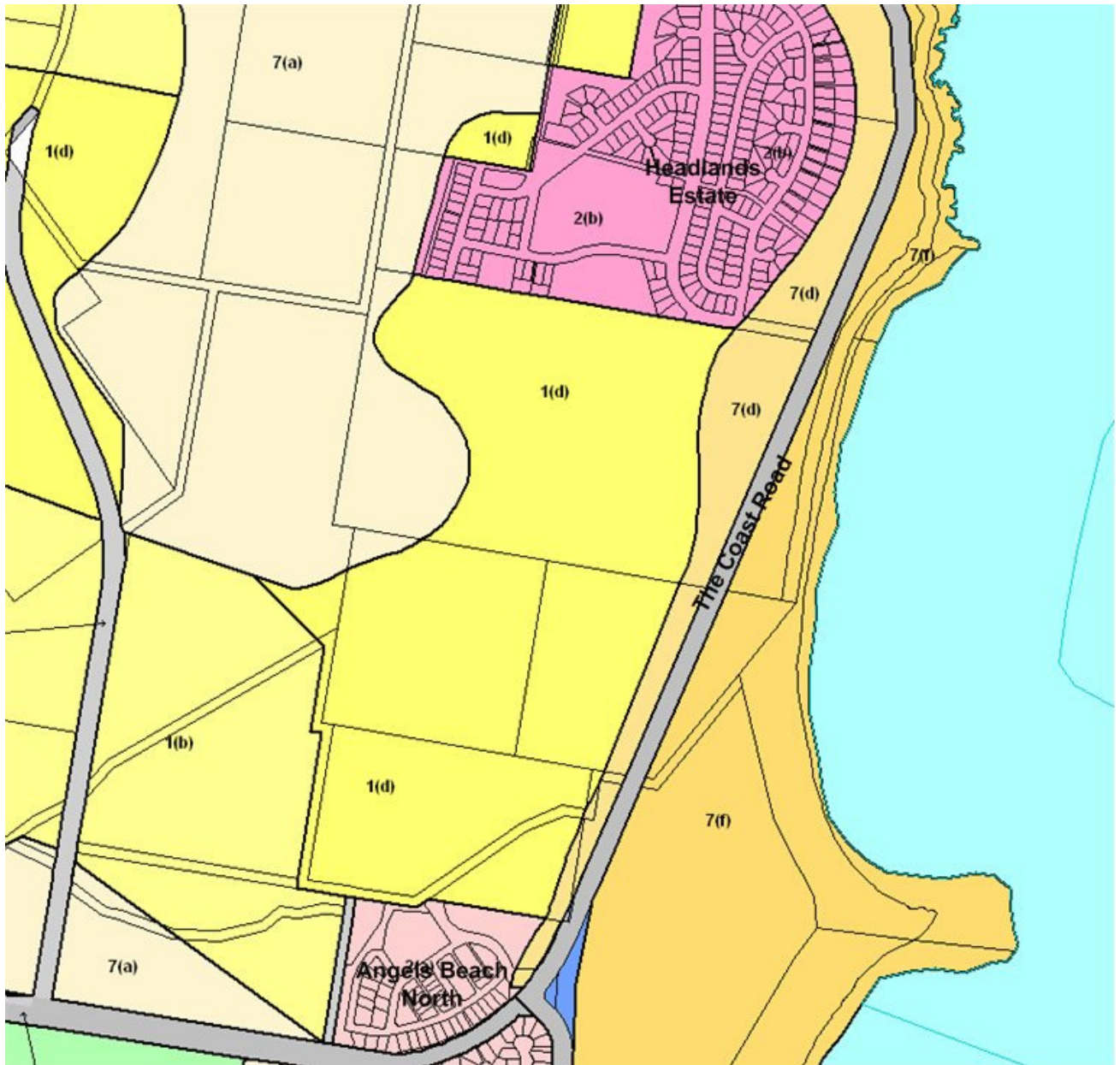


Attachment 2. Proposed Structure Plan - Wave Break Properties

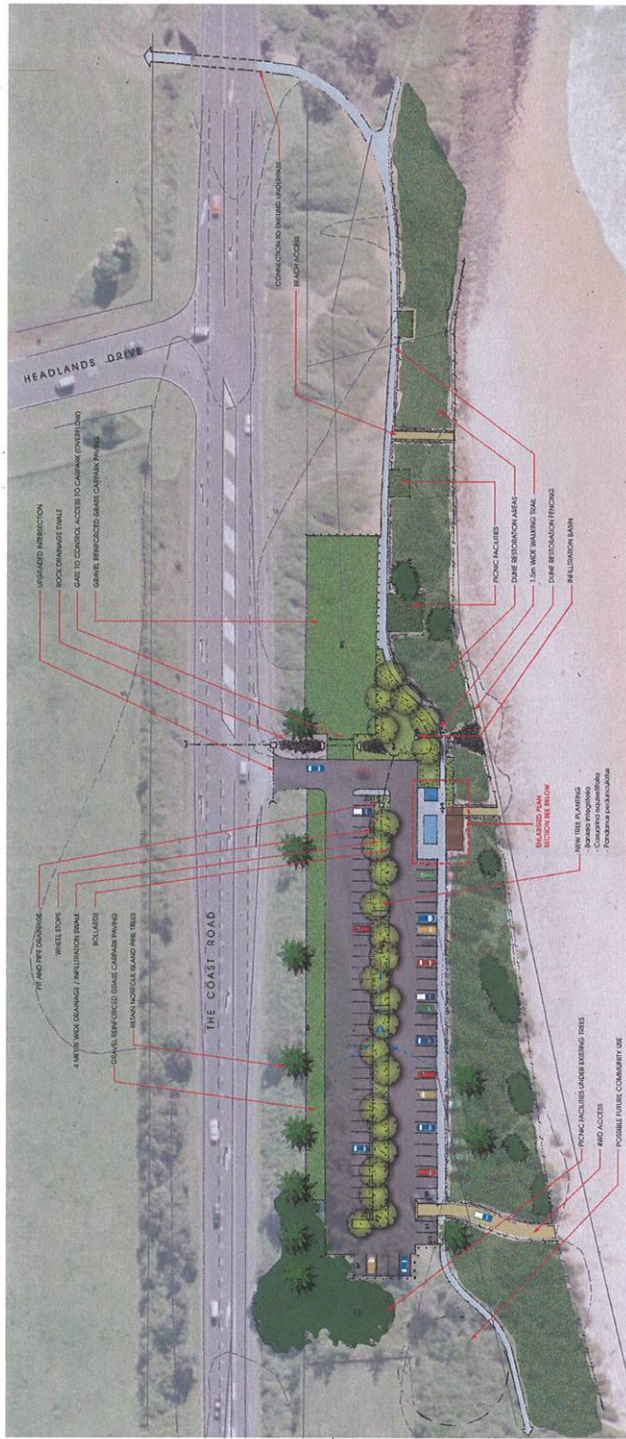


This plan illustrates land use outcomes for the site proposed by Wave Break Properties (Plan prepared by bda architecture 10 October 2008)

Attachment 3. Stewart Farm Study Area - Ballina LEP 1987 Land Use Zoning



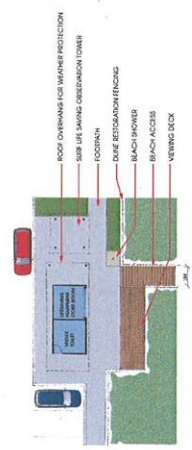
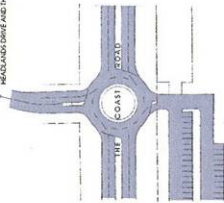
Attachment 4. Sharpes Beach Master Plan



NOTE: THE MASTER PLAN WILL COORDINATE WITH LOCAL COUNCILS, NEIGHBOURHOODS COMMITTEES AND OTHER STAKEHOLDERS TO ENSURE THE PLAN IS FEASIBLE AND SUPPORTED. THE DEVELOPMENT OF THE MASTER PLAN WILL BE CO-ORDINATED THROUGH THE SHARPES BEACH LOCALITY GROUP.



