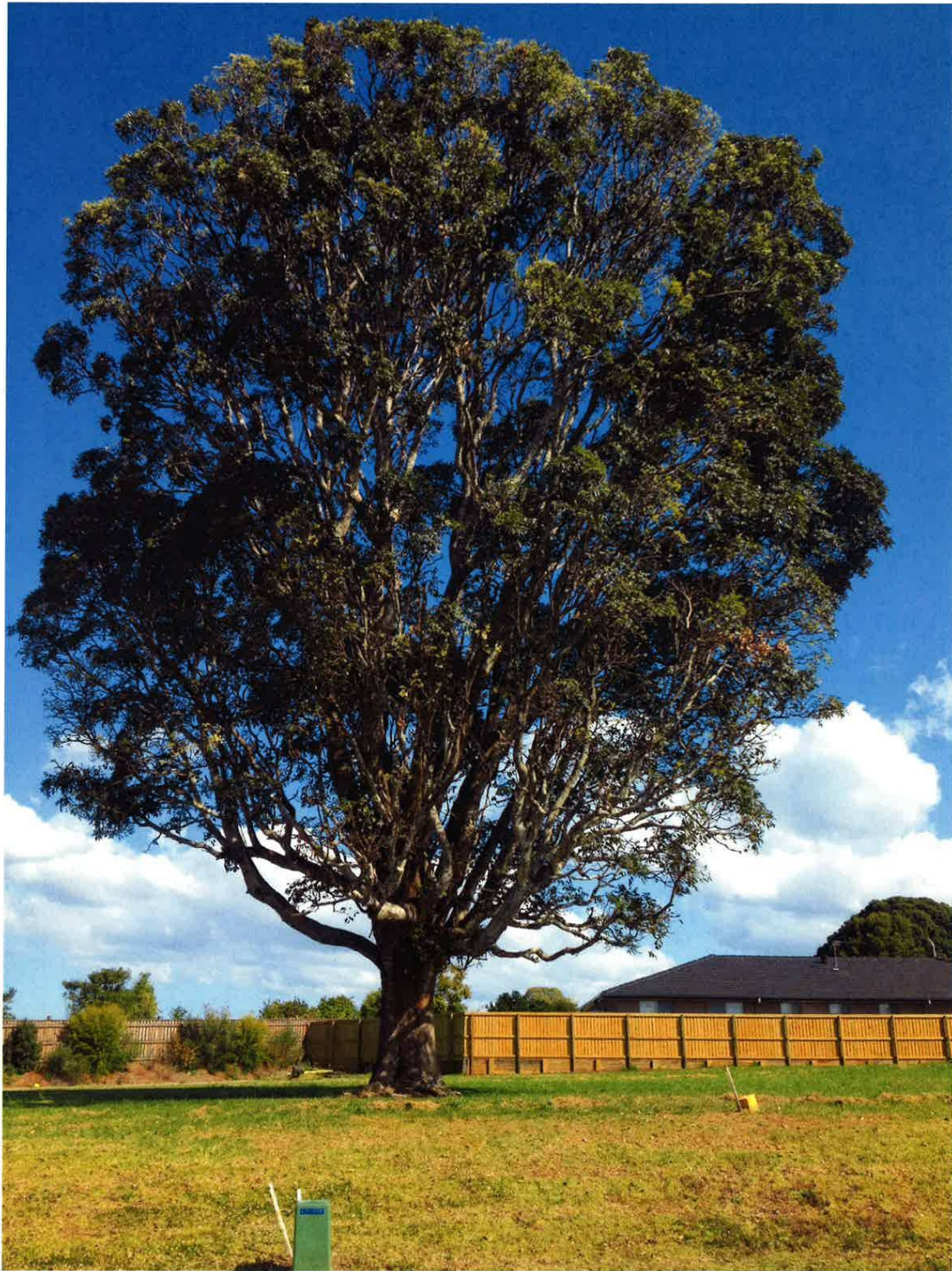


<http://maps.six.nsw.gov.au/>

12/07/2013



**In the Land and  
Environment Court  
of New South Wales**

No. 10181 of 2008

**Avalon Property Developments  
Pty Limited**

Applicant

**Ballina Shire Council**

Respondent

Order

The orders of the Court, by consent, are:

1. The appeal is upheld;
2. Development Application 2007/876 for a residential subdivision at 121 Rifle Range Road, Wollongbar is determined by the granting of development consent subject to the conditions in Annexure A; and
3. The exhibits, other than Exhibit A, may be returned.

Ordered: 10 December 2008

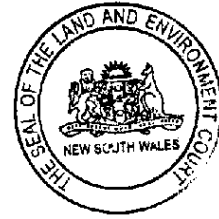
By the Court



Susan Dixon  
Registrar

ANNEXURE A

Conditions of Consent



1. DEFERRED COMMENCEMENT CONDITIONS

1.1. **Deferred commencement**

The operation of this consent being deferred, pursuant to Section 80(3) of the Environmental Planning & Assessment Act until:

A detailed site investigation report prepared in accordance with the 'Guidelines for Consultants Reporting on Contaminated Sites' (197b) (NSW EPA) is to be prepared by a suitably qualified contaminated land consultant and be submitted to and approved by Council. The detailed site investigation is to be carried out on the areas nominated in Appendix J 'Preliminary Site Investigation' of the Statement of Environmental Effects, prepared by Ardill Payne & Partners, Dated June 2007, that warranted further investigation for contamination. The detailed site investigation report, if required, is to develop a remediation strategy and implement and validate the remediation process in accordance with the appropriate guidelines for the proposed future use.

This deferred commencement consent will lapse if the above requirements are not complied with prior to 10 November 2010 to the satisfaction of Council.

2. GENERAL CONDITIONS

General

2.1. Development being carried out generally in accordance with the plans and associated documentation lodged by, or on behalf of, the applicant, including plans prepared by Ardill Payne & Partners, Job No. 5012, Figure 2A, dated 27 October 2008; Job No. 5012, Drawing No RR-SK2b, dated November 2008; Job No. 5012, Drawing No. B01, dated 3 October 2008; Job No. 5012, Drawing No. B02, dated 3 October 2008; Job No. 5012, Drawing No. B03, dated 3 October 2008; Job No. 5012, Drawing No. B04, dated 3 October 2008; Job No. 5012, Figure 14, dated 31 October 2008, except as modified by any condition in this consent.

2.2. **Commencement of occupation or use**

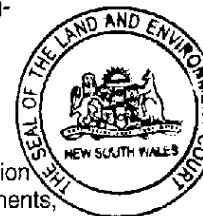
Occupation or use of the site for the purposes authorised by this consent shall not commence until all conditions of this consent have been complied with, unless alternative arrangements have been made with Council.

2.3. **No Dwelling-House Entitlement**

Council records indicate that proposed Lots 141 and 142, the creation of which is authorised by this consent, do not enjoy a dwelling entitlement under the provisions of the Ballina Local Environmental

Plan 1987.

The grant of this consent do not authorize or permit, and shall not be interpreted as authorising or permitting the erection of a dwelling-house or a dwelling entitlement on proposed Lots 141 and 142 created by the subdivision.



**2.4. Stormwater Management Plan Addendum**

A stormwater management plan addendum is to be provided to Council detailing the changes made to the development application submission, new locations of basins, sizing and volume requirements, and compliance with DCP Number 1 Chapter 13. Details are to be provided to Council prior to lodgement of the Construction Certificate for any stage of the development.

**2.5. Rifle Range Road Addendum**

Amended drawings are to be prepared detailing the configuration of the Rifle Range Road – Lillian Way Intersection. This intersection is to comprise a Type C or Type B configuration in accordance with Austroads Intersections at Grade. The drawings are to be submitted to and approved by Council prior to the issue of the Construction Certificate. Dimensions are to be included on the drawing in accordance with the Austroads requirements.

**2.6. A horizontal alignment and typical cross section of Rifle Range Road is to be provided that meets the following criteria:**

- (i) The full-width of the trafficable surface of Rifle Range Road is to comprise at full cost to the developer a noise retardant seal in accordance with the relevant Australian Standards for noise suppression on pavements to meet the noise report's traffic loading requirements and be in accordance with the requirements of the application's noise report. This work is not required until such time as Council has completed its portion of the upgrade of Rifle Range Road.
- (ii) Plantings for screening are to be limited to the mounding and are not to encroach on the 5m clear footpath area.
- (iii) Rifle Range Road shall comprise of upright barrier kerb and shall provide a 1.35m wide all weather access pedestrian path on the northern side extending from Lillian Way towards the Wollongbar Village.
- (iv) Interspersed between the face of kerb and the footpath are to be mature tree plantings in accordance with Ballina Council's Open Space requirements.
- (v) The acoustic wall shall be designed for a minimum design life of 10years before maintenance becomes an issue.
- (vi) The acoustic wall shall be designed in accordance with the Acoustic Consultant's recommendations and the Noise Wall Guidelines prepared by the RTA.
- (vii) The acoustic wall is to also be adequately designed to not reflect sound waves to the southern side of Rifle Range Road.

The above details are to be provided to Council prior to lodgement of Application for a Construction Certificate for any stage of the development

**3. PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE (Subdivision)**

*The following conditions in this section of the consent must be complied with or addressed prior to the issue of any Construction Certificate relating to the approved development.*



**Bushfire Management**

3.1. The development is to be carried out in conformity with the Bushland Rehabilitation and Management Plan prepared by LandPartners dated January 2007, the report by Barry Eadie Consulting Pty Ltd dated 16 July 2008, and as specified in the correspondence from the NSW Rural Fire Service to Council dated 27 May 2008 and 2 September 2008.

3.2. Deleted.

3.3. The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to provide direct flame contact with a building.

A Fire Management Plan is to be prepared that addresses the following requirements:

- (a) Contact person/department and details; and
- (b) Schedule and description of works for the construction of Asset Protection Zones and their continued maintenance.
- (c) Schedule and description of works for the proposed Open Space Allotments (Lot 141) and proposed residual allotment for future development (Lot 142) and their continued maintenance.

The Fire Management Plan is to be prepared by an appropriately qualified bush fire consultant and must be submitted to and approved by Council prior to the issue of the Construction Certificate.

**Noise attenuation**

3.4. Final design and construction details on the proposed acoustic barrier, including details of the landscaped area (i.e. width, species, quantity, location etc.) to be provided in front of the acoustic barrier are to be submitted and approved prior to the release of the Construction Certificate.

**Construction Works**

3.5. A Construction Management Plan is to be prepared for the proposed development for the management and maintenance of all construction

works on site and shall be submitted to and approved by Council prior to the issue of the Construction Certificate.

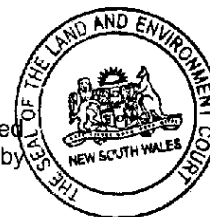
- 3.6. A Soil and Water Management Plan in accordance with Managing Urban Stormwater – Soils and Construction, LANDCOM, March 2004 shall be submitted to and approved by Council prior to the issue of the Construction Certificate. The plan shall define the specific stormwater treatment and management techniques for both the construction and operational phases of the development. The plan must also provide for a maintenance program and management for the control devices that are to be incorporated into the development once operational.

#### **Lighting**

- 3.7. All external lighting to be installed and operated on site is to comply with the Australian Standard AS 4282:1997 "Control of the Obtrusive Effects of Outdoor Lighting". Details demonstrating compliance with these requirements are to be submitted to and approved by Council prior to the issue of the Construction Certificate.

#### **Building Envelopes**

- 3.8. Plans and details of the proposed building envelopes for proposed Lots 42-45, 48, 49 and 52 are to be submitted to and approved by Council prior to the issue of the Construction Certificate.

