

13.2 Rescission Motion - Ballina LEP - Amendment No. 90 - Stewart Farm

Attachment 1 - Locality Plan



NOTE: Grid lines shown are based on the Geocentric Datum of Australia

0 800



Draft LEP (Amendment No. 90), Local Environmental Study  
975960

Site Locality

Illustration 2.1



**Attachment 2 - Study Area**  
**LEP Amendment No.90 - Property Descriptions and Existing Planning Framework**



**LEGEND**

-  SEPP 14 coastal wetlands
-  1(b) Rural (Secondary Agricultural Land)
-  1(d) Rural (Urban Investigation)
-  2(a) Residential (Living Area)
-  2(b) Residential (Village Area)
-  6(a) Open Space
-  7(a) Environmental Protection (Wetlands)
-  7(d) Environmental Protection (Scenic / Escarpment)
-  7(f) Environmental Protection (Coastal Lands)



0 300



Draft LEP (Amendment No. 90), Local Environmental Study  
 975964

**The Site**

Illustration 2.2

## Attachment 3 - Latest correspondence from Wave Break Properties

WAVE BREAK PROPERTIES PTY LTD  
ACN: 100 455 196  
P.O Box 270  
LENNOX HEAD NSW 2478  
Ph: (02) 6687 4822 Fax: (02) 6687 4866 Mob: 0410 543 862  
Email: eastmex@bigpong.com

Ballina Shire Council  
Tamar Street, Ballina NSW 2478

Attention: Mr Paul Hickey

**Stewart Property – Skennars Head- Park Lot 2 in DP 784864**

Dear Sir,

Following our meeting with you and a representative for the Stewart Family (Mr Patrick McGlinchey) on 5<sup>th</sup> December 2011 and further to Council's resolution of 24<sup>th</sup> November 2011 in respect of the above matter we wish to provide the following undertakings. We understand these undertakings should address any of the concerns raised by Councillors and or Council Staff: -

**1. DEDICATION OF LAND ON WESTERN SIDE OF COAST ROAD**  
[See diagram 1]

Wave Break intends to dedicate, at no cost to Council, the lands shown edged red on diagram no 1. This dedication provides the relevant coastal scenic buffer consistent with Council's policy and the adjacent Headlands Estate buffer. The relevant land on the Western side of the Coast Road is part of a parcel which Wave Break will acquire from Dr and Mrs Stewart.

As discussed with you, this dedication will be included into the Voluntary Planning Agreement to be executed as part of the LEP Amendment Exhibition process.

**2. STORMWATER DISCHARGE ONTO ADJOINING LAND**

In principle agreement has been reached with Dr and Mrs Stewart for the provision of a "Stormwater Easement" over the smaller part of their land that may be affected by any runoff created by the Wave Break development (Part Lot 2 DP 784864).

Relevant provisions to facilitate the grant of the Easement will be inserted into the Voluntary Planning Agreement. If further investigations are required, Wave Break will work with Council's Strategic Planning department to deliver suitably effective solutions.

**3. CONTINUATION OF BUFFER ON STEWART LAND ADJACENT TO COAST ROAD FOR ADDITIONAL LAND TO BE DEVELOPED IN THE FUTURE**  
[See diagram 2]

We note Council's desire to ensure adherence with its Coastal Buffer policy in respect of any land which may form subsequent development proposals. Council's planning department have acknowledged that these lands are not the subject of this LEP Amendment and at this stage we believe that Dr & Mrs Stewart will continue to use their land for rural purposes.

#### 4. NEW ROUNDABOUT

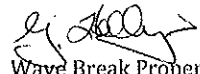
Wave Break agrees to construct a new Roundabout and gratefully acknowledges Council's proposed contribution offer of \$100,000. The provisions of the Voluntary Planning Agreement will reflect these works. [This roundabout will replace the existing intersection at Sharpes Beach and a process to close that part of Headlands Drive should be instituted so as to remove any doubt about a duplicate intersection] As discussed with you and council staff, all parties expect that the new roundabout will improved ingress and egress into both the Headlands Estate, Wave Break's development and Sharpes Beach car park there by benefiting the community.

#### 5. OUTSTANDING FEES

Wavebreak will deliver a cheque to the value of \$10,000 to Council by Wednesday 7/12/11 [at latest].

We trust the above issues have now been clarified and wish to advise that Dr & Mrs Stewart have also had the opportunity to review the contents for this letter.

Your Faithfully,  
Graeme Hellyar



Wave Break Properties Pty Ltd

Cc: Patrick McGlinchey (Commercial Family Representative for Stewart Family)

Peter & Ruth Stewart



DIAGRAM 1



**Attachment 4 - Preliminary Zone Boundaries (subject to change)**

Source: GeoLINK Date: March 2009



**LEGEND**

- 1(b) Rural (Secondary Agricultural Land)
- 2(b) Residential (Village Area)
- 7(a) Environmental Protection (Wetlands)
- 7(d) Environmental Protection (Scenic/Escarpment)
- 7(f) Environmental Protection (Coastal Lands)
- 7(l) Environmental Protection (Habitat)

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

<b>File Reference</b>	Draft Ballina Local Environmental Plan 1987 Amendment No.90
<b>CSP Linkage</b>	Diverse and balanced land use
<b>Delivery Program</b>	Strategic Planning
<b>Objective</b>	To seek direction from Council with respect to further processing of Draft LEP 1987 Amendment No.90.

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**Background**

Council received a request in 2006 from Wave Break Properties Pty Ltd to initiate an amendment to the Ballina Local Environmental Plan 1987 relating to Lot 1 DP 184117, Lot 1 DP 449851, Lot 50 DP 755684, Lot 66 DP 755684, Lot 76 DP 755684 and Lots 1 and 2 DP 784864, commonly known as the Stewart farm at Skennars Head (Attachments 1 and 2). More specifically, the request sought the rezoning of the northern portion of the above land, immediately southward of Headlands Drive and the existing residential development at Skennars Head, to facilitate urban development.