POTENTIAL CONNECTION TO RESTROOMS AND SHOWER STOPS
DUE TO POTENTIAL REMOVAL OF EXISTING INTERSECTION OF
HEADLANDS DRIVE AND THE COAST ROAD



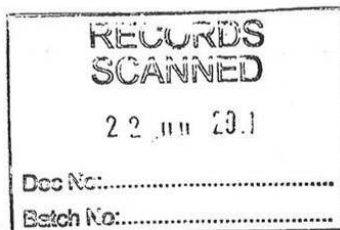
SHARPES BEACH MASTER PLAN
PREPARED FOR BALLINA SHIRE COUNCIL BY KING & CAMPBELL 1 JULY 2011

KING + CAMPBELL
PO BOX 242 North Ballina NSW 2441 T: 02 6686 2555 F: 02 6686 1044

Attachment 5. Proposed Voluntary Planning Agreement Terms - Wave Break Properties.

18 July 2011

General Manager
Ballina Shire Council
P.O. Box 450
Ballina NSW 2478



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Dear Paul,

Re: Draft Ballina Local Environmental Plan Amendment No 90 - Proposed Rezoning and intention towards entering into a Voluntary Planning Agreement of 'Dr. Stewarts Land' at Skennars Head to the West of the Coast Road

1. Introduction

Elton Consulting acts on behalf of Wave Break Properties in relation to the above described rezoning application in respect of land owned by Dr Stewart and Mrs R M Stewart at Skennars Head.

2. Authority to undertake negotiations in relation to the Land

We understand that Council requires Wave Break Properties to enter into a voluntary planning agreement (VPA) under s93F of the *Environmental Planning and Assessment Act, 1979 (EPA Act)* in order to progress the rezoning application/Planning Proposal.

In this regard, Wave Break Properties is authorised to deal directly with Council in relation to the rezoning application and any VPA over the land to the west side of The Coast Road being Lot 2 DP784864, Lot 1 DP784864, Lot 76 DP755684, Lot 50 DP755684, Lot 1 DP184117, Lot 1 DP449851 and Lot 66 DP755684 (**Land**). The letter of authorisation from Dr Stewart and Mrs Stewart dated 10 April 2011 is at **Annexure A**. The Land to which Wave Break Properties is authorised to deal with is shown in **Annexure B**.

Wave Break Properties will undertake the direct negotiations with Council relating to the Land and it is proposed that Council and Wave Break Properties (with Dr Stewart) will be Parties to the VPA relating to the Land.

We understand that negotiations in relation to the land to the east of The Coast Road will be undertaken directly between Council and Dr and Mrs Stewart.

3. Letter of Offer

I advise that Wave Break Properties are eager to resolve and progress the rezoning of the Land.

This letter serves as a letter of offer from Wave Break Properties, outlining the terms of the proposed VPA between Wave Break Properties and Council in relation to the Land. However, this letter does not constitute a formal offer to enter into a planning agreement for the purpose of s93I(3) of the *Environmental Planning and Assessment Act 1979*.

We are advised by solicitors, Lindsay Taylor Lawyers, that the Council can progress the rezoning while negotiating on finalising the detailed drafting of the VPA. This letter additionally allows Council to inform the Department of Planning and Infrastructure of a revised timeframe for the rezoning of the land.

4. Land to which VPA applies

The VPA would apply to Lot 2 DP784864, Lot 1 DP784864, Lot 76 DP755684, Lot 50 DP755684, Lot 1 DP184117, Lot 1 DP449851 and Lot 66 DP755684 being land to the west side of The Coast Road and shown shaded in red on the map in **Annexure B**.

5. Instrument Change to which the VPA applies

The VPA will relate to the rezoning of the Land and therefore a change to the *Ballina Local Environmental Plan 1987 (Ballina LEP)*. The Instrument Change will be defined in the VPA to mean the local environmental plan that operates to amend the Ballina LEP so as to allow for residential development to be permitted over part of the land and would be identified for residential purposes.

6. Development to which the VPA relates

The VPA would apply to development on the Land that is made permissible by reason of the Instrument Change, primarily development of approximately 400 residential lots.

7. Development contributions and other public benefits under the VPA

The VPA would require Wave Break Properties to carry out works and dedicate land, as set out in Annexure C.

The Dedication Land and Works Map referred to in Annexure C showing the land to be dedicated and location of works is in Annexure D.

