



LATE ITEMS

Ordinary Meeting 28 November 2013

Held at Ballina Shire Council Chambers
40 Cherry Street Ballina

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9.3 LEP Amendment Request - Ballina Heights Estate

Delivery Program Strategic Planning

Objective To invite the Council to initiate a planning proposal to recognise the intended residential development outcome for an approved subdivision located in the Ballina Heights Estate.

Reason for Urgency

Council has been approached by the owners of the Ballina Heights Estate with respect to concerns over the zoning of a number of residential lots that are due to be sold (i.e. settle) on Friday 29 November 2013. The concerns raised by the developers are that under the Ballina Local Environmental Plan 2012 (BLEP 2012) the lots are now zoned:

- R3 Medium Density Residential Zone – provides for a broad range of residential development forms including dual occupancies, residential flat buildings, multi dwelling housing and the like (and other compatible uses) and
- B2 Business Zone – provides for a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local areas

Under the original consent for this subdivision the land was intended to be developed and sold as low density residential (i.e. now R2 in the BLEP 2012 – this provides for low density residential development forms including dwellings and secondary dwellings (granny-flats) as well as other compatible uses).

The developers have concerns that under the BLEP 2012 zoning the land could be developed in a manner different to that originally intended and approved. This could impact on the overall planning for the Ballina Heights Estate along with causing distress for immediate neighbours, who will be anticipating that any adjoining properties will be developed in accordance with the R2 provisions.

In order to address this concern, the developers are asking that Council initiate a planning proposal at the November 2013 Ordinary meeting, as this will allow the Section 149 Certificates that will be issued with the contract for the sale of the land, to note that Council has supported the commencement of a planning proposal process.

With settlement to occur on Friday 29 November 2013 the matter is considered urgent enough to justify the consideration of this late report at the November meeting.

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The matter is considered to be of an urgent nature as the land that is the subject of this report is due to be sold (i.e. settle) on Friday 29 November 2013 and following settlement Council will not be in a position to include details of its intentions in respect to this land on the Section 149 Certificates to be issued with the contracts for sale.

A site plan is included in Attachment 1.

Background

The introduction of the BLEP 2012 involved the identification of existing residential allotments with appropriate zoning under the LEP either through application of an R2 Low Density Residential or R3 Medium Density Residential zone. Typically, existing low density lots received an R2 zone and existing duplex and medium density lots received an R3 zone.

Land within proposed urban release areas for which allotments had not been created, such as unreleased land within the Ballina Heights Estate, were generally (but not always, depending on the circumstances) zoned R3 Medium Density Residential under the new plan. This was to allow flexibility in development outcomes and to allow the development assessment process to determine the appropriate mixture of low and medium density residential forms within these areas.

Under this approach, the potential for development of the various residential forms is mainly determined by the size of the allotments created, with reference to development standards provided in the BLEP 2012 and DCP 2012.

Notwithstanding the above, Council was not able to recognise the intended zoning outcome for all lots that had been approved, but not created, during the process of the introduction of the BLEP 2012. This meant that in some cases, where approved lots were not created at the time the LEP zone provisions were applied, those lots were not subject to analysis regarding the most suitable residential zone type on an individual lot basis. This is because the individual lots did not exist in Council's property information system at the time zonings were applied.

In the case of the subject site, approval was granted as part of DA 2003/413 for the creation of 30 residential allotments comprising 28 low density lots and two medium density (duplex) lots. These development outcomes were not included in the BLEP 2012 for the reasons outlined above. As such, the subject site comprises a mix of zones including B2 Local Centre, R3 Medium Density Residential and R2 Low Density Residential. These zones do not reflect the development outcomes as preferred by the developer of the site and contained in the subdivision approval for Stage 7a of the Ballina Heights Estate granted in DA 2003/413.

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The reason for this report is to seek the Council's support to initiate a planning proposal to rectify these issues for the reasons outlined above. Subject to a favourable determination by the Council, a planning proposal will be drafted and submitted to the Department of Planning and Infrastructure for Gateway determination to adjust the zoning of the subject lots on the attached site plan. The planning proposal will seek to apply the R2 Low Density Residential Zone to all lots with the exception of the identified "duplex" lots which will have the R3 Medium Density Residential Zone applied.

In addition to the above, the planning proposal will also incorporate changes to the Lot Size Map to ensure the minimum lot size provisions are adjusted to match the land use zoning in consistency with Council's current adopted standards. Because the subject land is currently partially affected by the B2 Local Centre Zone, adjustments will also be required to the Floor Space Ratio and Height of Buildings map to ensure these controls also reflect Council's current adopted development standards for residential zones.