With respect to the amendment request, Council resolved to prepare an amendment to the LEP at its December 2006 Ordinary Meeting as follows [Minute No.141206(009)]:

*"That Council prepare an amendment to the Ballina Local Environmental Plan to facilitate urban development and promote improved environmental outcomes over land owned by Dr and Mrs Stewart located adjacent to The Coast Road at Skennars Head. Further, that a local environmental study be prepared to support the draft local environmental plan."*

The amendment is known as Draft Ballina Local Environmental Plan 1987 Amendment No.90 - Stewart Farm (Draft LEP Amendment No.90). The history of the amendment process is outlined in the report regarding Draft LEP Amendment No.90 presented at Council's July 2011 Ordinary Meeting. At that meeting, Council considered the progress of Draft LEP Amendment No.90 and resolved as follows [Minute No.280711/11]:

*"That this matter be deferred until after Council has held a workshop to discuss the matter, and that the workshop be held on a confidential basis due to commercial in confidence aspects."*

In accordance with the above resolution, a Councillor workshop was held on 12 September 2011. As an outcome of the workshop, Councillors identified a preference for the finalisation of lease arrangements between Council and Dr and Mrs Stewart in relation to land east of The Coast Road prior to the reconsideration of the progress of Draft LEP Amendment No.90.

Dr and Mrs Stewart agreed to terms associated with the lease of the land known as the Sharpes Beach car park and an adjoining area (including land to facilitate the shared coastal pathway) in October 2011. Given this, this report outlines the status of Draft LEP Amendment No.90 and seeks direction from Council with respect to further progress of the matter.

#### **Key Issues**

- Progress of Draft LEP Amendment No.90

#### **Information**

##### *Planning Policy Context*

The following provides an overview of the planning policy context associated with the land the subject of the initial LEP amendment request made by Wave Break Properties in 2006.

- Ballina Local Environmental Plan 1987

Attachment 3 illustrates the land use zoning applicable to the subject land under the Ballina Local Environmental Plan 1987. Significantly, a substantial portion of the land is subject to the 1(d) Rural (Urban Investigation) zone. This signals to land owners, the community and other interested parties that the land has been identified by Council as having potential for investigation in relation to urban land uses.

- Ballina Urban Land Release Strategy

The 1(d) zoned portion of the land is identified in Council's urban land release strategy as having potential for urban development by virtue of the current land use zoning applicable to the site.

- Lennox Head Structure Plan

The majority of the subject land is identified as Area T under the Lennox Head Structure Plan. The structure plan does not nominate preferred uses for the land, although it identifies visual separation between Skennars Head and East Ballina as a desirable outcome arising from the Lennox Head Community Aspirations Strategic Plan.

- Far North Coast Regional Strategy

The area of the site subject to the 1(d) zoning is identified in the Far North Coast Regional Strategy as a Proposed Future Urban Release Area. This acknowledges that the land has potential for urban land use subject to site specific analysis and considerations.



- Summary

Having regard for the above, substantial portions of the subject land are clearly identified in both State Government and local planning policies as having potential for future urban land uses. Importantly, however, this does not mean that the entire area the subject of the LEP amendment is suitable for urban land uses. The LEP amendment process may identify land use zoning arrangements that reflect other values such as environmental protection, urban separation or agricultural production. That is, LEP amendment processes (including Draft LEP Amendment No.90) do not only address urban land use outcomes.

*LEP Amendment Timing*

The Department of Planning and Infrastructure (DP&I) initially nominated the end of May 2011 for completion of Draft LEP Amendment No.90. Subsequently, the DP&I advised of a 3 month extension, making completion of the amendment due by 25 August 2011.

Following Council's July 2011 Ordinary Meeting, Council asked the DP&I to hold the amendment in abeyance pending Council's further consideration of the matter. In response, the DP&I advised of a further extension to the timeframe for completion of the amendment, with Draft LEP Amendment No.90 now due for completion before 25 May 2012.

*Processing to Date*

Although a local environmental study has been substantially completed for the land, and the relevant technical analysis for the site is essentially complete, Council has not been able to proceed to public exhibition or finalisation of the draft amendment. The progress of the draft amendment has to date been subject to confirmation of the terms of a proposed voluntary planning agreement between Council and the proponent and negotiations associated with land owned by Dr and Mrs Stewart east of The Coast Road (the Sharpes Beach car park area).

The initial intent of a voluntary planning agreement has been to ensure that several matters in the interest of the public are resolved prior to the rezoning of the land. Items considered in relation to a voluntary planning agreement have included provision of long term public access to the Sharpes Beach car parking area, public access to the remainder of the Stewart farm east of The Coast Road, revegetation of the planned urban break between East Ballina and Skennars Head and provision of public infrastructure upgrades, including improvements to the intersection of The Coast Road and Headlands Drive. Further detail in relation to the voluntary planning agreement in relation to the amendment is provided below.

As outlined above, further processing of the amendment was considered by Council at its July 2011 Ordinary Meeting. At that meeting, Council resolved to hold a confidential workshop. That workshop was held on 12 September 2011.

*Sharpes Beach Car Park Area*

It has been assumed in the processing of the amendment to date, that the incorporation of the land east of The Coast Road into public ownership remains a desirable outcome to Council. This approach was generally supported by those Councillors in attendance at the 12 September confidential workshop. In this regard, it should also be noted that in considering the progress of the amendment in January 2007, the DP&I indicated that the coastal land east of The Coast Road should be dedicated into public ownership as part of the rezoning process.

The matter of the coastal land east of The Coast Road (being part Lots 1 and 2 DP 784864) is significant as the land currently contains public infrastructure and facilitates public access to Sharpes Beach.

