



Planning Proposal 21/005

» *133 Hutley Drive and No. 2, 6 & 12 Anchorage Avenue, Lennox Head*

January 2022 (V2 Exhibition) 21/97662

ballina
shire council



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1. Introduction

1.1 Summary of Planning Proposal

This planning proposal applies to Lot 1 DP 1239938, 133 Hutley Drive, Lennox Head (Lot 1), Lots 36-38, DP 1257681, No. 2, 6 & 12 Anchorage Avenue, Lennox Head (Lots 36-38) and adjoining road reserves. The subject land is located within the landholding known locally as the 'Epiq Estate'. Lot 1 comprises the Epiq Marketplace shopping centre.

Lot 1 and Lots 36-38 (outlined in red) and adjoining road reserves (outlined in blue) are shown in the site identification diagram contained in Figure 1.

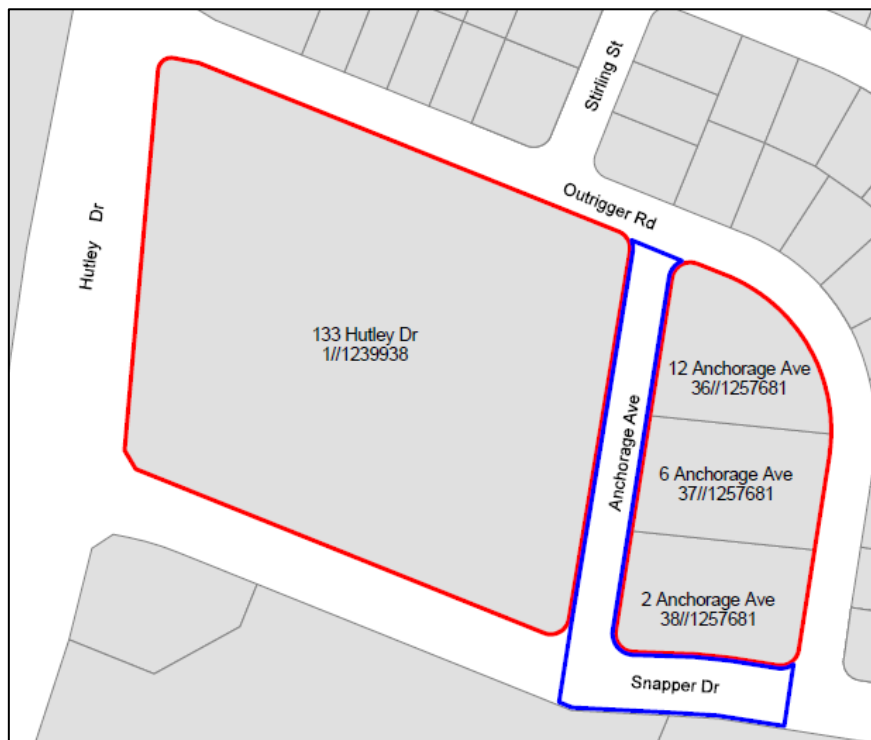


Figure 1: Site Location Diagram

The LEP amendment request in respect to Lots 36-38 has been prepared by Newton Denny Chapelle and is contained within Appendix 5.

This planning proposal seeks to amend the Ballina Local Environmental Plan 2012 (BLEP 2012) by amending the land zoning applicable to Lots 36-38 to R3 Medium Density Residential and to apply a minimum lot size of 450m².

A number of zoning inconsistencies also exist with respect to the adjacent commercial site (Lot 1) and adjoining road reserves. It is also sought to address these inconsistencies within the planning proposal.

Currently there are two zones and three differing lot sizes applicable to Lots 36-38, and two zones and two lot sizes applicable to Lot 1, as outlined in Table 1 below. The LEP amendment aims to rectify the mixed land zoning and minimum lot size over the four lots in order to provide consistency with the approved Concept Plan (Major Project 07_0026).