Should the Council resolve to support the initiation of a planning proposal to address the above issues; staff will prepare a planning proposal for submission to the Department of Planning and Infrastructure for Gateway determination. Following the receipt of an affirmative Gateway determination, the relevant community consultation and public exhibition process will be undertaken with the matter reported to the Council for endorsement following the conclusion of the consultation process and prior to final determination of the proposal.

Key Issues

- Residential development potential.
- Consistency with strategic planning intent and approved subdivision.

Information

The purpose of this report is to seek the Council's support in the initiation of a planning proposal to amend the BLEP 2012 as it relates to the lots identified on the attached site plan. These lots are formally identified as Lots 330-359 in DP 1189176. The land is currently part owned by the Roman Catholic Church and part owned by Vixsun Pty Ltd, being the developers of the Ballina Heights Estate. As noted earlier in this report, the sale of some of these identified lots is imminent and an urgent resolution to the identified zoning discrepancies is sought.

The subject land is currently partly zoned R3 Medium Density Residential, R2 Low Density Residential and B2 Local Centre under the terms of the BLEP 2012.

The land is generally identified for residential development in the Ballina Heights Structure Plan as adopted by Council in Chapter 3 of the DCP 2012. The land comprises Stage 7a of the Ballina Heights Estate and includes 30 residential allotments as approved by Council in DA 2003/413 on 3 June 2010. The intended land uses for the approved lots includes 28 low density residential allotments (generally intended for single dwellings and possible secondary dwellings (granny flats)) and two "duplex" lots (intended for medium density dual occupancy residential development).

This report recommends that the Council endorse the preparation of a planning proposal for referral to the NSW Government for Gateway determination. The planning proposal would seek to zone the subject land to reflect the development outcomes as detailed above.

Sustainability Considerations

- **Environment**

The rezoning of the land as recommended in this report is, under the circumstances, a minor matter and as such it is not likely to have any significant implications from an environmental, social or economic perspective. The rezoning is consistent with the existing subdivision approval for the land.

- **Social**

As above.

- **Economic**

As above.

Legal / Resource / Financial Implications

The approach recommended in this report is consistent with Council's legal responsibilities as a local planning authority. The matters arising from this report can be attended to within existing resources.

Consultation

It is envisaged that following referral to the Department of Planning and Infrastructure's Gateway panel, the planning proposal, if allowed to advance, will be placed on public exhibition in accordance with the Gateway determination. The period and method of community consultation will be stipulated by the Gateway.

Options

1. That Council resolve to prepare a planning proposal to advance the proposed rezoning and submit the planning proposal to the NSW Department of Planning and Infrastructure for Gateway determination; or
2. That Council not commence the rezoning process.

Option one is the preferred course of action on the basis that it will address the issues outlined in this report and will progress the matter to the next step in the rezoning process. This step involves a review of the proposal by the NSW Department of Planning and Infrastructure and Gateway determination.

It is recommended that Council proceed to the preparation of a planning proposal for submission to the Department of Planning and Infrastructure for Gateway determination primarily because the rezoning provides for consistency in the BLEP 2012 with previous decisions of Council in relation to the subdivision of the subject land. It should be noted that the Gateway determination may or may not allow the rezoning to proceed.

The primary disadvantage of the planning proposal not proceeding is the inconsistency that arises between the approved and anticipated use of the subject lots and the zoning under the LEP at present.

Where Council proceeds to submit a planning proposal for Gateway determination, Council has the option of requesting delegation of certain plan making functions from the Department. Under these delegations, Council would perform some of the plan making functions that are otherwise completed by the Department. In the subject case, it is recommended that this delegation be sought in order to expedite the rezoning process.