With respect to this land, alternate options have been examined to secure long term public access to the area given that Dr and Mrs Stewart have advised that Wave Break Properties does not have authority to act in relation to the land. That is, Wave Break Properties has not been able to demonstrate that it is in a position to provide for long term public access to the Sharpes Beach car park as an outcome of the LEP amendment process.

This is reinforced by the withdrawal of outcomes associated with the car park area from the foundations of a voluntary planning agreement proposed by Wave Break Properties.

In considering long term access to the Sharpes Beach car park area, Council resolved to enable the General Manager to negotiate terms for a long term lease of a suitable area of land with Dr and Mrs Stewart at its July Ordinary Meeting [Minute No.280711/25]. Dr and Mrs Stewart have now agreed to a 99 year lease to Council over the Sharpes Beach car park and adjoining land. In summary, the terms of the lease provide for the use of the land generally in accordance with the Sharpes Beach Master Plan (Attachment 4) and the provision of the shared coastal pathway along the Sharpes Beach foreshore.

To date Council has signed an agreement for lease with Dr and Mrs Stewart and the actual lease itself will be finalised once the separate allotment is created (for any lease over five years, a separate lot needs to be created).

*Planning Agreement*

Council has invited the address of several key issues (including infrastructure provision and the dedication of coastal land) relating to the LEP amendment request via a voluntary planning agreement. This essentially entails the proponent documenting a set of commitments that it will adhere to should the land be rezoned.

Council was advised at its July Ordinary Meeting that Wave Break Properties had not been able to present suitable documentation (whether via a draft voluntary planning agreement or other means) addressing its commitments to relevant matters of interest to Council. Since that time, Wave Break Properties has submitted documentation, via its consultant Elton Consulting, outlining the basis for a proposed voluntary planning agreement (Attachment 5).

With respect to the voluntary planning agreement (VPA) platform proposed by Wave Break Properties, it is considered that the following elements are key considerations:

- In framing the approach to the proposed agreement, Wave Break Properties suggests that Council requires Wave Break Properties to enter into a VPA. Importantly, Council does not require Wave Break Properties to enter into a VPA, but rather staff has suggested a VPA as a means of addressing several key issues of relevance to the proposed LEP amendment. Significantly, Council is yet to establish a formal position on the utilisation of a VPA or the progress of the draft LEP amendment.
- The proposed VPA platform does not include dedication of any land east of The Coast Road into public ownership. This is considered to be a key consideration for Council and relates to the lease agreement with Dr and Mrs Stewart as outlined above.
- With respect to the matter of road and transport infrastructure, Wave Break Properties identifies construction of a new access into Skennars Head off The Coast Road and rehabilitation of part of Headlands Drive as part of a VPA. In September 2011, Wave Break Properties proposed that Council would contribute approximately \$175,085.25 towards this work on the basis of traffic generation calculations associated with potential future development arising as a result of the LEP amendment.

In this regard, the proposed infrastructure is not identified under Council's 2010 Roads Contributions Plan and the verbal advice provided by Council staff to the proponent has been that the cost of the required access arrangements should be met by the development. However, staff has indicated that Council may contribute up to \$100,000 to the cost of works in the public interest.

- In relation to s94 developer contributions, staff has advised Wave Break Properties that items addressed by way of a VPA will not be considered in relation to the offset of required s94 contributions. That is, matters provided for via a VPA would be in addition to required s94 contributions as set out under Council's endorsed s94 plans.
- The VPA proposal does not include the dedication of environmental protection zoned land along the western side of The Coast Road or wetland areas adjacent to the proposed development footprint, embellishment of the currently 7(d) Environmental Protection (Scenic/ Escarpment) zoned area of the site and rehabilitation of wetland areas.



Given the nature of these areas, Council requested further information from Wave Break Properties on 23 September 2011. Specifically, Council requested clarification regarding the intended use of land associated with the draft LEP amendment that is identified as having either environmental protection or open space values. Council also sought confirmation of Wave Break Properties' proposed approach with respect to the management of stormwater and associated infrastructure relative to wetland areas in the locality.

Wave Break Properties responded with respect to the above in October 2011 indicating the following:

*"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 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."*

The future use of land identified as having environmental or open space values and the method of stormwater treatment and discharge remains of some concern. However, these matters can be further considered as part of the finalisation of the environmental study for the land and prior to public exhibition.

Having regard for the above and the information available to Council at present, the proposal for a VPA in the form submitted by Wave Break Properties in July 2011 is not considered satisfactory in relation to the address of the identified issues of interest to Council. However, the terms of a VPA can be further considered and revised in conjunction with the finalisation of the environmental study for the land and the public exhibition of the rezoning proposal should Council resolve to progress the amendment.

*Other Land Zoned 1(d) Rural (Urban Investigation) within the Stewart Farm.*

In addition to Lot 2 DP 784864, there are several other land parcels between Skennars Head and East Ballina that are currently zoned 1(d) Rural (Urban Investigation) under the Ballina LEP 1987. This land is described as part Lot 1 DP 784864, part Lot 50 DP 755684, part Lot 76 DP 755684, part Lot 1 DP 184117 and areas of road reserve. This land is identified as Area T under the Lennox Head Structure Plan. The structure plan does not nominate preferred uses for the land as the area was outside the scope of the plan. However, the plan identifies visual separation (a green space) between Skennars Head and

East Ballina as a desirable outcome arising from the Lennox Head Community Aspirations Strategic Plan.

Although it is apparent that Wave Break Properties is not able to act in relation to this land, site analysis and assessment undertaken in relation to the LEP amendment request addresses these land parcels. Given the analysis undertaken and the current zone arrangement, there is presently an opportunity to address the entire 1(d) zoned area and its surrounds with respect to the establishment of an urban buffer area between Skennars Head and East Ballina. It is recommended that the provision of an urban break between these urban areas by way of land use zoning and/or policy be considered in relation to the Wave Break Properties proposal should it proceed. This is consistent with Council's resolution of December 2006 in relation to Draft LEP Amendment No.90.