Table 1: Land Holdings Subject to the Planning Proposal

Lot/DP	Property Address	Land Zoning	Min. Lot Size (m ²)
36 / 1257681	12 Anchorage Avenue, Lennox Head	R3 Medium Density Residential	450 600
37 / 1257681	6 Anchorage Avenue, Lennox Head	R3 Medium Density Residential	450 600
38 / 1257681	2 Anchorage Avenue, Lennox Head	R3 Medium Density Residential B1 Neighbourhood Centre	450 600 800
1 / 1239938	133 Hutley Drive, Lennox Head	B1 Neighbourhood Centre R3 Medium Density Residential	450 800

1.2 Land to Which the Planning Proposal Applies

This planning proposal relates to Lots 36, 37 and 38, DP 1257681 located at 2, 6 & 12 Anchorage Avenue, Lennox Head and Lot 1 DP 1239938, 133 Hutley Drive, Lennox Head and adjacent road reserves, as indicated in Figure 1 above and the Site Identification Map contained within Appendix 1.

1.3 Council Resolutions

Council considered the matter at its Ordinary meeting held on 23 September 2021. The Council resolved as follows:

1. *That Council proceed to prepare a planning proposal to amend the land zoning and minimum lot size maps of the Ballina LEP 2012 to apply an R3 Medium Density Residential zone and 450m² minimum lot size to Lots 36 – 38, DP 1257681, sites 2, 6 & 12 Anchorage Avenue, Lennox Head.*
2. *That the planning proposal also make adjustments to the land zoning and minimum lot size in the immediate vicinity of Lots 36 – 38, DP 1257681, sites 2, 6 & 12 Anchorage Avenue, Lennox Head to provide for consistency with approved and constructed subdivision and land use outcomes.*
3. *That the planning proposal be forwarded to the Department of Planning, Industry and Environment for a Gateway determination.*
4. *That the Department of Planning, Industry and Environment be advised that Council wishes to exercise its delegated plan making functions for this LEP amendment.*
5. *That upon an affirmative Gateway determination being received from the Department of Planning, Industry and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.*
6. *That Council receive a further report on the matter following the completion of the public exhibition of the planning proposal.*

A copy of the report to the Council is contained in Appendix 3.

1.4 Gateway Determination

A Gateway determination allowing the planning proposal to proceed to public exhibition was issued on 28 October 2021. A copy of the Gateway determination is contained within Appendix Four.

2. Objectives & Intended Outcomes

The objectives of this planning proposal are to amend the Ballina LEP 2012 to adjust existing zoning and minimum lot size requirements with respect to Lots 36 – 38 DP 1257681, No. 2, 6 & 12 Anchorage Avenue, Lennox Head and Lot 1 DP 1239938, No. 133 Hutley Drive, Lennox Head and adjoining road reserves and to amend associated development controls.

The intended outcomes of this planning proposal will be to:

- Provide consistency with the Concept Plan approval that applies to Lots 36 – 38 DP 1257681.
- Facilitate the future subdivision of Lots 36 – 38, DP 1257681 for residential purposes.
- Remove the inconsistencies between the provisions of the BLEP 2012 and the adjacent commercial site (Lot 1 DP 1239938) and adjoining road reserves.

3. Explanation of Provisions

3.1 The Proposal

The proposed outcomes will be achieved by:

- Amending the Ballina LEP 2012 **Land Zoning Map** by:
 - deleting the R3 Medium Density Residential zone and applying the B1 Neighbourhood Centre zone to the whole of Lot 1 DP 1239938.
 - deleting the B1 Neighbourhood Centre zone and applying the R3 Medium Density Residential zone to Lot 38 DP 1257681 and adjacent road reserves.
- Amending the Ballina LEP 2012 **Lot Size Map** by:
 - deleting the 450m² minimum lot size and applying the 800m² minimum lot size to the whole of Lot 1 DP 1239938.
 - applying a 450m² minimum lot size to Lots 36 – 38 DP 1257681 and adjacent road reserves.
- Amending the Ballina LEP 2012 **Floor Space Ratio Map** by:
 - deleting the 0.6:1 FSR designation from Lot 38 DP 1257681 and adjacent road reserves; and
 - applying the 0.6:1 FSR designation to the whole of Lot 1 DP 1239938.
- Amending the Ballina LEP 2012 **Height of Building Map** by:
 - deleting the 9m HOB designation from Lot 38 DP 1257681 and adjacent road reserves and applying the 8.5m HOB designation; and
 - applying the 9m HOB designation to the whole of Lot 1 DP 1239938.