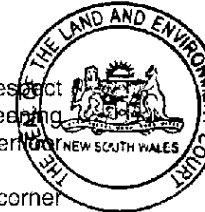


#### **Built Form Guidelines**

- 3.9. A revised "Built Form Guidelines" document is required to be prepared in accordance with the contents of the report to Council's Ordinary Meeting held on 28 February 2008 and submitted to, and approved by, the Council. In particular, the following matters are to be addressed:

- (i) Controls for dual occupancy, duplex and medium density developments are to be consistent with the general controls within Chapter 1 - Urban Land of the Ballina Shire Combined Development Control Plan.
- (ii) Revised controls for smaller allotments with an area of less than 600m<sup>2</sup> (including FSR, car parking requirements, landscaped area and side/rear boundary setbacks), including the preparation of three dimensional building envelopes that approximate the intended building form to demonstrate the achievability of the proposed controls.
- (iii) Deletion of the "Thermal Insulation and Thermal Mass" and "Ventilation" sections.
- (iv) Revision of the "Building Height" section to reference the overall height provision of the area and to be consistent with the height requirements within other areas of the Ballina Shire and provisions of the Ballina Local Environmental Plan 1987 (BLEP).





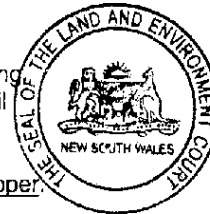
- (v) Deletion of the three (3) metre height restriction with respect to decks on sloping sites and revision of subfloor screening control such that it should only apply to the dwelling underfoot area, excluding decks.
- (vi) Revision of the "Building Lines and Setbacks" section - corner allotment setbacks are to be in accordance with Policy Statement No. 3 of Chapter 1 - Urban Land, where concessions apply. The patio and deck exemption (re: encroachment of the street frontage) and controls regarding the 1.8m cantilevered balcony exemption forward of the front building line should be deleted.
- (vii) The controls regarding the sizing of water storage tanks are to reflect the stormwater management measures incorporated into the subdivision and should refer to the requirements via BASIX.
- (viii) Deletion of the "Garden Sheds" section or alternatively reference the provision within Ballina Shire Exempt and Complying DCP, with other development considered on merit by Council.
- (ix) Deletion of the "Fencing" section.
- (x) Revision of sections "Building Colours and Materials" and "Geotech, foundations, earthworks and retaining walls" to reference building materials (being of light-weight construction) for allotments that have a medium likelihood of landslip.
- (xi) Revision of the contents of the Built Form Guidelines such that controls that are consistent with existing controls within the Ballina Shire Combined DCP or BLEP are referenced as such and reproduced as information only (rather than as new controls).
- (xii) The SEDA Assessment Plan (and minimum and flexible solar access zones) should be referenced within the document.
- (xiii) A plan(s) is to be provided at an appropriate scale that clearly shows all building controls/restrictions outlined within the "Built Form Guidelines" document and other restrictions placed on allotments as detailed within the proposed development (based on amenity, drainage, solar access and streetscape - i.e. building lines, side boundary setbacks, designated solar access areas, maximum impervious areas as noted within the stormwater management plan, bushfire asset protection zones etc.). Dimensions should be clearly shown.

The revised "Built Form Controls" document is required to be submitted to and approved by Council prior to the issue of the Subdivision Certificate. The Built Form Controls as approved by Council are to be brought to the attention of prospective purchasers of allotments within the approved subdivision and annexed to the Contracts for Sale of Land.

- 3.10. Building lines and setbacks for each allotment are to be provided clearly on the subdivision plan (which will form an attachment to Chapter 15 - WUEA of Council's Combined DCP) and are to be submitted to Council prior to the issue of the Construction Certificate.

Civil Works

3.11. Prior to the Issue of the Construction Certificate, engineering design drawings shall be submitted to and approved by Council under Section 138 of the Roads Act 1993 for the following civil works. All civil works described in subsections (i) - (viii) of this condition are required to be undertaken by the applicant/developer. Details are to be in accordance with the Northern Rivers Local Government *Development Design and Construction Manuals* (as current at the time of construction works commencing). Where details are not addressed in these Manuals, the design is to comply with the requirements of Council's *Subdivision Code*.

(i) **Rifle Range Road**

At the developer's expense, the Rifle Range Road street frontage shall have the road pavement upgraded to full-width of an 11m wide seal. The road widening is required to the existing sealed road pavement north of the southern edge of the shoulder, generally in accordance with APP Drawing No RR-SK2b dated November 2008. The pavement shall be designed in accordance with traffic loading requirements of 12,000 vehicles per day with subgrade in situ CBR testing to be undertaken prior to pavement design. It shall consist of a compacted roadbase quality material plus a minimum of 40mm asphalt wearing surface plus surface treatment to provide noise retardation. Inspection of the road widening by Council's Engineer (Ph. 6686 4444) is required at the time of excavation and prior to sealing of the works. Should the inspection reveal unsatisfactory subgrade material, the developer shall be required to remove the unsuitable material and replace it with approved material. Note: the transition from the urbanised 13m carriageway to the 11m seal is to occur over a 30m long transition and is to be centrally located over existing intersections.

(ii) Provision of a Type B or C intersection at Rifle Range Road and Lillian Way with allowance made for articulated vehicle swept paths. This intersection is to also comprise of a noise retardant seal.

(iii) **Footpath**

The provision of a concrete footpath a minimum of 1.35 metres wide along the southern side of Avalon Avenue from Lillian Way to Iris Place. The footpath is to be designed and constructed in accordance with Standard Drawing R-07 of Northern Rivers Local Government *Development Design and Construction Manuals*. The alignment must be approved by Council's Development Engineer and any unnecessary footpath resulting from the development is to be removed and the area restored in accordance with Council's requirements.

(iv) The provision of a concrete footpath a minimum of 1.35 metres wide along the western side of Trelawney Avenue from Somerset Terrace to Avalon Avenue. The footpath is to be designed and constructed in accordance with Standard Drawing R-07 of Northern Rivers Local Government *Development Design and Construction Manuals*. The alignment must be approved by Council's Development Engineer and any unnecessary footpath resulting from the development is to be removed and the area restored in accordance with Council's requirements.

(v) **Shared footpath\cycleway**

The provision of a concrete footpath a minimum of 2.0 metres wide along the southern side of Avalon Avenue from Glenmore Street to Lillian Way. The footpath is to be designed and constructed in accordance with Standard Drawing R-07 of Northern Rivers Local Government *Development Design and Construction Manuals*. The alignment must be approved by Council's Development Engineer and any unnecessary footpath resulting from the development is to be removed and the area restored in accordance with Council's requirements.



(vi) The provision of a concrete footpath a minimum of 2.0 metres wide along the western side of Lillian Way from Rifle Range Road to Avalon Avenue. The footpath is to be designed and constructed in accordance with Standard Drawing R-07 of Northern Rivers Local Government *Development Design and Construction Manuals*. The alignment must be approved by Council's Development Engineer and any unnecessary footpath resulting from the development is to be removed and the area restored in accordance with Council's requirements.

(vii) The provision of a 1.35 metre wide all weather pedestrian access path along the Northern Side of Rifle Range Road from the drive-in site to Lillian Way. The alignment must be approved by Council's Development Engineer.

(viii) The developer is required to provide a footpath along the western edge of Trelawney Close for its length at a width of 1.35 metres. Details of the alignment are to be submitted to Council for approval prior to issue of the Construction Certificate of the Trelawney Close staging.

3.12. **Bus Stops**

Bus Stops/Shelters are to be provided by the applicant in the following locations:

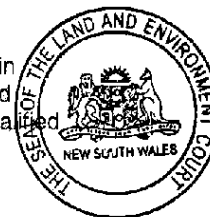
- In Lillian Way-Avalon Avenue, to capture the eastern catchment, and
- At the intersection of Trelawney Close and Avalon Avenue.

Details of the type, location and specific road geometry of the immediate area are to be submitted to Council for approval prior to

release of the Subdivision Certificate for the respective stage of the estate.

The Trelawney Close Bus Stop is to include a bus shelter whilst the need for a shelter at Lillian Way shall be decided in conjunction with the bus companies and Council prior to release of the Subdivision Certificate for that stage of the Estate.

- 3.13. Design of all car parking and vehicular accesses is to be in accordance with the Australian Standards AS/NZS 2890.1 and 2890.2 2004. Design plans are to be certified by a suitably qualified professional prior to issue of the Construction Certificate.



3.14. **Civil inspection fee & construction bond**

Prior to the issue of a Construction Certificate, the following fee and bond are to be paid to Council which includes the amount of Goods and Services Tax payable. The fee and bond are subject to review and may vary at the actual time of payment:

- Civil Inspection Fee: Equal to 3% of the estimated cost of the civil works (min \$175)
- Civil Construction Bond: Equal to 5% of the estimated cost of the civil works (min \$1000)

The Civil Construction Bond is taken and may be used by Council to cover the cost of any damage to Council's assets (eg. Sewer systems, footpaths, kerb and guttering etc) arising from private development work. The bond will be refunded upon completion of the stage of the development for which the bond has been lodged should no such damage occur.

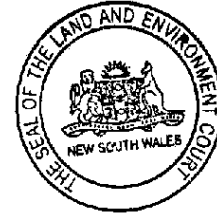
- 3.15. All traffic control during construction shall be in accordance with the Roads and Traffic Authority – *Traffic Control at Work Sites*. Details are to be submitted to and approved by Council prior to the issue of the Construction Certificate.

**Vegetation Management**

- 3.16. All engineering design drawings are also to clearly show all vegetation to be retained on site in accordance with the approved plans. These plans are to clearly identify the critical root zone of all vegetation to be retained (this includes any native vegetation growing within adjacent properties). No excavation, vegetation removal, construction, stockpiling of material etc is to occur in this zone. To avoid accidental damage during construction all personnel working on the site are to be made aware of the requirements of the plans and be provided with a copy of the plans.

**Environmental Management**

- 3.17. Detailed plans of the rehabilitation and embellishment of proposed Lot 141 (land zoned 7(d) - Environmental Protection (Scenic/Escarpment) Zone) are to be submitted to and approved by Council prior to the issue of the Construction Certificate for the first stage of the development. Note: All rehabilitation and embellishment works are to be undertaken by the developer.
- 3.18. A detailed Open Space Management and Maintenance Plan for proposed Lot 141 is required to be prepared addressing the following:
- (i) The type of area/zone,
  - (ii) Hazards,
  - (iii) Frequency of maintenance,
  - (iv) Estimated annual cost,
  - (v) Special equipment required,
  - (vi) Standard equipment required,
  - (vii) Special permits/approvals required,
  - (viii) Special provisions for access (vehicular and maintenance),
  - (ix) Occupational Health & Safety,
  - (x) Number of staff,
  - (xi) Risk management,
  - (xii) Special training required.
  - (xiii) Bush fire management requirements (as required by the NSW Rural Fire Service).
  - (xiv) Construction standards for access tracks and fencing.



The plan is required to be submitted to and approved by Council prior to the issue of the Construction Certificate.

**Landscaping**

- 3.19. Detailed landscaping plans are to be prepared for all land to be dedicated to Council (street system, open space areas etc.) with reference to the comments and changes outlined within Council's 6 July 2007 letter (i.e. revision of plant species, maintenance issues, mature size of species, root invasion, potential future damage to infrastructure etc.). Note: Vegetation plantings proposed along verges should not provide screened areas or concealment sections. Pavement and other landscape treatments are to be included in the abovementioned plans. The plans are required to be submitted to and approved by Council prior to the Construction Certificate.

**Flooding and Stormwater**

- 3.20. Stormwater controls are to be provided on site with Water Sensitive Design requirements in accordance with Chapter No. 13 - Stormwater Management of the Ballina Shire Combined Development Control Plan and generally in accordance with the approved plans. This is to include the shaping of driveways and

paved areas to drain to landscaped/vegetated areas with infiltration strips. Pervious paving is to be provided where possible. Details are to be shown on the design plans and submitted to and approved by Council prior to issue of the Construction Certificate.