*Progress of Draft LEP Amendment No.90*

Given the historical circumstances associated with the land and the extent to which technical analysis associated with the proposal has been completed, it is considered appropriate to proceed to the public exhibition phase of the LEP amendment. This phase provides for completion of the environmental study associated with the proposal, an opportunity for the community to provide feedback in relation to the proposed rezoning and an avenue for the proponent to provide a revised VPA proposal should it wish to do so.

Importantly, Council is able to cease further progress on Draft LEP Amendment No.90 following its consideration of submissions and other information arising as a result of the public exhibition process. There is no merit-based recourse available to the proponent in relation to such an approach via the Land and Environment Court.

In addition to the above, it is suggested that where the LEP amendment progresses to public exhibition, the provision of an urban break between Skennars Head and East Ballina (possibly by way of an environmental protection land use zone) should be incorporated into the LEP amendment. Such an urban break would be advantageous in supporting ongoing separation between the East Ballina and Skennars Head urban areas as well as providing for recognition of an area understood to be of Aboriginal cultural significance at the southern end of the Stewart farm. Such an urban break could be identified whilst still enabling continued agricultural activity on the land.

In the event that Council resolves to proceed to publicly exhibit Draft LEP Amendment No.90, it is expected that this would occur in the first quarter of 2012 given the need to finalise the environmental study for the land and undertake the exhibition clear of the Christmas holiday period. In this regard, further processing of the proposal (including any exhibition) will be subject to payment of required fees and charges as adopted by Council. As at the time of writing this report, the proponent has outstanding fees that have not been paid. Notwithstanding this, the recommendation below suggests that the matter progress to public exhibition with fees to be resolved before commencing the finalisation of the environmental study for the land and public exhibition.

### **Sustainability Considerations**

- **Environment**

Draft LEP Amendment No.90 includes a variety of considerations that seek to ensure that land identified as having potential for urban land use is considered with respect to the environmental, social and economic attributes of the land. In particular, infrastructure, access to coastal land and management and protection of environmental attributes such as Aboriginal heritage, visual amenity and habitat corridor values are considered to be central considerations with respect to the future use of the land.

- **Social**

As above.

- **Economic**

As above.

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

Council has expended substantial internal resources with respect to the processing of this matter. In particular, substantial time has been expended in addressing issues associated with authority to act in relation to the land, the integration of land east of The Coast Road into the LEP amendment request and advancement of an agreement or mechanism that addresses the issues of significance to Council.

Notwithstanding the above, it is considered reasonable to advance the LEP amendment to public exhibition in the circumstances. Further steps in the process will be at the proponent's cost in accordance with Council's adopted fees and charges schedule and Council may terminate the amendment at any time.

### **Consultation**

No formal community engagement by Council has been undertaken to date. However, it is suggested that Council elicit feedback from the community in relation to the proposal via the public exhibition of Draft LEP Amendment No.90 in accordance with the terms of the *Environmental Planning and Assessment Act*.

### **Options**

1. Proceed to finalise the environmental study for the land and undertake public exhibition of Draft LEP Amendment No.90.



Under this approach, Council would place the draft amendment on public exhibition following the completion of the environmental study for the land. In accordance with the Department of Planning and Infrastructure's terms for the processing of the amendment, the exhibition period would be 28 days in duration. The exhibition would include details of the proposed amendment, the completed environmental study and identification of matters that may be suited to address via a VPA. However, it is anticipated that a public exhibition would not incorporate a formal VPA proposal on the basis that the current VPA material put forward by Wave Break Properties is not considered to be satisfactory to Council.

The public exhibition of the draft amendment is the recommended approach as it affords an opportunity for completion of the environmental study and community feedback in relation to the rezoning concept. It also allows for further opportunity to address key site issues via a VPA.

The proponent is required to meet the costs associated with this step and Council retains the option of ceasing the rezoning process following consideration of submissions or at any time in the amendment process if this is identified as a preferred course of action.

2. Cease further processing of Draft LEP Amendment No.90.

Council may elect to cease further processing of the LEP amendment. Under this scenario, Council would formally request that the Minister for Planning & Infrastructure discontinue Draft LEP Amendment No.90.

This approach is not recommended at this time as it is considered appropriate to provide for the finalisation of the environmental study and public exhibition of the draft amendment.

Council may consider the VPA platform set out by Wave Break Properties to be unsuitable and a reason for cessation of the draft amendment. However, a public exhibition period affords a further opportunity to discuss the terms of a VPA for consideration in light of community submissions in response to an exhibition period.

Importantly, it should be noted that if Council resolves to cease further processing of the LEP amendment, the Minister for Planning & Infrastructure may elect to progress the matter separate from Council.

If Council resolves to cease further progress on the amendment, the longer term status of the subject land should also be considered. That is, it is suggested that Council consider whether the land suitable for investigation for its urban potential again at a future date, or whether it is no longer considered a suitable location for future urban development. Where the latter is the view of the Council, it is recommended that the land is removed from Council's planning framework for potential urban land and identified as part of an urban break between Skennars Head and East Ballina.

It is stressed that, whilst this is an option, it is not a recommended course of action. The land has appeared as a potential urban release area in Council's endorsed strategic land use planning documents for many years. Significantly, each of these documents has been an outcome of community engagement exercises. Given this, and the nature of the site assessment undertaken to date, it is considered appropriate that the technical assessment associated with the land and associated community engagement be undertaken prior to determining the outcome of the proposed LEP amendment (i.e. whether to proceed to rezone the land for urban purposes or cease further consideration of the matter).