The costs included in Annexure C are based on the estimated cost of works and the *Traffic Impact Assessment 2007*, prepared by CRG. The estimated cost of works equates to approximately:

| Item | Estimated Cost |
|---|----------------|
| Roundabout | 756,900 |
| Remove existing Headlands Drive pavement as per adjoining land to north | \$30,000 |
| Total | \$786,900 |

The assessment of traffic generation set out in the CRG report projected the:

- daily traffic volumes without development in 2026, to be 113,995 vehicles per day (refer to Figure 3.2 in the report)
- daily trip generated by the development to be 4005 vehicles per day (refer to Table 4.1 of the report).



The total future daily traffic generated is anticipated to be 18,000 vehicles per day. The percentage of traffic generated by traffic other than the Wave Break Properties development is 22.25%. The cost apportionments should therefore be:

- Council approximately \$175,085.25
- Wave Break Properties approximately \$611,814.75

It is recognised that the development will initiate the demand for the roundabout and therefore the proponent proposes that the costs, with the acknowledgement that Council recognise that contributions, should be based on apportionments. The final costs can be determined by an independent quantity surveyor.

The payment and works to undertake the roundabout can therefore be undertaken by WaveBreak Properties, with cost apportionment recoupment for Council's portion being one of cashflow, rather than cost. Council could amend the s94 Plan to obtain contributions to recoup their cost in the future due to traffic growth and use of the new intersection to the benefit of the broader community.

8. Timing of provision of development contributions

The timing of provision of the development contributions and other public benefits are set out in Annexure C.

9. Application of s94, s94A and s94EF to the Development

It is proposed that s94 would continue to apply to the Development. However, the benefits to be provided by the Developer under the agreement by reference to the agreed Contribution Value of the development contributions would be required to be taken into consideration by the Council in determining a development contribution for the development under section 94.

Section 94A would be excluded.

The VPA would not need to exclude the application of s94EF to the Development as the Land is not within a special infrastructure contributions area within the meaning of the EPA Act and, in any event, the Minister's consent would be required to exclude the application of s94EF to the Development.

11. Resolution of disputes

Any dispute under the VPA would be resolved by expert determination or mediation in accordance with processes specified in the VPA.

12. Security and enforcement

The EPA Act requires the VPA to provide for enforcement of the agreement by a suitable means such as provisions of a bond or bank guarantee. The usual form of security provided is a bank guarantee for an amount sufficient for the Council to complete the works required under the VPA.

If the Developer does not transfer the land to be dedicated under the Agreement at the time agreed, the Agreement will contain a mechanism that allows the land to be compulsorily acquired by the

Council from the landowners in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* for a nominal amount.

The VPA would also require Wave Break Properties to provide the Council with an unconditional bank guarantee from an Australian Bank in relation to the construction of the Headlands Drive Intersection in an agreed amount sufficient to enable the Council to complete the Work and at the time specified in Annexure C (**Security**). The security shall be paid to Council on granting of the subdivision certificate for the first phase of the residential development.

The Security could only be called-up by the Council if Wave Break Properties were in breach of its obligations to which the Security relates.

Further, the Security could not be called-up by the Council unless Wave Break Properties had not remedied the breach within a specified period of a notice being served on Wave Break Properties by the Council requiring it to do so.

Any money paid to the Council resulting from calling-up the Security could only be applied by the Council to remedy a breach of Wave Break Properties' obligation under the VPA to carry out the works to which the Security relates.

The VPA would provide for the return of the Security within 28 days of Wave Break Properties completing its obligations to which the Security relates.

The Council could not undertake any enforcement of the VPA unless Wave Break Properties has not remedied the relevant breach within a specified period of a notice being served on it requiring it to do so and any dispute resolution having been exhausted under the VPA.

13. Registration and restrictions on dealings

Having regard to the mechanisms for enforcement in paragraph, the nature of the contribution obligations which will be completed at an early phase of the development, it is not considered that the VPA needs to be registered on title.

The VPA would provide that Wave Break Properties may not sell the Land other than 'final lots' or assign its interests under the VPA or novate the VPA to a third party without the consent of the Council prior to the completion of all of its obligations to make development contributions.

Were it to become necessary for Wave Break Properties to sell the land or assign its interests under the VPA or novate the VPA with Council's consent prior to that time, then Wave Break Properties would not be able to sell, assign or novate its interest under the VPA to a third party unless:

- it had first procured the execution by the person to whom the it's rights or obligations under the VPA are to be assigned or novated, of an agreement in favour of the Council on terms satisfactory to the Council, and
- it was not in breach of the VPA at the time of the sale, assignment or novation.