- 3.21. Details of kerb/gutter capacity for minor flow events are to be provided in accordance with Section 7 of the Northern Rivers Stormwater Drainage Design Handbook and are to be submitted to and approved by Council prior to issue of the Construction Certificate.
- 3.22. The detention basin design is to be modified to provide safe egress from inside the pool area. Details are to be submitted to and approved by Council prior to issue of the Construction Certificate. Note: Council is willing to provide advice to the applicant in this matter.
- 3.23. A detailed maintenance plan is to be prepared for the detention ponds and stormwater assets that are to be dedicated to Council. Details are to be submitted to and approved by Council prior to issue of the Construction Certificate.
- 3.24. The use of "leaky well" stormwater pits is to be deleted and consultation undertaken with Council for a more maintenance friendly alternative. Details are to be submitted to and approved by Council prior to issue of the Construction Certificate.



#### Water Supply and Sewer Servicing

- 3.25. Prior to the issue of the Construction Certificate, detailed engineering plans and specifications of water, sewage and associated infrastructure servicing the development are to be prepared in accordance with Council's Subdivision Code and Water and Sewerage Specification. The plans are to be submitted to and approved by Council prior to the issue of the Construction Certificate.
- 3.26. **Standard Sewer Connection**  
The applicant shall be responsible for all costs associated with the connection of the proposed development to Council's sewer system in accordance with Council's *Subdivision Code* (as current at the time of construction works commencing). Design plans are to be submitted to and approved by Council prior to issue of the Construction Certificate.
- 3.27. **Pressure Sewer Connection**  
The applicant shall be responsible for all costs associated with the connection of the proposed development to Council's sewer system. As the proposed development is unable to be serviced by Council's gravity sewer system, the proposed development shall be serviced using a pressure sewer system in accordance with Council's

"Pressure Sewer Policy" (as current at the time of construction works commencing). Design plans are to be submitted to and approved by Council prior to issue of the Construction Certificate.

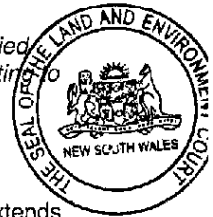
3.28. **Standard Water Connection**

The applicant shall be responsible for all costs associated with the connection of the proposed development to Council's reticulated water supply system in accordance with Council's *Subdivision Code* (as current at the time of construction works commencing). Design plans are to be submitted to and approved by Council prior to issue of the Construction Certificate.

3.29. Prior to the issue of the Construction Certificate for construction of water and sewage, application under Section 68 of the Local Government Act 1993 is to be submitted to Council.

4. **PRIOR TO CONSTRUCTION WORK COMMENCING**

*The following conditions in this section of the consent must be complied with or addressed prior to commencement of construction works relating to the approved development.*



**Soil Erosion and Sediment Control**

4.1. A single all weather access way is to be provided on site that extends from the kerb to the building construction site. All construction vehicles are to enter and exit the site via this access way so as to minimise erosion on site and prevent the movement of soil material onto surrounding roadways (if required provide a 'shake down' grid area for truck wheel washing). When necessary, roadways shall be swept and all drains and gutters cleaned of sediment material. **Failure to comply with this requirement may result in an on-the-spot fine being issued by an Authorised Officer of Council.**

4.2. Soil erosion and sediment control measures shall be designed, installed and maintained in accordance with Managing Urban Stormwater – Soils and Construction, LANDCOM, March 2004.

4.3. The advisory sediment and erosion sign issued with this approval is to be attached to the most prominent structure at the entrance of your site at all times during the construction of the project. **Failure to comply with this requirement may result in an on-the-spot fine being issued by an Authorised Officer of Council.**

4.4. To prevent the pollution of waterways, the applicant/builder is to ensure adequate sediment and erosion control measures are in place prior to the commencement of works on site and are to be maintained during the construction of the project until the site has been stabilised by permanent vegetation cover or a hard surface. This is to include:

- (i) The prevention of soil erosion and the transportation of sediment material into any roadway, natural or constructed drainage systems, watercourse and or adjoining land.

- (ii) Service trenches are to be backfilled as soon as practical.
- (iii) Downpipes are to be connected as soon as practical or otherwise temporary downpipes are to be used.
- (iv) Buffer vegetation zones are to be retained on sites that adjoin roadways, drainage systems and or watercourses.
- (v) Sediment and erosion control measures are to be maintained throughout the construction process and beyond by the owner, where necessary.

**Failure to comply with this requirement may result in an on-the-spot fine being issued by an Authorised Officer of Council.**

- 4.5. Silt/sediment and barrier fencing is to be erected around all environmental protection zones and significant vegetation (including the two (2) x Macadamia Tetraphylla to be retained within the proposed subdivision) prior to the commencement of civil and construction works such that the vegetation is not impacted upon by silt/sediment and is protected from physical damage.



**Construction Requirements**

**4.6. Safety barriers**

Any site excavations are to be provided with adequate safety barriers to protect the public.

**4.7. Surveyor setout**

A survey peg-out is to be carried out by a Surveyor to establish the correct position of the boundaries of the land before any civil construction work commences, unless all existing survey pegs can be located.

**Vegetation Management**

- 4.8. Prior to commencement of construction works for each stage of the Estate, all vegetation to be retained is to be clearly identified and protected with temporary fencing (Cyclone wire panels). Fencing is to be established a minimum of 2 metres outside of the identified critical root zone. All fencing is to be in place prior to works commencing in the stage area.

**5. DURING CONSTRUCTION**

*The following conditions in this section of the consent must be complied with or addressed during the course of carrying out the construction works relating to the approved development.*

**General**

**5.1. No storage of materials on Council land**

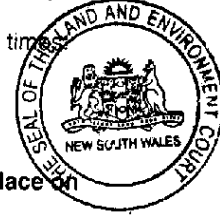
There shall be no storage of building materials, plant or equipment on the road, footway or reserve areas without the prior consent of Council.



**Amenity**

- 5.2. The land use on the site shall not interfere with the amenity of the locality by reason of the emission of noise, vibration, odours, fumes, smoke, vapour, steam, dust, water, waste products and the like.
- 5.3. The hours of operation for any noise generating construction activity (including the delivery of materials to and from the site) on the proposed development are to be limited to within the following times:

Monday to Friday 7.00am to 6.00pm  
Saturday 8.00am to 1.00pm



**No noise generating construction activities are to take place on Sundays or public holidays.**

**Inspections**

- 5.4. Inspection and approval of the road works approved within the road reserve is required by Council's Engineer (Ph. 6686 4444) at the time of excavation and prior to sealing of the works. Should the inspection reveal unsatisfactory subgrade material, the developer shall be required to remove the unsuitable material for a further depth of 700mm and replace with approved sand fill.
- 5.5. Council's Engineer must inspect and approve construction works associated with the connection of the development to Council's water and sewer mains. Council's Engineer must be contacted on telephone 6686 4444 at the time of excavation and connection.
- 5.6. Council's Engineer must inspect and approve works associated with the construction of the footpath and gutter crossing for the development. Council's Engineer must be contacted on telephone 6686 4444 at the time of excavation and at least 24 hours prior to the concrete pour.

**Waste**

- 5.7. All demolition, construction or the like waste is to be transported and disposed of to an approved waste facility or if alternative disposal methods are sought, that written approval is granted by Council.

**Demolition**

- 5.8. All demolition work is to be carried out in accordance with the WorkCover Authority guidelines, Australian Standard 2601:2001 'The demolition of structures', and Council guidelines for the removal of asbestos and lead based products. The sewer, water and electrical services from the buildings are to be disconnected by licensed tradespersons.

**Fill Material**



5.9. All site filling (excluding the open space and sports field areas) shall be in compliance with the requirements of Level 1 NATA Certification consistent with:

- AS 2870 – 1996 Residential Slabs and Footings Code
- AS 3798 – 2007 Guidelines on Earthworks for Commercial and Residential Developments.

5.10. Prior to the release of the Subdivision Certificate, certification from a suitably qualified, registered, practicing Geotechnical Engineer verifying such site filling is in accordance with AS2870, AS3798 and Northern Rivers Construction Manual. Additionally the compacted fill is to possess adequate bearing capacity for building construction with details submitted to Council in accordance with the Northern Rivers Construction Manual (as current at the time of construction). Certification shall also be provided verifying that any fill material imported to the site is free of contaminants, being natural or otherwise, and was obtained from an approved fill source with quality assurance certification.

**Pollution Management**

5.11. Clean up equipment including suitable absorbent material shall be stored on site to effectively deal with liquid contaminates such as oils and chemical spills.

5.12. In the event of a pollution incident on the premises, that has caused, is causing, or is likely to cause harm to the environment, the occupier shall report the incident to Council immediately the occupier or occupier's managers on site become aware of the incident.

**Soil Erosion and Sediment Control**

5.13. Suitable covering and protection is to be provided to all stockpiles to ensure that no material is removed from the site by wind, causing a nuisance to neighbouring properties.

5.14. A water truck designed to suppress dust from exposed surfaces and access roads shall be available at the site or in the immediate vicinity. Exposed surfaces and access pads shall be regularly wetted to suppress dust generation until such time that construction is completed and areas have been revegetated. All disturbed areas shall be revegetated immediately they are completed.

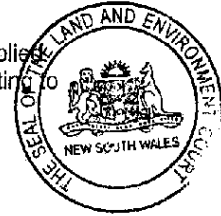
**Completion of Construction Tasks**

5.15. All temporary soil erosion controls employed during construction are to be removed and other permanent measures put in place as necessary.

- 5.16. All temporary site information signs, temporary toilet facilities, waste storage bins and the like are to be removed upon completion of site works.
- 5.17. **Repair damaged infrastructure**  
Kerb and guttering, footpaths, utility services or roadworks damaged as a result of construction works related to the development shall be immediately reinstated to a satisfactory condition.
- 5.18. **Reinstatement of road verge**  
Any grass verge or footpath within the road reserve that is damaged as a result of development works on the site shall be immediately reinstated to a satisfactory and safe condition. This will involve the regrading of the disturbed area, turfing and top-dressing.

6. **PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE**

The following conditions in this section of the consent must be complied with or addressed prior to the issue of a Subdivision Certificate relating to the approved subdivision.



**General**

6.1. **Application for subdivision certificate**

A completed Subdivision Certificate application form accompanied by final plans of subdivision, together with the requisite processing fee, shall be submitted to Council for approval.

6.2. **Subdivision works to comply with code**

All works associated with this subdivision are to be designed and constructed in compliance with *Council's Subdivision Code* (as current at the time of construction works commencing).

6.3. **Road names**

All new road and street names shall be submitted to Council for approval prior to making application for a Subdivision Certificate.

**Noise attenuation**

6.4. The acoustic consultant shall provide Council with certification that the development complies with the acoustic specifications identified in the letter to Council from Ardill Payne & Partners, Dated 26 June 2007, or as amended, and the details and plans approved via consent condition 3.4 prior to the issue of the Subdivision Certificate.

**Lighting**

6.5. Upon installation of all external lighting and before finally commissioned, a report prepared by a suitably qualified consultant is to be submitted to and approved by Council, demonstrating compliance with the Australian Standard AS 4282:1997 "Control of the Obtrusive Effects of Outdoor Lighting".

**Bushfire Management**

**6.6. *Water and Utilities***

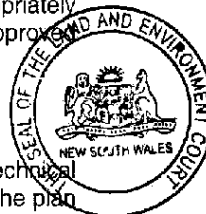
The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building.

Water, electricity and gas are to comply with Section 4.1.3 of *Planning for Bush Fire Protection 2006*.