3. Defer further processing of Draft LEP Amendment No.90.

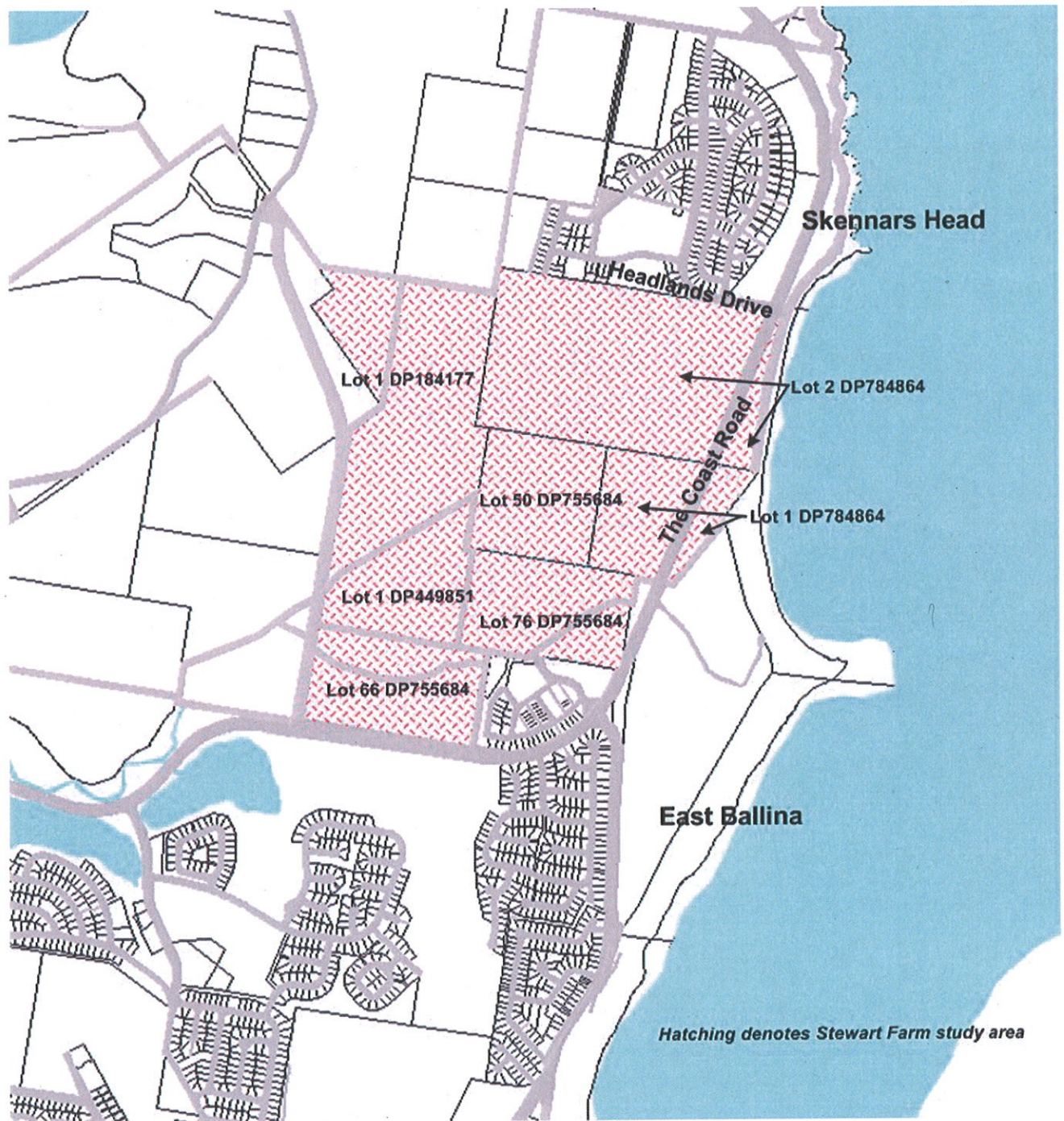
Council may elect to defer its decision regarding the progress of the draft amendment pending further information. However, this is not recommended as Council has held a confidential workshop canvassing the proposal and a substantial amount of technical information is available in relation to the land.