The thumbnail maps contained in Figures 2 to 5 indicate the mapping outcomes proposed by this planning proposal.



Figure 2: Existing and Proposed Zoning

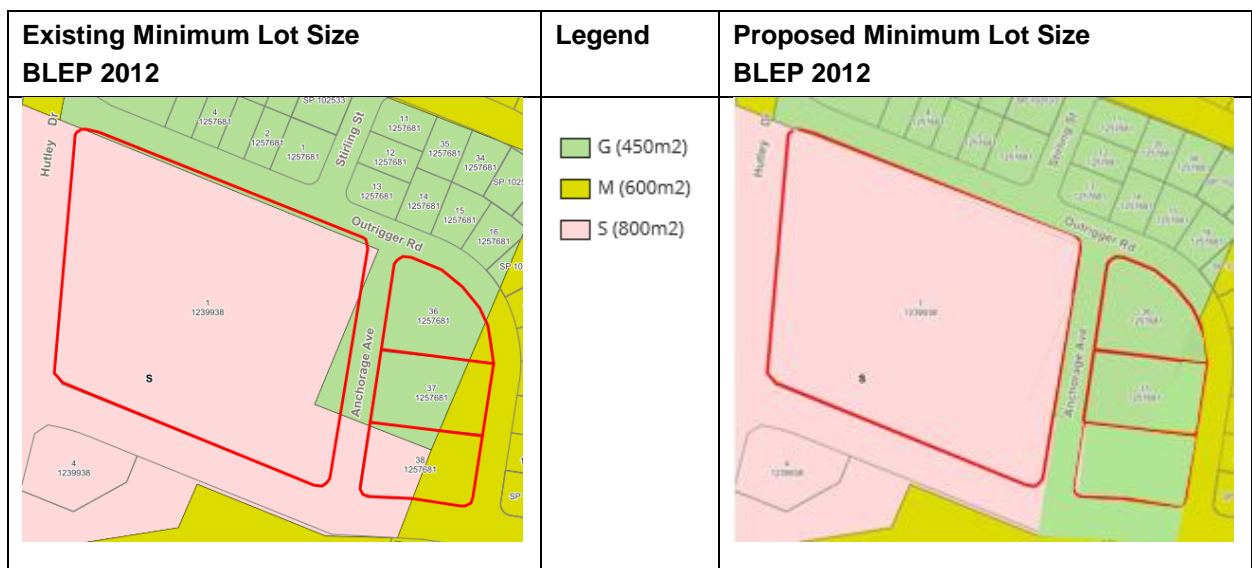


Figure 3: Existing and Proposed Lot Size

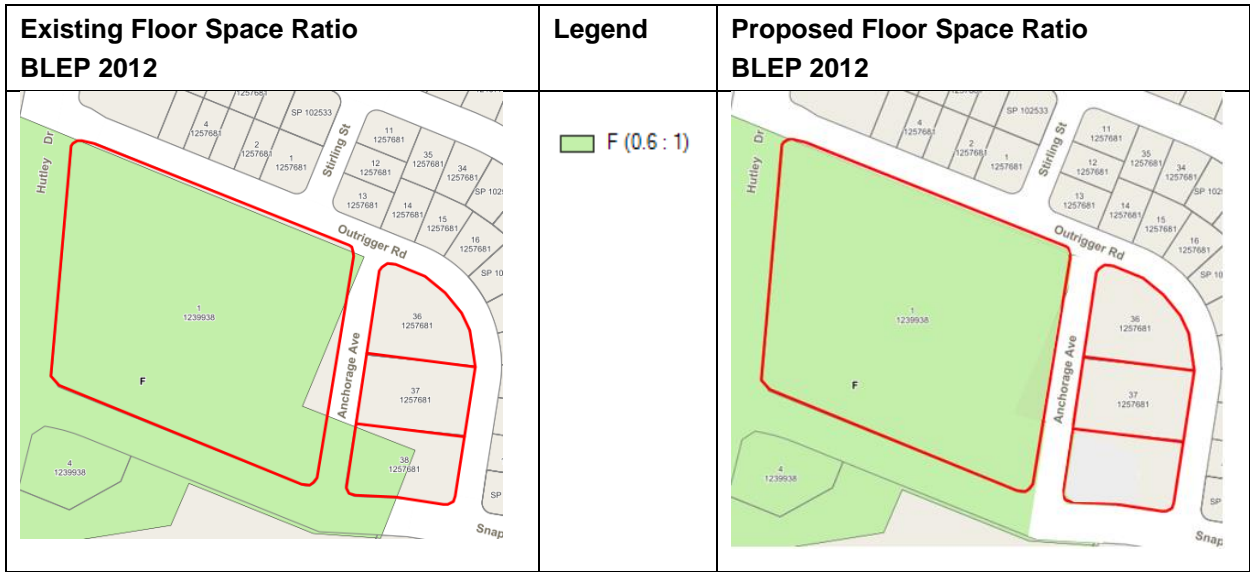