Written certification demonstrating compliance with the abovementioned requirements is to be prepared by an appropriately qualified bush fire consultant and is to be submitted to and approved by Council prior to the issue of the Construction Certificate.

**Geotechnical Investigation**

6.7. The proposed allotments identified as requiring additional geotechnical investigation at DA stage for a dwelling house (as shown on the plan prepared by Ardill Payne & Partners, Job No. 5012, Figure 14, Dated 31 October 2008 and including proposed lot 108) shall be indicated as such on the Deposited Plan and within a Section 88b instrument, as a restriction to each allotment affected.



**Developer Contributions**

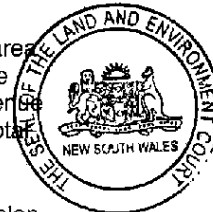
**6.8. *Developer contributions for Subdivision***

Prior to the issue of the Subdivision Certificate, a total payment to Council of non-refundable monetary contributions is to be made towards the provision of public services and amenities, which are required as a result of the development.

The current amounts required at the time of the issue of consent are:

- **\$187.50 per lot** for the embellishment of local parks.
- **\$1479.38 per lot** for the acquisition and embellishment of district open space.
- **\$1965.47 per lot** for the provision of playing fields and associated facilities.
- **\$839.19 per lot** for the provision of regional open space and recreational facilities.
- **\$21.25 per lot** for the administration of open space contributions.
- **\$1103.81 per lot** for the provision of local community facilities.

- **\$1694.84 per lot** for the provision of regional community facilities.
- **\$15.63 per lot** for the administration of community facilities contributions.
- **\$140,100** incurred towards the construction of the Rifle Range Road upgrade in conformity with condition 3.11(i) shall be deemed to be 65% of the Avalon Estate's total share of the cost of the construction of the WUEA Link Road.
- See Note 10 regarding the remaining 35% of Avalon Estate's contribution.
- **\$586.88 per lot** towards the construction of local area traffic management works and cycleway connecting the Wollongbar Urban Expansion Area to the Simpson Avenue Shopping Centre being 87.3% of the Avalon Estate's total share of the cost of this infrastructure.
- See Note 11 regarding the remaining 12.7% of Avalon Estate's contribution.



Contribution amounts will be calculated at the rate applicable at the time of payment.

The Open Space and Community Facility contribution rates shall be increased quarterly in accordance with the proportional increases in the corresponding contributions under the Ballina Shire Contributions Plan 2008 from the date of adoption of the schedule of works, being 1 November 2008.

The Roads contribution rates shall be increased quarterly in accordance with the indexing methodology outlined in the Ballina Roads Contribution Plan.

The payments required to be made for the W.U.E.A. Roads and Local Area Traffic Management Infrastructure shall be increased quarterly in accordance with the Sydney All Groups Consumer Price Index.

**6.9. Developer contributions for Subdivision**

Prior to the issue of the Subdivision Certificate, a total payment to Council of non-refundable monetary contributions is to be made towards the provision of public services and amenities, which are required as a result of the development.

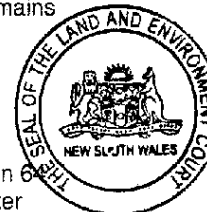
The current amounts required at the time of the issue of consent are:

- **\$284.10 per lot** for the provision of major shire wide road infrastructure.

Contribution amounts will be calculated at the rate applicable at the time of payment. This rate shall be increased in accordance with the formula contained in the Ballina Shire Roads Plan, Dated October 2002.

- 6.10. Prior to the issue of the Subdivision Certificate, payment is required to Council of a non-refundable monetary contribution towards the provision of water supply and sewerage infrastructure, for an amount of:

- **\$1576.00 per lot** for the augmentation of water supply mains and storage within Ballina Shire.
- **\$9313.00 per lot** for the augmentation of sewerage headworks.



These developer charges are levied in accordance with Section 6 of the Local Government Act 1993 and Section 306 of the Water Management Act, 2000. These developer charges are reviewed periodically by Council and the contribution amounts will be calculated at the rate applicable at the time of payment. Copies of the Contribution Plans may be viewed at the Council Chambers, corner of Cherry and Tamar Streets, Ballina.

- 6.11. Prior to the issue of the Subdivision Certificate, payment is required to Council (as a collection agent for Rous Water), of a non-refundable monetary contribution towards the provision of infrastructure development servicing in accordance with Section 64 of the Local Government Act 1993 and Section 306 of the Water Management Act, 2000 for an amount of:

- **\$3,600.00 per lot** for the amplification and provision of water supply infrastructure to meet the demands generated by new development on headworks and distribution works.

This rate is reviewed periodically and the contribution amounts will be calculated at the rate applicable at the time of payment. Copies of the Development Servicing Plans should be directed to Rous Water (Lismore).

It is noted that this fee may be waived where the development can demonstrate to Rous Water's satisfaction that it is a non-profit and charitable organization, which by virtue of carrying out such development is considered by Rous Water to be making a significant and positive contribution to the community.

#### Civil Works

- 6.12. All civil works approved under Section 138 of the Roads Act 1993 with the Construction Certificate are to be completed to the satisfaction of Council prior to issue of a Subdivision Certificate. All works are to be completed in accordance with the Northern Rivers

Local Government Development *Design and Construction Manuals* (as current at the time of construction works commencing). Where details are not addressed in these Manuals, the construction is to comply with the requirements of Council's *Subdivision Code*.

- 6.13. The construction of all car parking and vehicular accesses is to be in accordance with the approved design plans and the Australian Standards AS/NZS 2890.1: 2004. All works are to be certified by a suitably qualified consultant prior to issue of the Subdivision Certificate.

6.14. ***Concrete or similar parking areas***

The driveways and parking bays within the development are to be constructed of reinforced concrete or similar paved material. All driveway areas are to be adequately graded and drained to the stormwater system to ensure that stormwater is not directed onto adjoining properties.



6.15. ***Reinstatement of footpath area***

The Rifle Range Road footpath shall be evenly graded from the property boundary to the kerb and gutter to ensure that any surface water is conveyed directly to the kerb and gutter without ponding on the footpath area.

**Stormwater Management**

- 6.16. All stormwater management works within the site are to be completed in accordance with the approved plans prior to issue of the Subdivision Certificate.

**Easements**

- 6.17. Easements shall be created prohibiting the erection of buildings/structures over or adjacent to sewer and stormwater pipelines. The prohibition on the erection of buildings/structures shall extend horizontally on each side of the pipeline for a distance equal to the depth of the pipeline from the invert level to finished surface level. The minimum width of such easement shall be 3.0 metres. Details are to be approved by Council prior to issue of the Subdivision Certificate.

**Water Supply and Sewer Servicing**

- 6.18. All water supply and sewer works are to be completed in accordance with the approved plans and in accordance with Council's *Subdivision Code* (as current at the time of construction works commencing). All works are to be approved by Council prior to issue of the Subdivision Certificate.

**Certification**

- 6.19. Prior to the issue of a Subdivision Certificate, certification is to be provided that electricity and telephone services have been provided to each lot to the satisfaction of the relevant authorities.
- 6.20. The certification by a Registered Surveyor, prior to issue of a Subdivision Certificate, that all services and domestic drainage lines are wholly contained within the respective lots.

**Maintenance Bond**

- 6.21. Prior to the issue of a Subdivision Certificate, the following maintenance bond must be paid to Council which includes the amount of Goods and Services Tax payable. The bond is subject to review and may vary at the actual time of payment:

- Maintenance Bond: Equal to 5% of the estimated cost of the civil works (min \$1000)

A maintenance period of 12 months will apply from the date of issue of a Subdivision Certificate. The bond may be used by Council to maintain, repair or rectify works that are failing. The bond will be refunded upon completion of the 12 month period should no such failure occur.



**Works-As-Executed Drawings**

- 6.22. ***Submission of "works-as-executed" drawings***  
Prior to the release of the Subdivision Certificate, the applicant shall submit to Council a copy of a 'Works-as-Executed' (WAE) drawing and a computer disk copy of the WAE information. Separate drawings shall be provided for sewer and stormwater drainage. Such drawings are to be at a scale of 1:500 on transparent material. The applicant shall be deemed to have indemnified all persons using such drawings against any claim or action in respect of breach of copyright.
- 6.23. ***List of public infrastructure***  
In connection with the "Works-As-Executed" drawings the proponent shall submit a listing of all road, stormwater and sewer assets generated by the development. The format of the list shall conform to the proforma in Council's *Subdivision Code* (as current at the time).

**Restriction-As-To-User**

- 6.24. A 7.5m wide restriction on use is to be imposed on the eastern side of proposed Lots 42, 49 and 52 prohibiting the erection of any buildings or structures. This restriction is to be clearly indicated on the Deposited Plan and within a Section 88b instrument, as a restriction to each allotment affected.



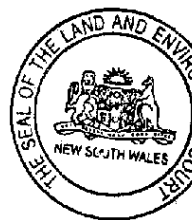
- 6.25. The Section 88b instrument must detail that 4KL rainwater tanks are to be provided for single dwelling allotments and 8KL rainwater tanks are to be provided for duplex developments. The tanks are to be directly connected to the dwelling house(s) for re-use.
- 6.26. Asset Protection Zones to be located on residential allotments are to be managed and maintained in accordance with the requirements of *Planning for Bush Fire Protection 2006*. This requirement is to be clearly indicated on the Deposited Plan and within a Section 88b instrument, as a restriction to each allotment affected.
- 6.27. A Section 88B restriction is to be placed on title of all residential lots to be created requiring the fitting of fly screens to all windows and external doors associated with any future dwellings to be established on the lots.

#### **Fencing**

- 6.28. A 1.8m high timber paling fence is to be provided along common property boundary between Lot 2 DP 258082, No. 155 Rifle Range Road, Wollongbar and proposed Lots 42, 43, 44, 45 and 48.

#### **REASONS FOR CONDITIONS**

- ensure compliance with the requirements of the Environmental Planning & Assessment Act, 1979;
- ensure compliance with the objectives of the Ballina Local Environmental Plan, 1987;
- ensure an appropriate level of amenities and services is available;
- protect the existing and likely future amenity of the locality;
- maintain, as far as practicable, the public interest;
- ensure compliance with the Building Code of Australia and relevant Australian Standards;
- ensure satisfactory compliance with relevant Council plans, codes and policies.



#### **ADVISORY MATTERS**

##### **1. *Disability Discrimination Act 1992***

The granting of this consent does not imply or confer compliance with the requirements of the *Disability Discrimination Act 1992 (DDA)*. The applicant is advised to investigate any liability that may apply under that Act. *Australian Standard AS 1428 – Design for Access and Mobility* should be consulted for guidance. The prescriptive requirements of Part 1 of the Standard apply to certain buildings requiring development consent.

Compliance with the BCA does not guarantee compliance with the DDA. The BCA provides important access provisions however:

- (a) it does not cover all developments that are subject to the provisions of the DDA;
- (b) it focuses primarily on access for people with disabilities which affect their mobility and does not address other disabilities, such as sensory disabilities; and
- (c) while it mandates improved access for people with disabilities, it is not framed in terms of "equality of access".

You are therefore advised to investigate your liability under the DDA with respect to any existing and proposed future works.

2. **Protection of the Environment**

The development is to be operated in accordance with the provisions of the *Protection of the Environment and Operations Act 1997* as it applies to issues of air quality, noise generation, water and wastewater quality.

3. **Noise control**

Use of the premises/services/equipment/ancillary fittings shall not give rise to an "offensive noise" as defined under the provisions of the *Protection of the Environment & Operations Act 1997*.

4. **WorkCover requirements**

The premises shall be operated in accordance with the requirements of the WorkCover Authority.