14. Legal costs

The VPA would require Wave Break Properties to pay the Council's reasonable legal and other costs incurred relating to the VPA up to \$30,000 (incl GST).

15. GST

A standard GST clause will be included in the VPA along the following lines:

34.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

34.2 Subject to clause 34.3, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.

34.3 Clause 34.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.

34.4 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the A New Tax System (Goods and Services Tax) Act 1999, the Parties agree:

34.4.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;

34.4.2 that any amounts payable by the Parties in accordance with clause 34.2 (as limited by clause 34.3) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.

34.5 No payment of any amount pursuant to this clause, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.

34.6 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the

amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.

34.7 *This clause continues to apply after expiration or termination of this Agreement.*

16. Time when the VPA would be entered into

The VPA would be entered into by Wave Break Properties in connection with the rezoning following community consultation of the proposed Instrument change at a time to be agreed with Council.

The VPA then would operate at such time as it is executed by the Council.

The obligation to make development contributions would not arise unless and until the Development was commenced as set out in Annexure C.

17. Other matters

The offer of development contributions contained in this letter is a revision of the offer previously discussed with Council by LandPartners on behalf of WaveBreak Properties in 2009.

The revisions take into account amendments to the planning framework, benefits and requirement to Council and the community with enabling the development to proceed, as well as Council's adopted Section 94 Contributions Plan. If the principles of the Offer are acceptable to Council, then further costs breakdowns and details can be worked through and negotiated with Council.

For councils' reference, a comparison table detailing the amendments to the 2009 VPA proposal is included as Annexure E.

I trust that this letter provides sufficient security to ensure that the planning proposal is able to proceed to public notification in accordance with clause 25D(1A)(b) of the *Environmental Planning and Assessment Regulation 2000* which allows public exhibition of the VPA to take place as soon as possible after public notice of the planning proposal.

Clause 25D of the *Environmental Planning and Assessment Regulation 2000* provides as follows:

- (1A) *If a planning authority proposes to enter into a planning agreement, or an agreement to amend or revoke a planning agreement, in connection with a proposed change to a local environmental plan, the planning authority is to ensure that public notice of the proposed agreement, amendment or revocation is given:*
- (a) *if practicable, as part of and contemporaneously with, and in the same manner as, any public notice of the relevant planning proposal that is required under Part 3 of the Act, or*
 - (b) *if it is not practicable for notice to be given contemporaneously, as soon as possible after any public notice of the relevant planning proposal that is required under Part 3 of the Act and in the manner determined by the planning authorities that are parties to the agreement.*

If the detail of the VPA is not available prior to public notice of the planning proposal, then it is not practicable to exhibit it with the proposal and it will need to be exhibited after that public notice.



We look forward to your response to the above matters and welcome the opportunity to discuss any outstanding issues / concerns.

Yours sincerely

Jenny Rudolph
Associate Director
jennyr@elton.com.au

Annexure A: Letter of authorisation

Page 1 of 2 MS

505 North Creek Road
Lennox Head NSW 2478

10 April 2011

Karina Vikstrom
Ballina Shire Council
P.O. Box 450
Ballina NSW 2478

Dear Karina,

RE: LEP Amendment 90 Wave Break Properties

I refer to your letter dated 7 April 2011 and apologise for any confusion relating to the proposed rezoning of the land and the authority of parties to our on our behalf.

Wave Break Properties, myself and Mrs Stewart have entered into an Agreement allowing them to undertake a staged development over part of the land owned by myself and Mrs R.M Stewart. Consequently, Wave Break Properties have our authority to act for land to the west of The Coast Road, identified in red in the figure below, in all matters relating to the proposed rezoning and any Voluntary Planning Agreement.

This authority does not extend to land situated east of The Coast Road, identified in blue in the figure below. Consequently, any Voluntary Planning Agreement relating to land located east of the Coast Road must be dealt with separately and any negotiations relating to this matter are to be undertaken with myself and not Wave Break Properties.





Page 2 of 2 MS P.W.

I trust the above provides clarity.