### RECOMMENDATIONS

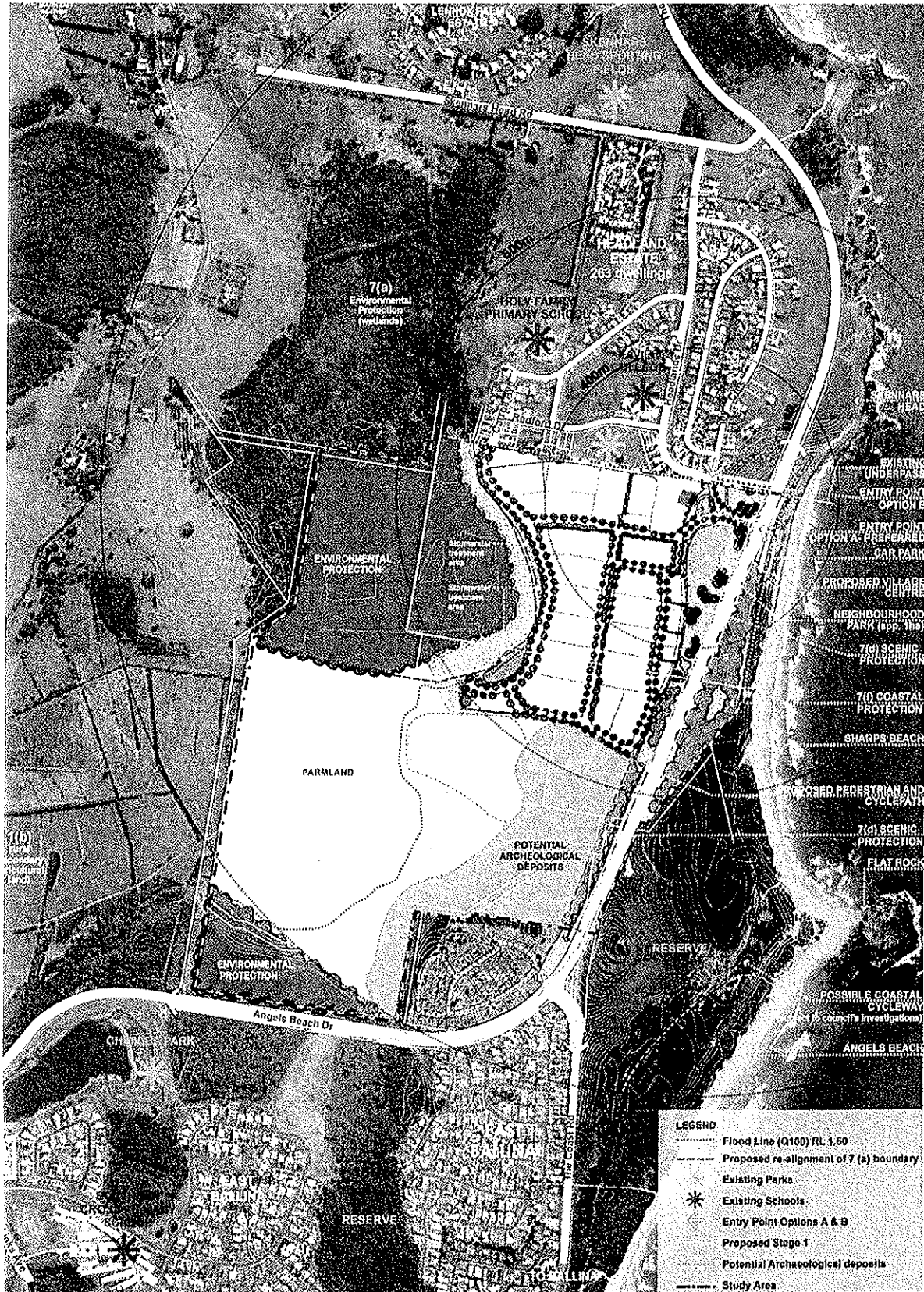
1. That Council endorses the public exhibition of Draft Ballina Local Environmental Plan 1987 Amendment No.90 - Stewart Farm following completion of the environmental study for the subject land.
2. That progress of Draft Ballina Local Environmental Plan 1987 Amendment No.90 - Stewart Farm incorporates consideration of provision for an urban break between Skennars Head and East Ballina by way of land use zoning and/or policy.
3. That the outcomes associated with the public exhibition of Draft Ballina Local Environmental Plan 1987 Amendment No.90 - Stewart Farm be reported to Council for its further deliberation.

### Attachment(s)

1. Stewart Farm Study Area - Draft LEP Amendment No.90.
2. Proposed Structure Plan - Wave Break Properties.
3. Stewart Farm Study Area - Ballina LEP 1987 Land Use Zoning.
4. Sharpes Beach Master Plan.
5. Proposed Voluntary Planning Agreement Terms - Wave Break Properties (September and October 2011 correspondence).