5. **Wastewater management advice**

All work carried out in connection with this approval must comply with any applicable standard established by the *Local Government (Approvals) Regulation 1993*, the *Local Government (Water, Sewerage and Drainage) Regulation 1993*, or by or under the Act.

6. Future Asset Protection Zones (APZ) required as part of the development may encompass land that will be located within a riparian corridor/area. Ecological management of the riparian area may conflict with that required for the APZ's. In this regard, the applicant will need to liaise with the NSW Department of Natural Resources to identify their management objectives do not conflict with those required for the APZ's by the NSW Rural Fire Service.

7. Any further development application for class 1, 2 & 3 buildings as identified by the Building Code of Australia must be subject to separate application under Section 79BA of the EP&A Act and address the requirements of *Planning for Bush Fire Protection 2006*.

8. A development application for a dwelling house upon any of the proposed allotments will be subject to the requirements of BASIX and must incorporate the initiatives of SEDA.

9. The future development of proposed Lot 141 may require the provision of a 2m wide shared pathway linking the proposed Avalon subdivision



to the 7(d) - Environmental Protection (Scenic/Escarpment) Zone (containing a recreational creek area).

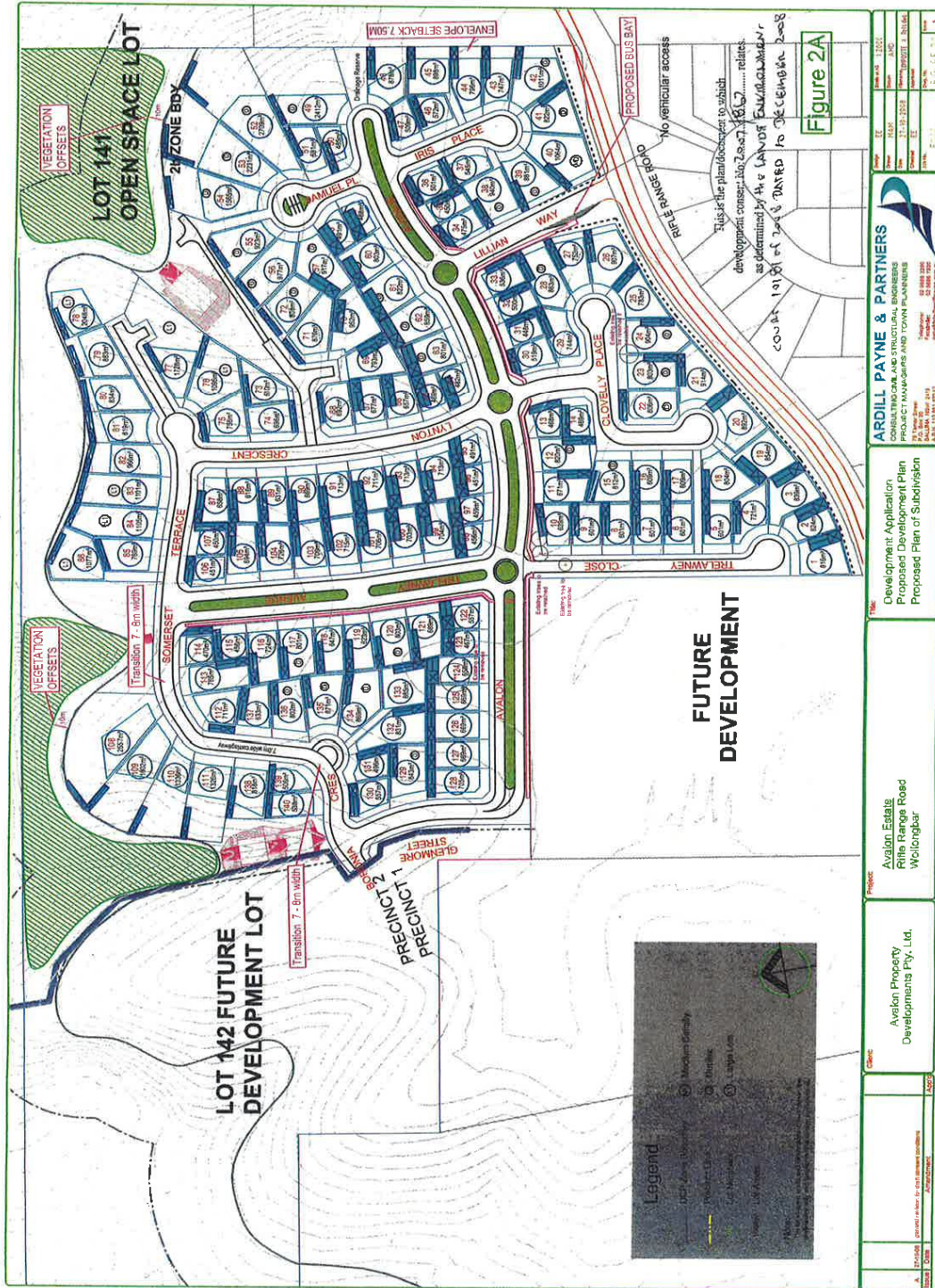
10. The remaining 35% of the contribution for the Avalon Estate will be paid as and when Subdivision Certificates are authorised by the Council for those lands to the west of Glenmore Street.

11. The remaining 12.7% of the contribution for the Avalon Estate will be paid as and when Subdivision Certificates are authorised by the Council for those lands to the west of Glenmore Street.



**Tim Moore**  
Commissioner of the Court







This plan is NOT to be used for construction purposes unless it carries the approval stamp of the local authority.



Let dimensions, areas, the location of services and utility of easements are subject to Council requirements, field survey by Registered Surveyor, Subdivision Certificate & Registration.

Design	MPA	Scale at 1:1000
Drawn	APP	Drawn
Check	2010-07-04	Approved
Checker		5012-PP-001
Job No.	5012	Doc. No.
		BCP-01

**ARDILL PAYNE & PARTNERS**  
 Consulting Civil & Structural Engineers Project Managers  
 Town Planners & Surveyors  
 Telephone: 02 6666 5280  
 Facsimile: 02 6666 7920  
 Email: info@ardillpayne.com.au  
 Website: www.ardillpayne.com.au  
 BALLINA NSW 2467

Client: Avaton Property Developments Pty Ltd  
 Title: Building Control Plan  
 Stage 1 - Land Release  
 Chapter 15 - Building Shire Council's  
 WUEA Combined DCP

Project: Avaton Estate  
 Rifle Range Road  
 Wollongbar NSW  
 Do not scale drawings. Use written dimensions only.  
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# ARDILL PAYNE

& P a r t n e r s  
www.ardillpayne.com.au e:info@ardillpayne.com.au  
ABN: 51 808 558 977



5012 section 82a cover letter (april 2013).doc

3 April 2013

The General Manager  
Ballina Shire Council  
PO Box 450  
**BALLINA NSW 2478**

**Attention: Regulatory Services Group**

**Dear Sir/Madam**

**re: Section 82A review of determination – DA 2012/337**

Ardill Payne & Partners has been commissioned by Messrs BR, RL and CR Brown and Two Minus Two Pty Ltd (Avalon Grazing) to provide professional services in the preparation of a review of determination (pursuant to Section 82A of the EP & A Act 1979) to have Council reconsider its refusal of Development Application No. 2012/337, which sought consent for the removal of one tree that straddles the boundary of two urban residential lots.

Attached herewith is the following:

- copy of the Section 82A review of determination document
- cheque for \$55.00 being the Section 82A fee as detailed in Council's Quote No. 1983 (dated 3<sup>rd</sup> April 2013)
- copy of Council's Quote No. 1983

Should you have any questions in respect of this matter, please contact me on 6686 3280 or [pauls@ardillpayne.com.au](mailto:pauls@ardillpayne.com.au).

**Yours faithfully**

Paul Snellgrove

**ARDILL PAYNE & PARTNERS**

**Engineers | Planners | Surveyors | Environmental | Project Management**

**BALLINA**  
79 Tamar Street  
PO Box 20  
BALLINA NSW 2478  
Ph: 02-6686 3280

**BRISBANE**  
Level 1, The Designbank  
89 Grey Street  
SOUTH BRISBANE QLD 4101  
Ph: 07-3123 6675

**GUNNEDAH**  
Germane House,  
285 Conadilly Street,  
GUNNEDAH NSW 2380  
Ph: 02-6742 9955

**ARDILL PAYNE**

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



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## **SECTION 82A REVIEW OF DETERMINATION**

Submission to Ballina Shire Council

To undertaken a review of determination  
of the refusal of DA 2012/337


Lots 23 & 24 DP 1162144  
No.s 13 & 15 Clovelly Place  
Wollongbar

for:  
Avalon Grazing

April 2013

**Document Control Sheet**

Filename:	5012 Section 82A review of determination (April 2013)
Job No.:	5012
Job Captain:	Paul Snellgrove
Author:	Paul Snellgrove
Client:	Avalon Grazing
File/Pathname:	

Revision No:	Date:	Checked By		Issued By	
		Name	Signed	Name	Signed
0	3.4.13			Paul Snellgrove	
1					
2					



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### **List of Appendices**

- Appendix A** Copy of Notice of Determination of Development Application No. 2012/337
- Appendix B** Copy of deposited plan
- Appendix C** Building Control Plan – Stage 1 Land Release

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## 1 Introduction

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*This section introduces and provides a general overview of the proposal and identifies general and background information on the project.*

### 1.1 Background

Ardill Payne (AP) has been engaged by Messrs BR, RL and CR Brown and Two Minus Two Pty Ltd (Avalon Grazing) to provide professional services in the preparation and lodgement of a Section 82A review of determination with Ballina Shire Council.

The proponents/owners of the subject land have requested that a Section 82A review be lodged with Council, with the intent of having Council reconsider its prior determination by way of refusal, and in doing so, grant consent to DA 2012/337.

### 1.2 Structure and Scope of Report

**Section 2.0** identifies the physical characteristics of the subject land and its local environmental context.

**Section 3.0** addresses the reasons for refusal.

**Section 4.0** provides justification for the removal of the tree.

**Section 5.0** reviews the statutory and planning policy provisions applying to the review.

**Section 6.0** provides a summary and conclusions.

A number of appendices form part of this application being:

**Appendix A** Copy of Notice of Determination of Development Application No. 2012/337

**Appendix B** Copy of deposited plan

**Appendix C** Building Control Plan – Stage 1 Land Release

### 1.3 **Planning and Land Use History**

Development Application No. 2012/337 was received by Council on the 20<sup>th</sup> August 2012 and sought consent for the removal of one (1) tree from land described as Lots 23 & 24 DP 1162114, No. 13 & 15 Clovelly Place, Wollongbar.

The refusal notice was issued by Ballina Shire Council (dated 7<sup>th</sup> November 2012) with the reasons for such being:

- “1. *The teak tree is in good health; and*
2. *Building envelopes have been established on each of the allotments and it is considered that the lots are of such suitable size and configuration to facilitate the construction of dwelling house(s) within the building envelope without impacting on the teak tree.*
3. *The removal of the teak tree is not in the public interest.”*

A copy of the refusal notice is provided at **Appendix A**.

### 1.4 **Overview of Statutory Framework**

The original development application was assessed by Council and did not comprise integrated development for the purposes of Section 91 of the EP & A Act 1979 and did not require concurrence.

### 1.5 **Landowner and Project Proponent Details**

The land to which DA 2012/337 and this Section 82A review relate is owned by Messrs BR, RL and CR Brown and Two Minus Two Pty Ltd (Avalon Grazing), 181 Rifle Range Road, Wollongbar.

Ardill Payne & Partners (PO Box 20, Ballina) was the original applicant to DA 2012/337 and is the applicant for this Section 82A review.