RECOMMENDATIONS

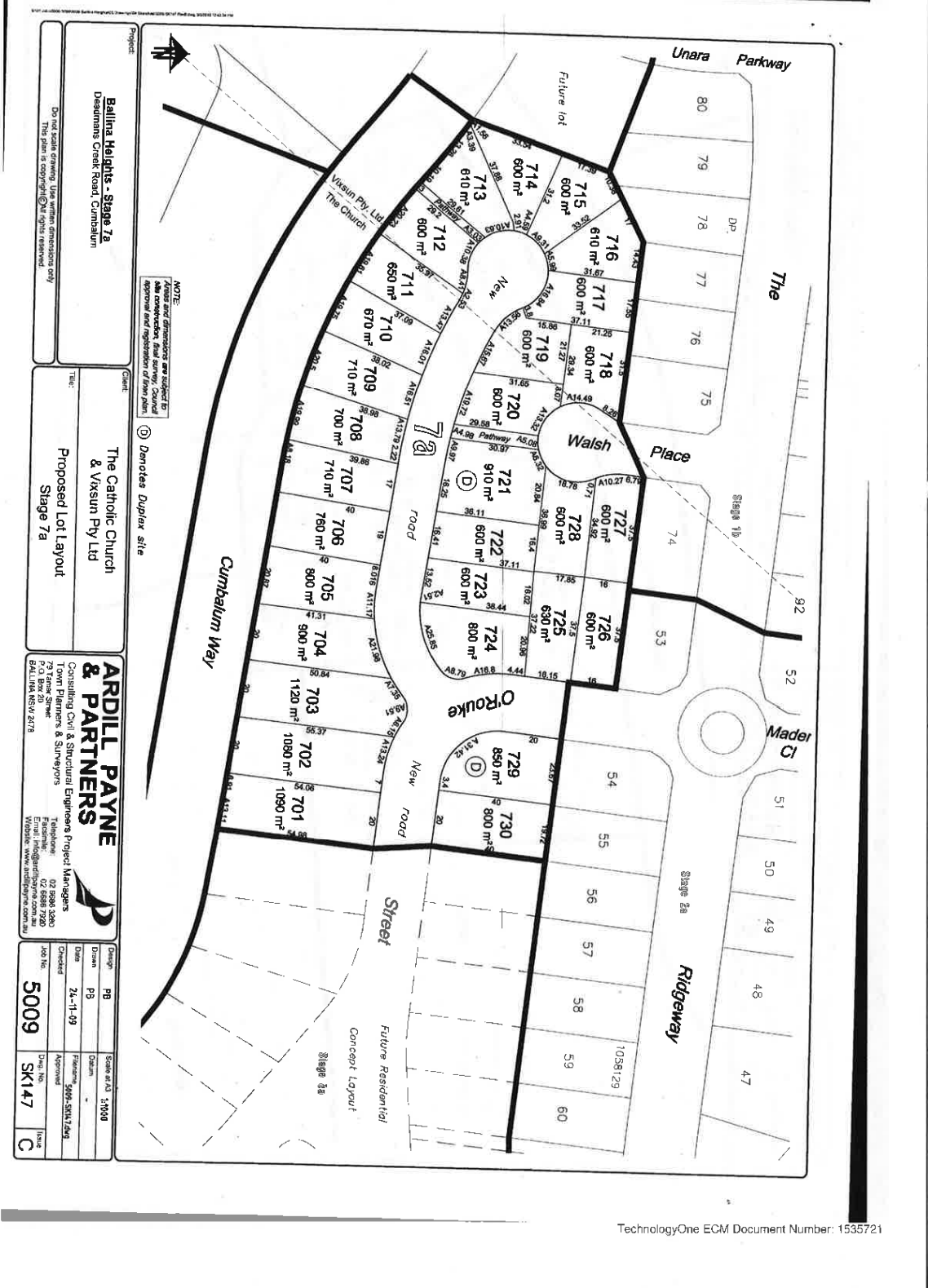
1. That the Council endorses the application of the R2 Low Density Residential zone to 28 lots and the R3 Medium Density Residential zone to two “duplex” lots consistent with the approved subdivision plan for Stage 7a of the Ballina Heights Estate as the basis for a planning proposal (as shown in the site plan contained in attachment 1).
2. That the Council authorises the preparation and submission of a planning proposal relating to the identified residential lots comprising Stage 7a of the Ballina Heights Estate to the NSW Department of Planning and Infrastructure for review and Gateway determination.
3. That upon an affirmative Gateway determination being received from the Department of Planning & Infrastructure, the procedural steps associated with progression of the planning proposal, including public exhibition, be undertaken.
4. That a further report be presented to the Council in relation to this matter following the mandatory community consultation.

Attachment(s)

1. Site Plan

9.3 LEP Amendment Request - Ballina Heights Estate

This is A Reprint Of A Scanned Image



NOTE:
 Areas and dimensions are subject to
 the cadastral, final survey, Council
 approval and registration of final plan.

Ⓧ Denotes Duplex site

Project:
Ballina Heights - Stage 7a
 Dasmanns Creek Road, Cumabulum

Client:
 The Catholic Church
 & Vixsun Pty Ltd
 Proposed Lot Layout
 Stage 7a

Design:
 Design: PB
 Date: 24-11-09
 Checked: Approved: SK147
 Job No: 5009
 Date No: SK147
 Issue: C

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