Figure 4: Existing and Proposed Floor Space Ratio

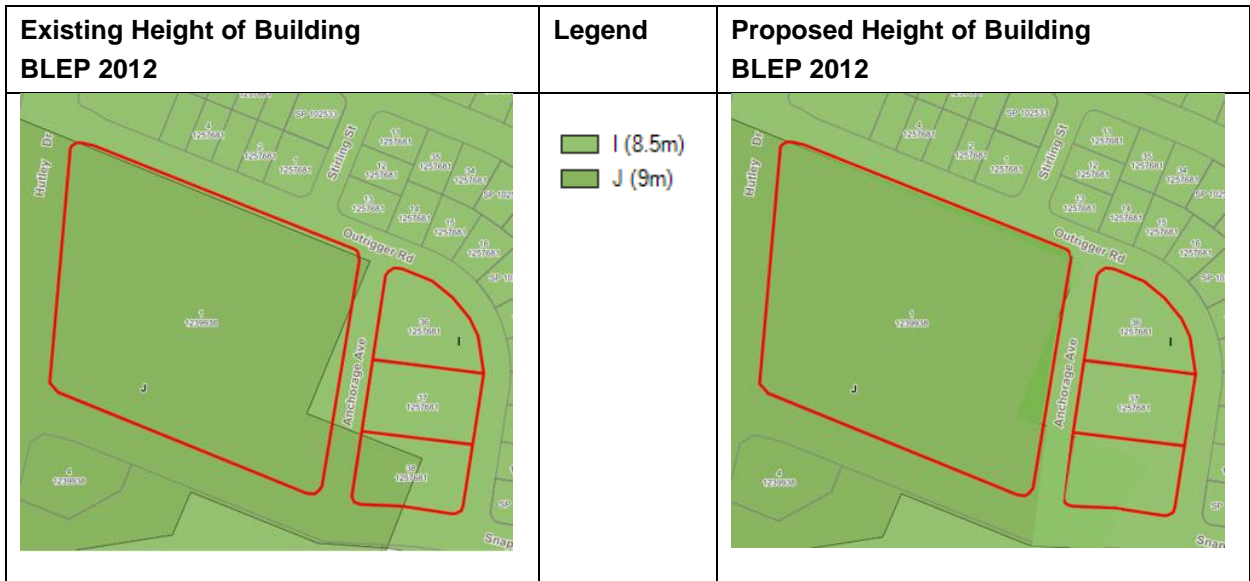


Figure 5: Existing and Proposed Height of Building

4. Justification

4.1 Section A – Need for the planning proposal

Q1 Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?