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## 2 The Site and Its Context

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*This section describes the subject land and identifies the geographical context of the site and its relationship to the surrounding locality and environment.*

### 2.1 Property Description

The land to which DA 2012/337 relates is described as Lots 23 & 24 DP 1162144, being No.s 13 and 15 Clovelly Place, Wollongbar.

A copy of the deposited plan is provided at **Appendix B**.

### 2.2 Site Analysis

The subject lots were created under the terms and conditions of DA 2007/876 which was approved by the NSW Land & Environment Court on the 10<sup>th</sup> December 2008. Both lots are vacant, fully serviced urban residential lots, that are situated within a developing urban residential estate/subdivision.

A detailed site analysis was provided in the Statement of Environmental Effects prepared by Ardill Payne & Partners (dated June 2007) that accompanied DA 2007/876.

With the exception of the subdivisional and building/construction works that have and are being undertaken on the site, under the terms and conditions of DA 2007/876 (and other approvals for dwellings), this site analysis has not changed since that date and provided detailed information in respect of the following, which remain pertinent to this application:

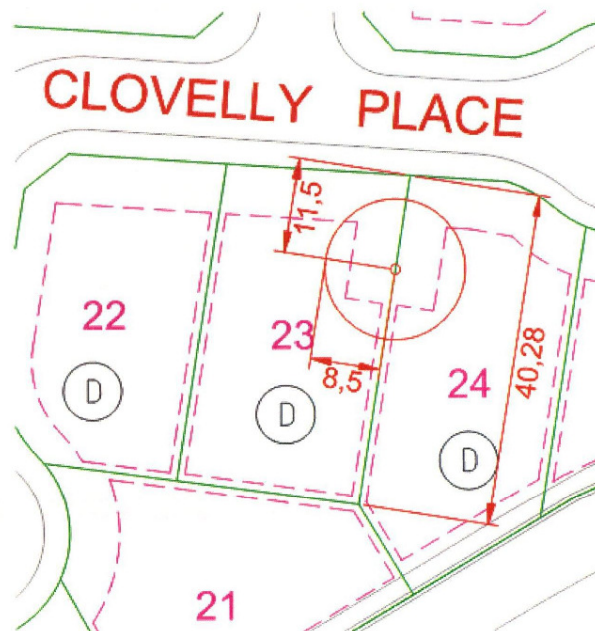
- location
- topography
- geotechnical
- soils
- acid sulfate soils
- flooding
- visual context
- bushfire
- noise
- flora and fauna
- contamination
- heritage
- adjoining and surrounding land uses
- infrastructure provision

- water and sewerage
- electricity
- telecommunications

Provided at **Appendix C** is a copy of the Building Control Plan – Stage 1 Land Release, which shows the location of the tree relative to the common boundary of the subject lots and the approved building envelopes on the lots.

The approved plan accompanying DA 2007/876 (prepared by APP, Job No. 5012, Figure 2A, Dated 27 October 2008) identified the subject Teak Tree as “Existing tree to be retained if possible”.

The following diagram shows the location and spread of the tree relative to the building envelopes for the subject lots.



---

**3 Reasons for Refusal**

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*The following comments expressly address the reasons for refusal and are provided to assist Council in its deliberation of the Section 82A application.*

***"1. The teak tree is in good health."***

It is submitted that the health of the tree is not of particular relevance to the proposed development as the proposal to remove the tree is not based/premised on its state of health.

The proposal to remove the tree is based on its inappropriateness in this urban residential context, particularly as a consequence of its location (on the common boundary of two medium density residential lots) and its size and spread. The tree has a trunk diameter of greater than 1m, a spread of approximately 17m and a height of 27m and is situated on the northern side of the subject lots.

***"2. Building envelopes have been established on each of the allotments and it is considered that the lots are of such a suitable size and configuration to facilitate the construction of a dwelling house(s) within the building envelope without impacting on the teak tree."***

Lots 23 and 24 DP 1162144 were designated duplex lots under the provisions of DA 2007/876 and the Ballina Shire Combined DCP 2006.

Lots 23 and 24 are now zoned R3 – Medium Density Residential under the provisions of the BLEP 2012 and are mapped on the dwelling density map of the DCP 2012 as having a maximum permissible density of 1 dwelling/300m<sup>2</sup> of site area, and thus have the ability to each contain 2 x detached dwellings (dual occupancy).

It is acknowledged that building envelopes have been established on each lot and that the size of such should be able to accommodate a detached dual occupancy.

However, it is evident that when the DCP was first prepared, the size and spread of the tree and the potential for impact into building zones/areas and on future dwellings from the tree's overhanging branches was not fully realised.

The tree will likely require substantial pruning (at the least) to enable duplex/dual occupancy dwellings to be constructed on each lot. Such pruning may compromise the integrity of the tree.

In addition to the above, the tree is located such that it will interfere with the construction of future boundary fencing.

The location of the tree is also such that the future construction and building works on the site will likely adversely impact its root system, and further there is potential for the roots to over time, damage foundations, concrete surfaces and under-ground infrastructure services (particularly water and sewer pipes).

**"3. The removal of the teak tree is not in the public interest."**

It is submitted that there is no real or tangible public interest issue with respect to the retention or removal of this tree. The tree is situated on private property and is not such that contributes greatly to the local landscape, streetscape or amenity of the subdivision and locality.

The tree was a singular paddock tree on a cattle grazing property and was retained over the years largely to provide shade for cattle.

The documentation accompanying DA 2007/876 (including the stamped approved plans) identified the subject tree as *"Existing tree to be retained if possible"*.

The subject tree has been retained thus far, however it is becoming evident that it has the potential to adversely impact and compromise, and be adversely impacted and compromised by, the future planned development of the lots for detached duplexes.

The visual character and setting of the land has and is continuing to change and be transformed from rural to urban residential and will thus be characterised by roads, residential buildings, improvements and domestic landscaping.

If the tree is removed and both lots are developed for dual occupancy purposes, the sites will be landscaped with more appropriate domestic type and scale vegetation and thus there will be a net floristic gain on the land in the longer term.



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**4 Justification for Removal of Tree**

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*This section provides further justification for the removal of the subject tree.*

The subject tree is situated on/straddles the common lot boundary of two duplex lots. This location has the potential to result in future on-going neighbour conflicts, due to uncertainties as to the ownership and/or control of the tree. As neither party will have total ownership and/or control of the tree, the responsibilities in relation to potential claims by impacts from falling limbs, pruning, maintenance, root damage to buildings and infrastructure etc will become problematic.

A number of court cases have been held in respect of these issues under the Trees (Disputes Between Neighbours) Act 2006 as this is often the only way to resolve disputes of this kind.

The developers of the estate are mindful that the tree will likely lead to dispute in the future between the residents of No.s 13 and 15 Clovelly Place, Wollongbar (being 2 residents on each lot), with the likely outcome of those disputes being an order to remove the tree. Avoidance of potentially costly litigation and neighbourhood disputes will be avoided by removing the tree now.

In addition to the above, the tree is also located such that it will interfere with the construction of future boundary fencing.

There is anecdotal evidence that household insurance premiums are now being impacted where large trees are located in close proximity to dwellings and the risk to personal injury from falling branches should not be overlooked.

The location of the tree is also such that the future construction and building works on the site will likely adversely impact its root system, and further there is potential for the roots to over time, damage foundations, concrete surfaces and under-ground infrastructure services (particularly water and sewer pipes).

In hind-sight, it would have been prudent to have sought consent for the removal of the tree under the terms and conditions of DA 2007/876.

As Council would appreciate, there will be an actual net floristic gain when dwellings are built on the two (2) lots as a consequence of domestic landscaping.

The Avalon Estate has been subject of extensive vegetation planting that has and will continue to be undertaken as part of the overall landscaping theme for the estate. Over 24 species specific street trees have been planted in Clovelly Place.

Being of larger spread than envisaged by the DCP plan, the tree's root system is likely to encroach further into the building envelope on the allotments and also Council's sewerage infrastructure traversing the front of the lots. The potential for damage to building footings and sewer cannot be overlooked. There is also a real potential for damage to the tree root system from the excavation and construction of driveways and parking areas associated with duplex development on the lots.

In considering this application, attention is drawn to Council's "Ballina Shire URBAN GARDEN GUIDE" which notes:

- To avoid planting large trees near houses and in small backyards.
- To avoid planting trees on the northern side of allotments as they have the potential to block winter sun and sunlight to solar energy devices.
- That the listed tree species, that rarely grow taller than 15m, are suitable for most suburban blocks.

The existence of the subject tree is actually contrary to the above guide in that:

- It is a large tree (27m in height) that will be situated on the boundary of two medium density (dual occupancy) lots and will be proximate to a total of 4 dwellings.
- It is situated on the northern side of the allotments and thus has the potential to block winter sun and sunlight to solar energy devices.
- It has a height of 27m which substantially exceeds the recommended 15m height.
- Some 57 tree species are listed as being suitable for suburban blocks, however the document does not list *Flindersia australis*.

Having regard to the above, it is requested that Council grant consent to the removal of the Teak Tree from the common boundary of Lots 23 and 24 DP 1162144, so that the lots can be fully developed for their intended purposes (construction of residential dwellings) without any problems/restrictions from an inappropriately sized and located tree.

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## 5 Statutory Planning Provisions

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*This section of the report identifies and addresses the applicable environmental planning instruments (EPIs) and policy planning documents that must be considered by Council in the consideration of this review.*

### 5.1 Section 82A considerations

APP has prepared this application on behalf of Messrs BR, RL and CR Brown and Two Minus Two Pty Ltd, and was the original applicant to DA 2012/337.

**Section 82A(1)** provides that where the consent authority is a Council, an applicant may request the Council to review a determination of the applicant's application, other than:

- (a) a determination to issue or refuse to issue a complying development certificate
- (b) a determination in respect of designated development
- (c) a determination in respect of integrated development
- (d) a determination made by the Council under Division 4 in respect of an application by the Crown

**Section 82A(2)** provides that a Council must, on a request made in accordance with Section 82A, conduct a review.

**Section 82A(2A)** provides that a determination cannot be reviewed after such time limited for the making of an appeal under Section 97 expires, if no such appeal is made against the determination.

**Section 82A(3A)** provides that in requesting a review, the applicant may make amendments to the development described in the original application subject to subsection (4)(c).

**Section 82A(4)** provides that Council may review the determination if:

- it has notified the request for review in accordance with the regulations (if so required) or a DCP (if so required)
- it has considered any submissions made in respect of the notification
- where amendments have been made to the original application, the consent authority is satisfied that the development as amended, is substantially the same development as that described in the original application

**Section 82A(4A)** provides that as a consequence of its review, the Council may confirm or change the determination.

**Section 82A(6)** provides that if the Council reviews the determination, the review must be made by another delegate of the Council who is not subordinate to the delegate who made the determination.

**5.2 Ballina Local Environmental Plan 2012**

The BLEP 2012 came into effect on the 4<sup>th</sup> February 2013 and has resulted in the land being zoned R3 – Medium Density Residential Zone.

The subject lots are both planned and zoned to be developed for a detached dual occupancy, and the proposed tree removal is required to facilitate such future development.

The proposal is therefore considered to be expressly consistent with the relevant provisions of the BLEP 2012.

**5.3 Ballina Development Control Plan 2012**

The DCP came into effect on the 4<sup>th</sup> February 2013. The DCP now contains a chapter that provides express controls for vegetation management works on urban zoned land.

Vegetation management works area defined in the DCP as “..any activity or work that affects vegetation and includes the undertaking of any of the following actions with regard to vegetation: burning, clearing, cutting down, destroying, felling, injuring, killing, logging, lopping, poisoning, pruning, removing, ringbarking, slashing, thinning, topping, digging up or uprooting.”

Section 3.1.2 of Chapter 2a – Vegetation Management identifies the development consent requirements applying to urban zones and the proposed removal of the tree is such that requires consent.