Yours faithfully

P.W Stewart
P.W Stewart

R.M Stewart
R.M Stewart

Annexure B: Land to which VPA applies

Figure 1. Amended VPA considerations



Source: Land Partners Limited/Elton Consulting



Annexure C: Proposed Development Contributions

| Item | Public Purpose | Manner & Extent | Timing | Security | Contribution Value |
|---|-------------------------|---|---|-----------------|---------------------------|
| Dedication of land | | | | | |
| 1. Dedication of land for Headlands Drive Intersection | Roundabout intersection | Dedication of that part of the Land on which Item 2 is located. | Within 14 days of the completion of Item 2. | Nil | \$0 |

| | | | | | |
|------------------------------------|-------------------------|---|--|--|---|
| Carrying out of Work | | | | | |
| 2. Headlands Drive Intersection | Roundabout intersection | <p>Construction of a roundabout at the intersection of The Coast Road and Headlands Drive, including:</p> <ul style="list-style-type: none"> • realignment of Headlands Drive and • environmental rehabilitation of existing Headland Drive pavement between the Coast Road and Killarney Crescent, <p>at the location shown on the Dedication Land and Works Map.</p> <p>Construction to be carried out:</p> <ul style="list-style-type: none"> • as illustrated on the plans submitted | Prior to the issue of the subdivision certificate that creates the first residential lot in the development. | <p>Roundabout \$756,900</p> <p>Remove existing Headlands Drive pavement as per adjoining land to north \$30,000</p> <p>Total \$786,900</p> | <p>Council \$175,085.25</p> <p>Wave Break Properties - approximately \$611,814.75</p> |



| Item | Public Purpose | Manner & Extent | Timing | Security | Contribution Value |
|------|----------------|---|--------|----------|--------------------|
| | | <p>with the request relating to the Instrument Change,</p> <ul style="list-style-type: none">▪ to council specifications,▪ in accordance with any development consent. | | | |



Annexure D: Dedication Land and Works Map





Annexure E: Comparison with original offer

| Comparison with original offer | Reason |
|---|---|
| 1. Offer of dedication of Sharps Beach Carpark has been removed | Land east of The Coast Road no longer forms part of the authority of Wave Break, and hence Council will negotiate with Dr Stewart directly. We understand that Council has come to some agreement for long term lease over the land. There is an acquisition clause in the current LEP which allows government to acquire the site from Dr Stewart for public purposes. |
| 2. Offer of dedication of residual coastal land in stage 2 has been removed | Land east of The Coast Road no longer forms part of the authority of Wave Break and thus Council should continue to negotiate with Dr Stewart directly. |
| 3. Offer of dedication of 7(d) land – stage 1. | No longer proposed as provision of local open space. Any open space provided as part of the future development will be in accordance with Council's existing s.94 plan. |
| 4. Offer for dedication of 7(d) – Stage 2 | Refer above. |
| 5. Offer for dedication of public right of way through coastal reserve has been removed. | Land east of The Coast Road is under control of Dr Stewart and we understand that Council has already negotiated an outcome with Dr Stewart in this regard. |
| 6. Offer for embellishment of part of 7(d) land to be dedicated to council – Stage 1 has been restricted to the parkland located immediately adjacent the Headlands Drive, Coast Road intersection, and public cycleway on the east side adjacent The Coast Road. | This is no longer proposed. |
| 7. Offer for embellishment of 7(d) – Stage 2 has been restricted to the public cycleway and nominal landscaping adjacent The Coast Road. | This is no longer proposed. |
| 8. Offer for construction of Headlands Drive | Offer remains generally unchanged. Council agrees to payment of apportionment of traffic to be taken into |



Intersection remains generally unchanged account in relation to the development under s94.

9. Offer for construction of a new pedestrian underpass under the Coast Road has been removed. New underpass is not required.

10. Offer for preparation of EMP to remain. Offer for rehabilitation of wetlands to be reviewed at DA stage Proposed development will have a negligible impact on the wetlands and can be a condition of consent, if required.

11. Offer for maintenance of wetland dedicated lands is no longer required. This is no longer proposed, and could be a condition of consent, if required.