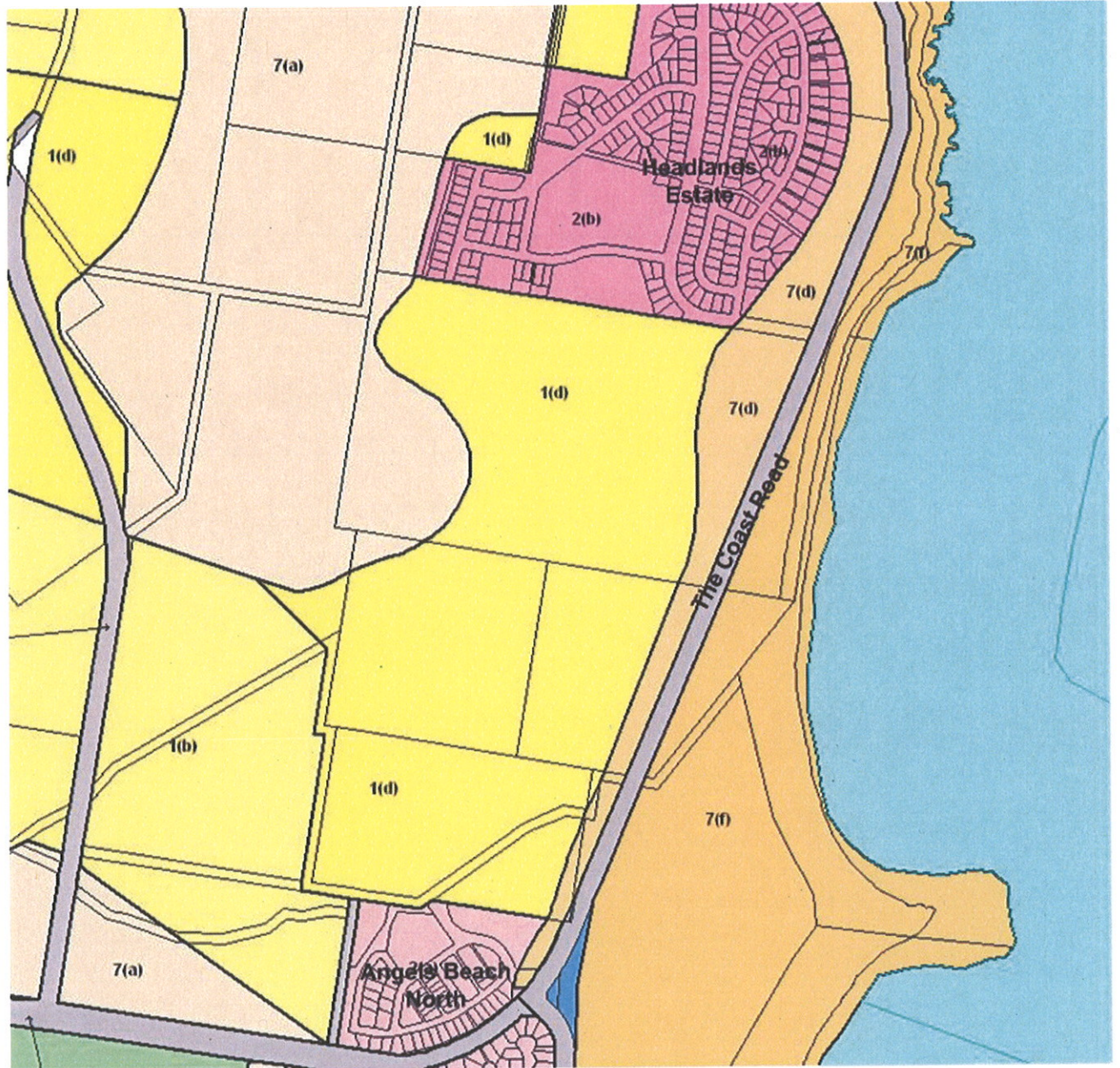






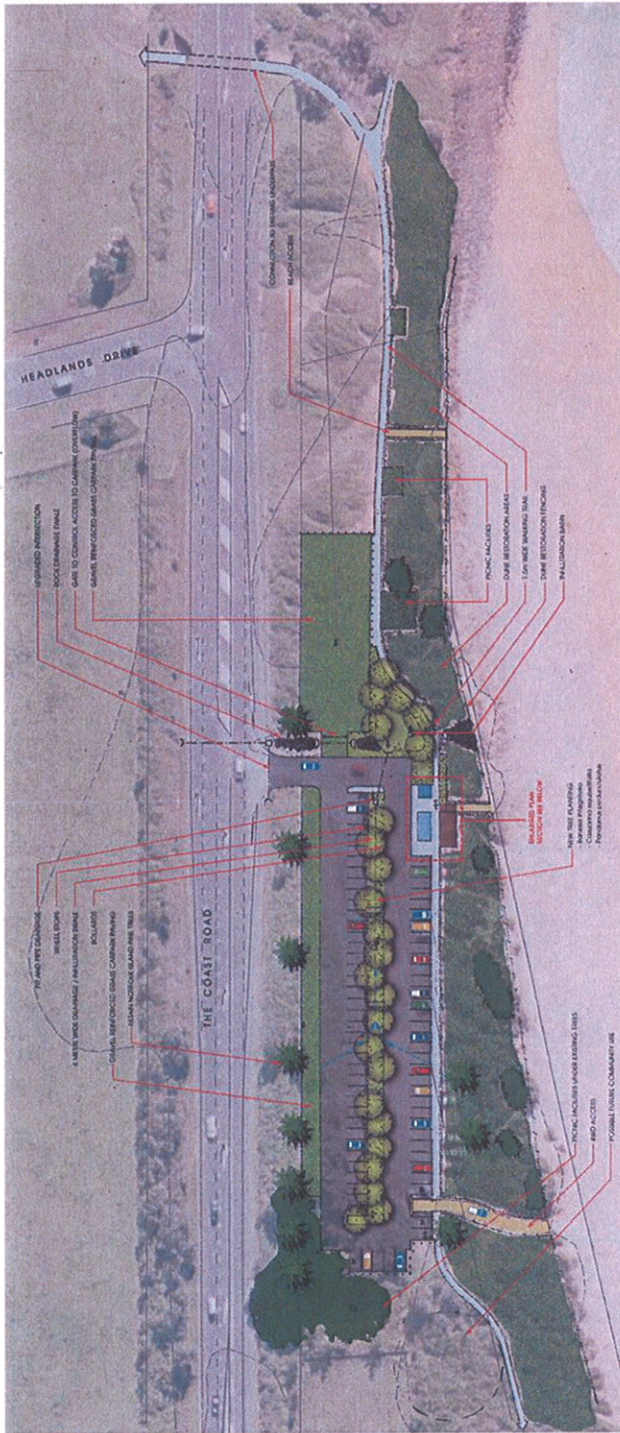
This plan illustrates land use outcomes for the site proposed by Wave Break Properties (Plan prepared by bda architecture 10 October 2008)



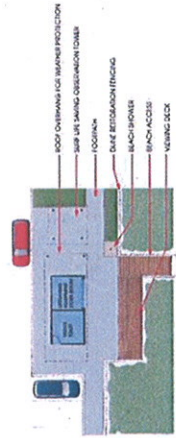
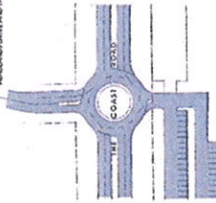




Attachment 4. Sharpes Beach Master Plan



POSSIBLE LONG TERM INTERSECTION CONFIGURATION  
1:1000 @ A1



POSSIBLE LONG TERM INTERSECTION CONFIGURATION  
1:1000 @ A1

Detailed Plan Section  
1:200 @ A1



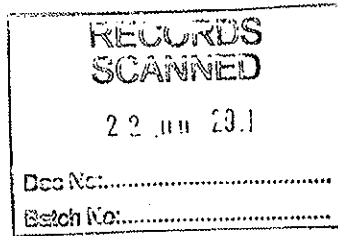
**SHARPES BEACH MASTER PLAN**  
PREPARED FOR BALLINA SHIRE COUNCIL BY KING & CAMPBELL 1 JULY 2011