Section 4.2.1 of Chapter 2a provides the matters to be considered when determining an application for vegetation management works, comments on which are provided below:

- (a) The tree is not considered to be such that contributes greatly to the aesthetic qualities of the locality and does not comprise an important component of the skyline.

The tree was previously an isolated paddock tree on a grazing property that was largely retained as a shade tree.

The tree does not have any significant contribution to the aesthetic qualities of the landscape or streetscape, which is now being transformed from rural to urban.

The tree's contribution to the landscape will be significantly diminished as a consequence of the construction of future dwellings, domestic landscaping and street tree planting.

- (b) The tree is not such that makes a significant contribution to the amenity and character of the locality. The tree has not been identified in any prior studies as being of particular significance to the amenity and character of the locality and may actually detract from the amenity of the two lots as it will potentially cast significant shadows over the future dwellings and private open space areas on the lot.

The tree is not mapped on the Significant Urban Bushland Map of the DCP 2012 as being either:

- significant urban bushland, or
  - other significant vegetation
- (c) The tree is not such that is important from a cultural and/or heritage perspective. The tree has not been identified in any prior studies as having any particular cultural or heritage value.
- (d) The size (spread, height and root zone) is considered to be undesirable given the fact that it is situated on the common boundary of two duplex lots and has the potential to adversely impact, or be adversely impacted by, the future residential development of the two lots.
- (e) The tree has the potential to adversely impact private utilities and services that will be provided on the land when the lots are developed for duplex purposes.
- (f) Due to the tree being situated on the northern side and common boundary of two duplex lots, it has the potential to severely interfere with the ability to design and construct solar or communications appliances to the four future dwellings.
- (g) The tree is not in an overcrowded vegetation situation.

- (h) The tree is not identified as being of particular ecological significance in the local and regional context and is not such that provides particular habitat for native fauna.
- (i) The tree is not dying or diseased however, its integrity and survivability may be compromised when the lots are developed for future residential purposes (construction of buildings and ancillary improvements and structures, installation of underground infrastructure etc).

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**6 Conclusion**

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*This section of the report is the conclusion of the prior assessments.*

Council is requested to review its prior refusal of a development application to remove one tree that straddles the boundary of two new urban residential (duplex) lots within a recently developing residential estate.

The tree is considered to be inappropriate and its removal is reasonable having regard to the circumstances of the case being:

- it is situated on the common property boundary of two designated duplex lots
- it is a large tree that has the potential to adversely impact and damage future buildings and improvements (including underground infrastructure services)
- it is situated on the northern side of the lots and will block access to winter sunlight to future dwellings
- there will be a net floristic gain when the two lots are developed for residential purposes and are landscaped
- it has no particular heritage, ecological or aesthetic value
- its retention will likely result in conflicts between affected landowners due to the actual ownership of the tree not being clear

The development to which this review relates is exactly the same as that for which consent was originally sought.

The development is permissible with consent and is consistent with the objectives of the R3 – Medium Density Residential Zone under the BLEP 2012.

In conclusion and having regard to the particular circumstances of this case, it is respectfully requested that Council grant consent to this application.

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**7 Scope of Engagement**

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This report has been prepared by Ardill Payne & Partners (APP) at the request of Messrs BR, RL and CR Brown and Two Minus Two Pty Ltd (Avalon Grazing) for the purpose of a Section 82A review and is not to be used for any other purpose or by any other person or corporation.

This report has been prepared from the information provided to us and from other information obtained as a result of enquiries made by us. APP accepts no responsibility for any loss or damage suffered howsoever arising to any person or corporation who may use or rely on this document for a purpose other than that described above.

No part of this report may be reproduced, stored or transmitted in any form without the prior consent of APP.

The maps, development plans and other figures contained in this report are suitable only for the purposes of this report. No reliance should be placed upon this information for any purpose other than for the purposes of this report.

APP declares that it does not have, nor expects to have, a beneficial interest in the subject project.

To avoid this advice being used inappropriately it is recommended that you consult with APP before conveying the information to another who may not fully understand the objectives of the report. This report is meant only for the subject site/project and should not be applied to any other.



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APPENDIX A

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**Appendix A**  
Copy of Notice of  
Determination of Development  
Application No. 2012/337

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*Section 82A review of determination  
DA 2012/337  
Lots 23 & 24 DP 1162144*

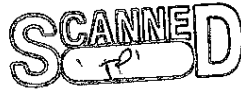
*Page 15*

enquiries refer

**Jenna McNabb**

In reply please quote

**DA 2012/337**



ballina  
shire council

Ardill Payne & Partners  
PO Box 20  
BALLINA NSW 2478

**NOTICE TO APPLICANT OF DETERMINATION OF A  
DEVELOPMENT APPLICATION**  
(Issued under Section 81(1)(a) of the Environmental Planning and  
Assessment Act 1979)

**Development Application No:** DA 2012/337

**Applicant:** Ardill Payne & Partners

**Subject Land:** Lots 23 & 24 DP 1162144  
No's. 13 & 15 Clovelly Place, Wollongbar

**Development Proposal:** To Undertake the removal of 1 Teak Tree  
(*flindersia australis*) from a Common Property  
Boundary

**Determination:** The development application has been determined by Ballina  
Shire Council on 7 November 2012 by way of **refusal for the  
following reasons:**

1. The teak tree is in good health; and
2. Building envelopes have been established on each of the allotments and it is considered that the lots are of such a suitable size and configuration to facilitate the construction of a dwelling house(s) within the building envelope without impacting on the teak tree.
3. The removal of the teak tree is not in the public interest.

 (initial)  
Assessment Officer

cnr tamar & cherry streets, p.o. box 450, ballina nsw 2478 dx 27789, ballina • ph 02 6686 4444  
• council@ballina.nsw.gov.au • www.ballina.nsw.gov.au



Signed:  ..... 7 November 2012

Rod Willis  
Group Manager  
Regulatory Services

on behalf of Ballina Shire Council

(For details concerning appeal rights relating to Council's determination, please see below.)

**Right of Appeal:**

If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act 1979 gives you, the applicant, the right to appeal to the Land and Environment Court within 6 months after the date on which you receive this notice or the date on which the application is taken to have been determined under Section 82(1).

Section 97 of the Environmental Planning and Assessment Act 1979 does not apply to the determination of a development application for local development that has been the subject of a Commission of Inquiry.

**Review of Determination:**

Section 82A of the Environmental Planning and Assessment Act 1979 gives you, the applicant, the right to request the Council to review the determination of your application. This request must be made within the time prescribed by Section 82A(2A) and be accompanied by the fee prescribed by Section 257 of the EP & A Regulation 2000. Review provisions do not apply to:

- (a) a determination to issue or refuse to issue a complying development certificate, or
- (b) a determination in respect of designated development, or
- (c) a determination in respect of integrated development, or
- (d) a determination made by the Council under Division 4 in respect of an application by the Crown.

 (initial)  
Assessment Officer

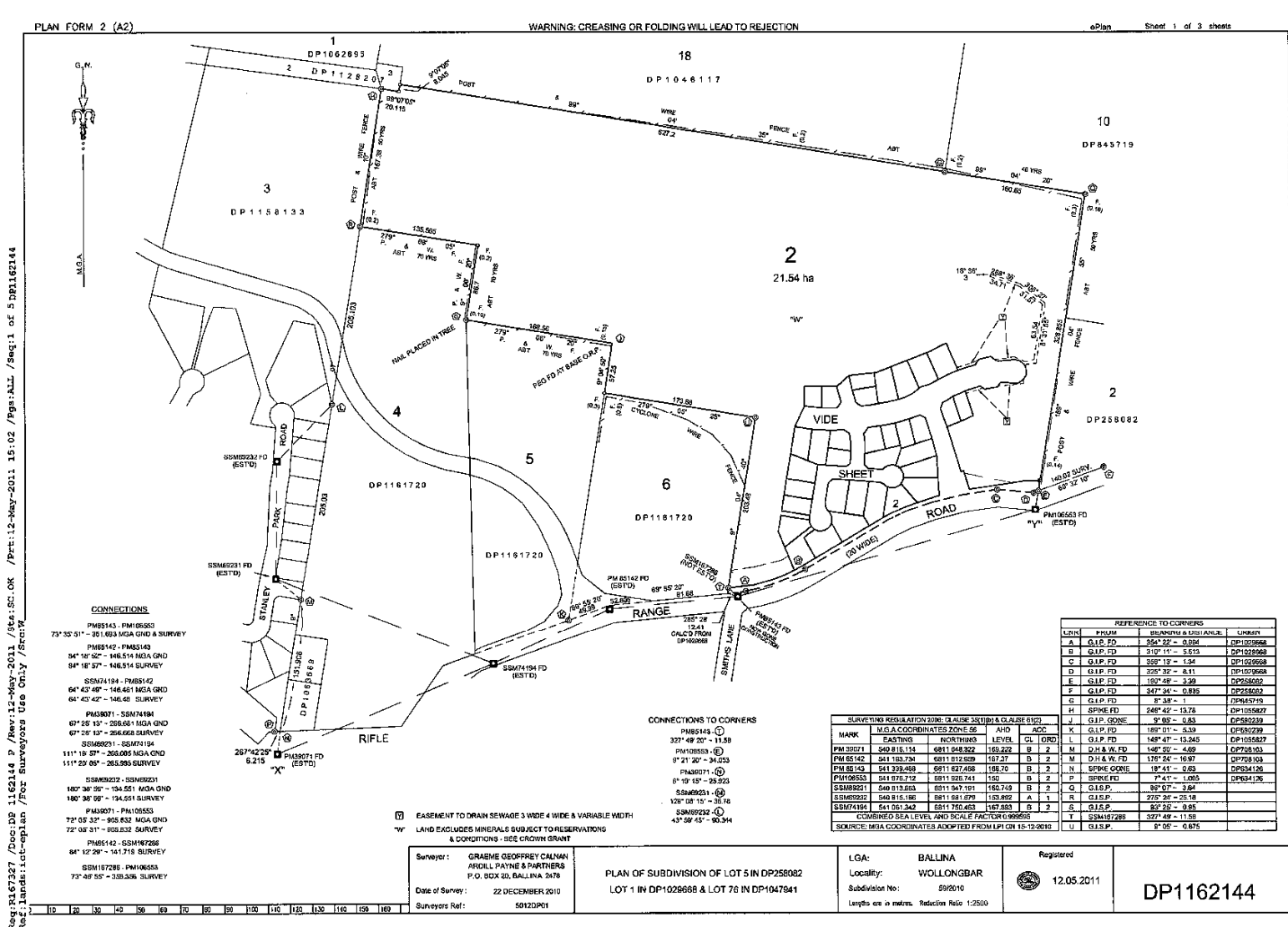
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APPENDIX B

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**Appendix B**  
Copy of deposited plan

8.1 DA 2012/337 - Removal of Teak Tree (S82A Review).DOC



Reg:R167327 /Doc:DP 1162144 P /Rev:12-May-2011 /Sc:SC OK /Prt:12-May-2011 15:02 /Pgs:ALL /Seq:1 of 5 DP1162144  
 Rec:lands:ict:epian /For Surveyors Use Only /Sc:PW

**CONNECTIONS**

PM85143 - PM105503
73° 35' 51" - 351.693 MGA GND & SURVEY
PM85142 - PM85143
34° 14' 52" - 148.514 MGA GND
84° 18' 57" - 148.514 SURVEY
SM74194 - PM85142
64° 43' 49" - 148.451 MGA GND
64° 43' 42" - 148.62 SURVEY
PM85141 - SM74194
67° 25' 15" - 258.561 MGA GND
67° 24' 13" - 258.668 SURVEY
SSM69231 - SSM74194
111° 16' 37" - 258.095 MGA GND
111° 20' 09" - 255.993 SURVEY
SSM69232 - SSM69231
180° 38' 55" - 134.551 MGA GND
180° 38' 56" - 134.551 SURVEY
PM85141 - PM105553
72° 05' 32" - 903.832 MGA GND
72° 08' 31" - 903.832 SURVEY
PM65142 - SSM187266
84° 12' 29" - 141.719 SURVEY
SSM187265 - PM105553
73° 40' 55" - 333.326 SURVEY