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13 October 2011

Mr Matthew Wood
Manager Strategic Planning
Ballina Shire Council
P.O. Box 450
Ballina NSW 2478

Dear Matthew,

Re: Draft Ballina Local Environmental Plan Amendment No 90 - Proposed Rezoning of 'Dr. Stewarts Land' at Skennars Head to the West of the Coast Road

I refer to Council's letter dated 26 September 2011 and appreciate the status update of the draft LEP amendment and proposed platform for a voluntary planning agreement. This letter serves to confirm and clarify a number of matters raised in the Council letter.

Progressing the Draft LEP Amendment

The Council letter advises that the rezoning will be reported to Council following finalisation of discussions with Dr and Mrs Stewart in relation to the Council's proposed lease of land east of The Coast Road.

We note that the Department of Planning and Infrastructure (DoPI) has extended the timeframe for the completion of the Planning Proposal by 9 months, due for completion on 25 May 2012. To achieve this timeframe Council will need continue to progress the LEP amendment and undertake the necessary environmental study and exhibition period. We urge that the matter is reported to Council at the earliest opportunity to enable the environmental study to be completed in sufficient time to allow for exhibition, reporting and forwarding of the Planning Proposal to the DoPI.

The timeframe set out by DoPI provides significant time for Council to continue the negotiations with Dr and Mrs Stewart prior to Council making a final determination on the LEP amendment. It also provides sufficient time to progress the principles of the VPA.

As outlined in my previous letter, WaveBreak Properties is aware from discussions with Dr and Mrs Stewart, that the principles, timeframe, size of the land, price and long term lease arrangements have been agreed and that the lease agreement has been signed. This is a positive outcome for Council, which successfully meets the outcomes of the confidential workshop. As the lease arrangements are finalized, Council can now liaise and work with WaveBreak Properties, to progress the rezoning and the Voluntary Planning Agreement.

In relation to Council's comment on the authority of Wave Break Properties to act in relation to parts of the Stewart Farm we re-iterate that Dr and Mrs R M Stewart have given WaveBreak Properties the authority to deal with Council over the land to the west of The Coast Road, while Council is dealing directly with Dr Stewart in relation to the land on the east of The Coast Road.

5

Department of Planning and Infrastructure Timeline

As outlined above the DoPI has issued an extension to complete the Planning Proposal by 9 months. We note that the Planning Proposal is due for completion on 25 May 2012 and Council's request for the Department to draft and finalise the Planning Proposal should be made 6 weeks prior to the projected publication date.

Voluntary Planning Agreement (VPA)

We acknowledge your comments in relation to the VPA and agree with Council's commitment to contribute \$100,000 to the cost of works for the roundabout, despite being less than the calculation determined by apportionment of traffic generation.

In relation to the dedication of environmental protection zoned land along the western side of The Coast Road, I can advise that a portion of this land, which will be located adjacent to The Coast Road and the new entrance road, will be a local park and the remainder of the land will remain in private ownership. The future use of that land would be in accordance with the provisions of the applicable zone. As such the land does not form part of the VPA.

In relation to the environmental protection zoned land in the wetland area I can advise that this land will remain in the ownership of Dr Stewart. As set out in Engineering report, prepared by Cardno in 2007 and submitted with the original rezoning request, a treatment train, incorporating water sensitive design is proposed to ensure stormwater is treated to remove pollutants prior to discharge. The treatment train will function to protect the SEPP 14 Wetlands to ensure pollutant load reduction targets have been met prior to stormwater entering the wetland system. In addition, stormwater will be detained prior to discharging to the wetland, which will allow peak post development discharge flow rates to match the pre development flows. The detail will be resolved through the development application process.

We acknowledge receipt of a Council invoice for a processing fee of \$10,000 and our client will make payment once the LEP amendment has been reported to Council and we know that the LEP amendment will progress.

Further Processing of Draft LEP Amendment

We acknowledge that as the Relevant Planning Authority, Council will process the LEP amendment within the terms of the *Environmental Planning and Assessment Act 1979*. The principles set out in our 20 May 2011 however, were based on the principles of Council's guidelines and as you can appreciate have been set out to provide a fair and transparent process for all parties going forward and ensure financial feasibility and management of the project.



We trust that Council takes the above into consideration and continues to progress the LEP amendment. We look forward to hearing more on the progress.

Yours sincerely

Jenny Rudolph
Associate Director
jennyr@elton.com.au