**KING + CAMPBELL**  
PO Box 112, Mtubatuba 3120, 3441 E. St. 4345 3333 F. St. 4345 3344

## 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



Sydney  
t (02) 9387 2600  
PO Box 1488  
Level 6, 332-342 Oxford St  
Bondi Junction NSW 1555  
f (02) 9387 2557  
consulting@elton.com.au  
www.elton.com.au  
ABN 56 003 853 101



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:

<u>Item</u>	<u>Estimated Cost</u>
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](mailto:jennyr@elton.com.au)

**Annexure A: Letter of authorisation**

*20 April 2011*

505 North Creek Road  
Lennox Head NSW 2478

10 April 2011

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

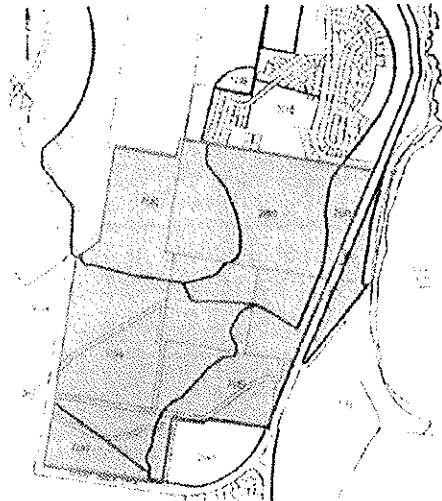
Dear Karina,

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 7/4*

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

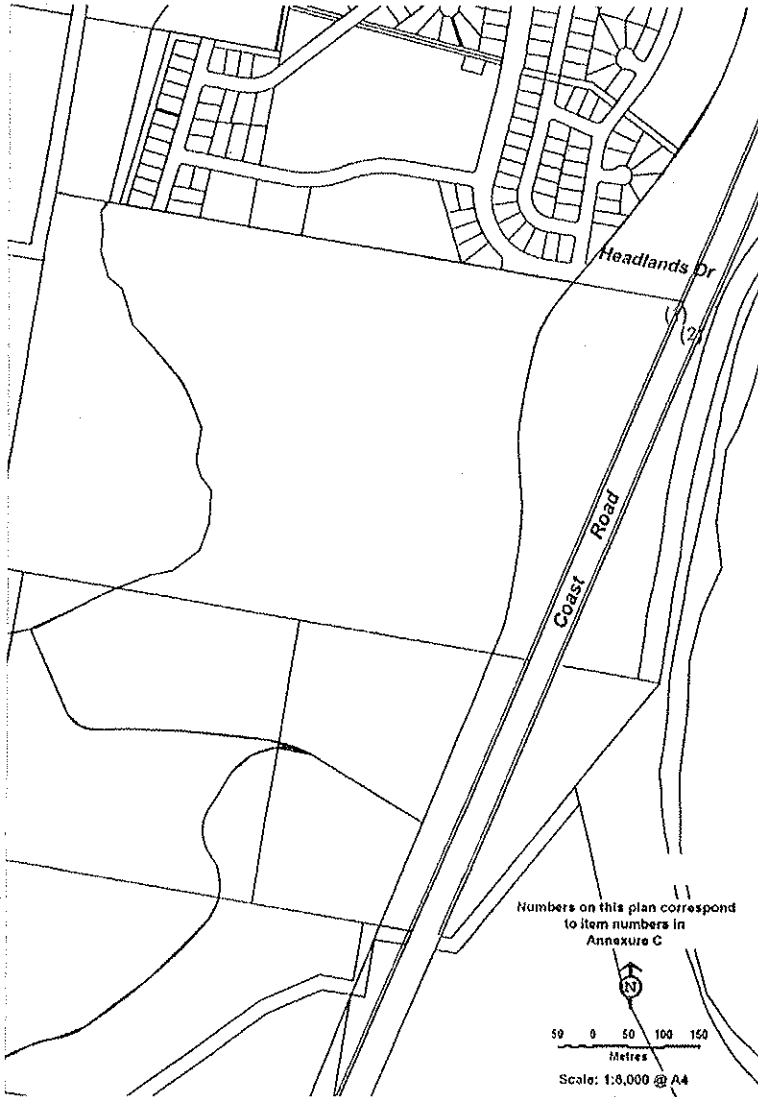
**Annexure C: Proposed Development Contributions**

<b>Item</b>	<b>Public Purpose</b>	<b>Manner &amp; Extent</b>	<b>Timing</b>	<b>Security</b>	<b>Contribution Value</b>
<b>Dedication of land</b>					
1.	Roundabout intersection of land for Headlands Drive 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
<b>Carrying out of Work</b>					
2.	Roundabout intersection Headlands Drive Intersection	Construction of a roundabout at the intersection of The Coast Road and Headlands Drive, including: <ul style="list-style-type: none"> <li>• realignment of Headlands Drive and</li> <li>• environmental rehabilitation of existing Headland Drive pavement between the Coast Road and Killarney Crescent,</li> </ul> <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"> <li>• as illustrated on the plans submitted</li> </ul>	Prior to the issue of the subdivision certificate that creates the first residential lot in the development.	Roundabout \$756,900  Remove existing Headlands Drive pavement as per adjoining land to north \$30,000  Total \$786,900	Council \$175,085.25  Wave Break Properties - approximately \$611,814.75



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"><li>▪ to council specifications,</li><li>▪ In accordance with any development consent.</li></ul>			

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.

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

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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.

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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.



Sydney  
t (02) 9387 2600  
PO Box 1488  
Level 6, 332-342 Oxford St  
Bondi Junction NSW 1355  
f (02) 9387 2557  
consulting@elton.com.au  
www.elton.com.au  
ABN 56 003 853 101

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 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

A handwritten signature in black ink, appearing to read 'Jenny Rudolph'.

Jenny Rudolph  
Associate Director  
[jennyr@elton.com.au](mailto:jennyr@elton.com.au)