**CONNECTIONS TO CORNERS**

PM85143 - (1)
327° 49' 20" - 11.59
PM105553 - (2)
0° 21' 20" - 34.253
PM85141 - (3)
8° 19' 45" - 25.923
SSM69231 - (4)
128° 18' 15" - 35.14
SSM69232 - (5)
43° 58' 45" - 90.344

**SURVEYING REGULATIONS (CLAUSE 38(1)(b) & CLAUSE 61(2))**

MARK	EASTING	NORTHING	LEVEL	CL	DRD	AHD	ACC	K		
PM 52071	549 815.114	6811 648.922	163.229	B	2	M	D.H.A.W.F.D	148° 47' - 13.245		
PM 85142	541 103.734	6811 812.829	167.37	B	2	M	D.H.A.W.F.D	176° 24' - 16.97		
PM 85143	541 339.488	6811 837.488	168.70	B	2	N	S.P.M.E. CORNER	18° 41' - 0.63		
PM105553	541 676.712	6811 835.741	150	B	2	P	S.P.M.E. CORNER	7° 41' - 0.93		
SSM69231	540 815.653	6811 847.101	162.749	B	3	Q	G.I.P.F.	89° 07' - 1.64		
SSM69232	540 815.186	6811 841.079	153.892	A	1	R	G.I.P.F.	275° 24' - 25.18		
SSM74194	541 061.242	6811 750.493	167.883	B	2	S	G.I.P.F.	82° 22' - 0.85		
CONCRETE								T	SSM187266	127° 49' - 11.59
SOURCE: MGA COORDINATES ADOPTED FROM LPI ON 12-10-2010								U	G.I.P.F.	8° 05' - 0.675

**REFERENCE TO CORNERS**

LINK	FROM	BEARING & DISTANCE	TO
A	G.I.P.F.	354° 22' - 0.94	DP1028668
B	G.I.P.F.	310° 11' - 5.13	DP1028668
C	G.I.P.F.	355° 13' - 1.34	DP1028668
D	G.I.P.F.	325° 32' - 4.11	DP1028668
E	G.I.P.F.	150° 48' - 3.29	DP258002
F	G.I.P.F.	347° 34' - 0.835	DP258002
G	G.I.P.F.	8° 38' - 1	DP845719
H	S.P.M.E. CORNER	240° 42' - 15.74	DP1028668
J	G.I.P.F. CORNER	9° 05' - 0.83	DP850232
K	G.I.P.F.	189° 01' - 0.33	DP850232
L	G.I.P.F.	148° 47' - 13.245	DP1028668
M	D.H.A.W.F.D	148° 25' - 4.69	DP258002
N	D.H.A.W.F.D	176° 24' - 16.97	DP258002
O	S.P.M.E. CORNER	18° 41' - 0.63	DP845719
P	S.P.M.E. CORNER	7° 41' - 0.93	DP845719
Q	G.I.P.F.	89° 07' - 1.64	DP258002
R	G.I.P.F.	275° 24' - 25.18	DP258002
S	G.I.P.F.	82° 22' - 0.85	DP845719
T	SSM187266	127° 49' - 11.59	DP1162144
U	G.I.P.F.	8° 05' - 0.675	DP1162144

(7) EASEMENT TO DRAIN SEWAGE 3 WIDE 4 WIDE & VARIABLE WIDTH  
 (7) LAND EXCLUDES MINERALS SUBJECT TO RESERVATIONS & CONDITIONS - SEE CROWN GRANT

Surveyor: GRABE GEOFREY CALHAN  
 ANOILL PAYNE & PARTNERS  
 P.O. BOX 20, BALLINA 2478  
 Date of Survey: 22 DECEMBER 2010  
 Surveyors Ref: 5012DP01

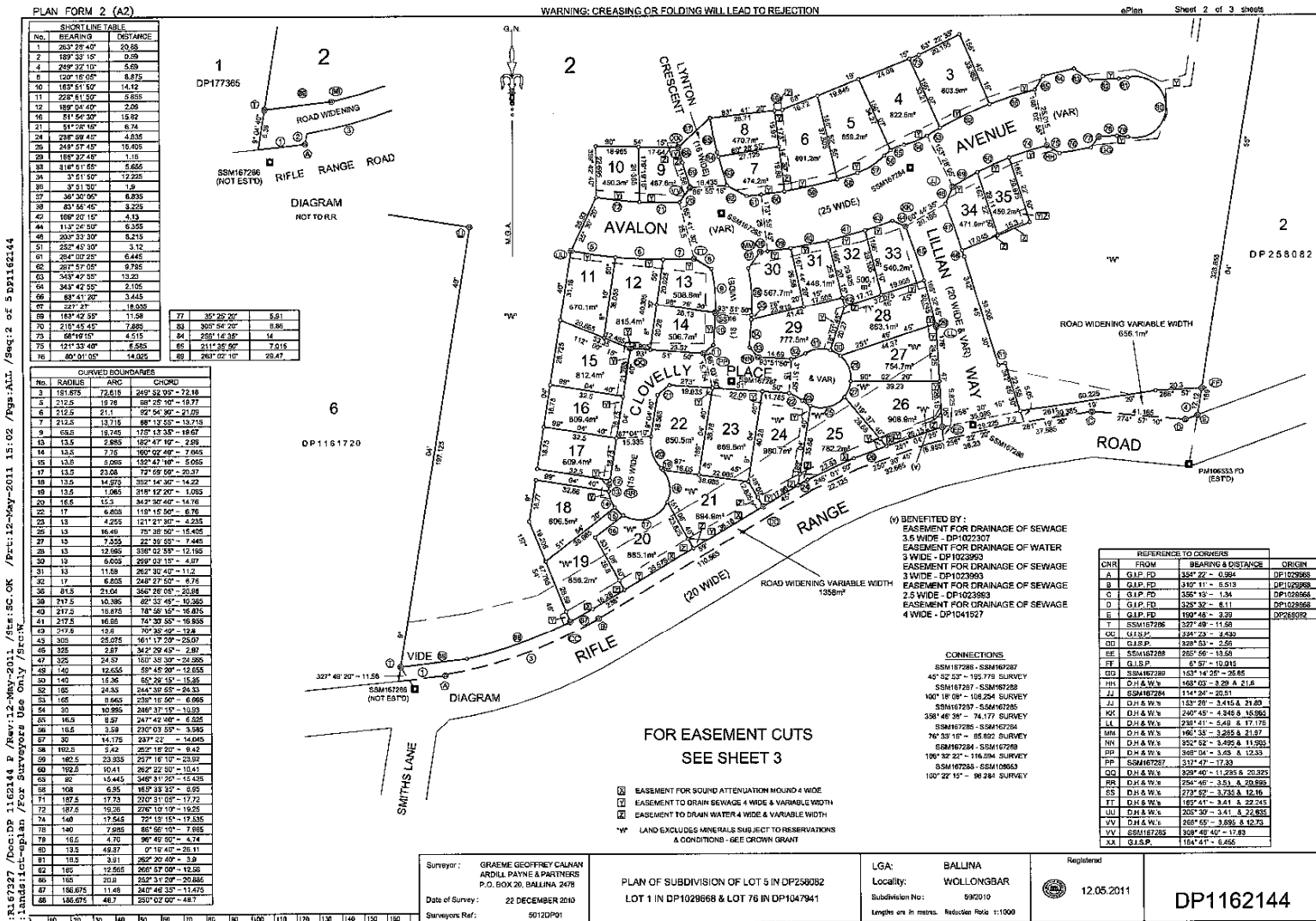
PLAN OF SUBDIVISION OF LOT 5 IN DP258002  
 LOT 1 IN DP1028668 & LOT 76 IN DP1047941

LGA: BALLINA  
 Locality: WOLLONGBAR  
 Subdivision No: 59/2010  
 Lengths are in metres. Reduction Ratio 1:2500

Registered  
 12.05.2011

DP1162144

8.1 DA 2012/337 - Removal of Teak Tree (S82A Review).DOC





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APPENDIX C

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**Appendix C**  
Building Control Plan –  
Stage 1 Land Release

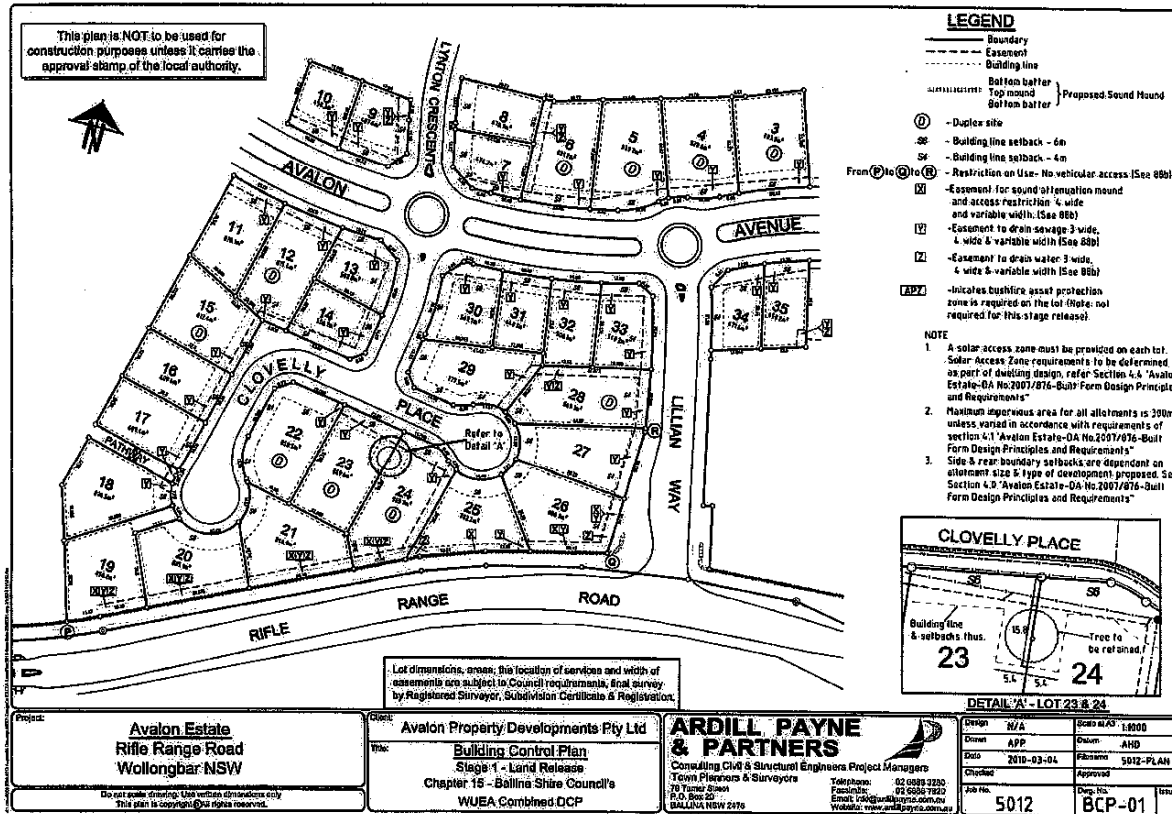
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*Section 82A review of determination*  
DA 2012/337  
Lots 23 & 24 DP 1162144

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Ballina Shire Combined Development Control Plan



LOT 23 & 24  
 D.P. 1162144