No, the planning proposal is not the result of a local strategic planning statement, strategic study or report.

The proposal is however generated through the inconsistency between the overarching Concept Plan approved for the Epiq Estate and the land zoning and minimum lot size provisions under the Ballina LEP 2012. In essence, the proposal provides for a housekeeping amendment to the Ballina LEP 2012 to address the inconsistency.

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

Yes. In order for a Development Application to be considered for the subdivision of the land to create residential housing as envisaged under the Concept Plan approved for the subject lands, a planning proposal is the appropriate and only mechanism to integrate these changes to the Ballina LEP 2012.

4.2 Section B – Relationship to strategic planning framework

Q3 Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?

North Coast Regional Plan 2036 (NCRP)

The planning proposal is consistent with the NCRP and in particular, *Direction 23 – Increase housing diversity and choice* which encourages housing diversity through the following action:

23.1 *Encourage housing diversity by delivering 40 per cent of new housing in the form of dual occupancies, apartments, townhouses, villas or dwellings on lots less than 400 square metres, by 2036.*

Q4 Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?

Ballina Shire Council Community Strategic Plan 2017-2027 (CSP)

The planning proposal is considered to be generally consistent with the Prosperous Economy and Engaged Leadership outcomes contained within Council's CSP.

Ballina Shire Local Strategic Planning Statement 2020-2040 (LSPS)

The purpose of the LSPS is to provide a land use planning vision for Ballina Shire in the 20-year period to 2040. The LSPS provides a level of consistency between key directions and actions within the North Coast Regional Plan 2036 and Ballina Shire's strategic planning priorities and actions. The planning priorities and actions contained

within the LSPS build on the strategic planning actions already contained within the CSP and the 2019-2023 Delivery Program and Operational Plan.

The planning proposal is considered to be generally consistent with the themes and planning priorities contained within the LSPS.

Ballina Shire Growth Management Strategy 2012 (BSGMS)

The planning proposal is consistent with the following principles of the BSGMS:

- *Facilitate opportunities for well-designed higher density residential development in central areas, within proximity to community and commercial facilities.*

Lennox Head Structure Plan 2004 (LHSP)

The subject land falls within the provisions of the Structure Plan which apply to the Pacific Pines (now Epiq Estate) area. The key actions for the land prescribed under the Structure Plan are:

- that any future development of the site comply with the development principles documented in Section 2.3.3;
(Note: in this instance, the proposal seeks to provide a variety of housing types and densities through the scope to provide for single dwellings and dual occupancy dwellings based on the proposed subdivision design and minimum lot size);
- that the revised layout include the community and commercial infrastructure envisaged in the current endorsed layout; and
- that the revised layout include opportunities for the provision of the southern extension of Hutley Drive as outlined in Section 4.8.3.

The LHSP envisaged residential development on the subject land. Consequently, the structure plan informed the initial Concept Plan for Epiq Estate, and therefore the subject lands in October 2008. The planning proposal is generally consistent with Council's LHSP.

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

The planning proposal is generally consistent with applicable State Environmental Planning Policies (SEPPs) as detailed in the table below:

SEPP Title	Compliance of Planning Proposal
SEPP No 55 – Remediation of Land	<p>Clause 6 of this SEPP was repealed on 17 April 2020 and the provisions relating to rezoning proposals were transferred to Ministerial Direction 2.6 Remediation of Contaminated Land.</p> <p>Refer to s.9.1 Direction checklist contained within Appendix 2 of this planning proposal.</p> <p>In summary, a SEPP 55 contaminated land assessment was completed for the Concept Plan approval and subsequent applications approved for the subject lots. It was considered that the site is suitable for the proposed uses.</p>
SEPP (Coastal Management) 2018	<p>The land is partially mapped as “Coastal Use Area” and entirely mapped as “Coastal Environment Area”.</p> <p>The proposal will not impact on the biophysical, hydrological or ecological integrity of the adjacent coastal wetland nor will it impact on the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland.</p> <p>The subject land is physically and spatially separated from any foreshore area or watercourses and is unlikely to impact on any coastal land or foreshore area. Future subdivision and residential development of the land will not adversely impact on any part of the coastal foreshore or any public land.</p> <p>The planning proposal is considered to be consistent with the provisions of, and is not contrary to, the intent of this SEPP.</p>

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

Yes. A number of section 9.1 directions are relevant to the planning proposal. A section 9.1 direction checklist for this planning proposal is provided at Appendix 2.

4.3 Section C – Environmental, social and economic impact

Q7 Is there any likelihood that critical habitat or threatened species, population or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

No. The Epiq Lennox Estate has been the subject of detailed ecological assessments as part of the Major Project (MP07_0026). As a result of the environmental assessments completed, the development is subject to both a Conservation Zone Management Plan and an Environmental Management Plan.

In specific regard to the land area, the land has been subject to preliminary earthworks associated with the approved Stage 1B and Release 4 and as such does not contain any vegetation cover. In summary, the ecological value of the land area subject to this application comprises:

- The site is heavily disturbed and native vegetation has been historically modified by clearing, disturbance and grazing.

- No compensation is required for the loss of improved pasture (the majority of the study area).
- There is no habitat for threatened fauna at the site.

As the site is identified for residential development under the Concept Plan approval and has development consent in place for the subdivision to create the three existing allotments, there are no likely impacts on critical habitat, threatened species or ecological communities or their habitat arising as a result of the proposed change of the land zoning and minimum lot size standard.

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

Potential environmental impacts in relation to the development have been identified and addressed below.

a) Soils - Contamination

Detailed assessments have been completed for Releases 2 & 3 together with the neighbourhood supermarket site which directly adjoins the subject lands. The assessments have identified no land contamination issues with the other Release areas and the neighbourhood supermarket site, detailed soil analysis has not been undertaken in this instance. This position was endorsed under DA 2020/618 for the multi-dwelling housing development.

b) Bushfire

The subject land is not identified as bushfire prone land as indicated in Figure 6 below.

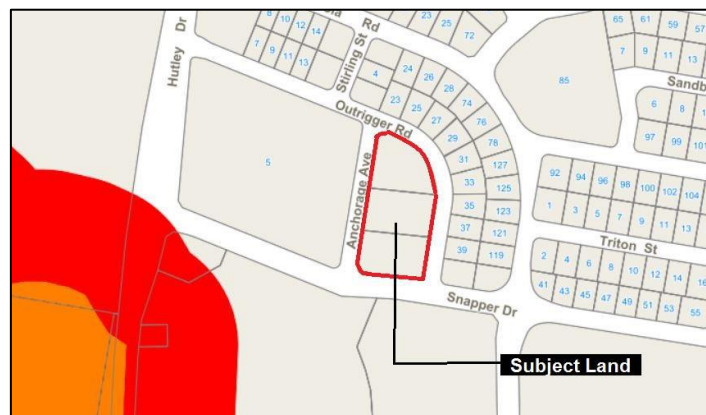


Figure 6: Bushfire Prone Land Map Extract

c) Acid Sulfate Soils

The subject land is mapped as containing part Class 5 Acid Sulfate Soils (ASS) as shown in Figure 7, therefore consent is not required unless works occur within 500m of Class 1, 2 or 3 land that is below 5m AHD by which the watertable is likely to be lowered. As the land is located less than 500m from Class 2 mapped soils, the proposed development will trigger the consent provisions in this instance and will be subject to Council's standard ASS management plan for minor works.

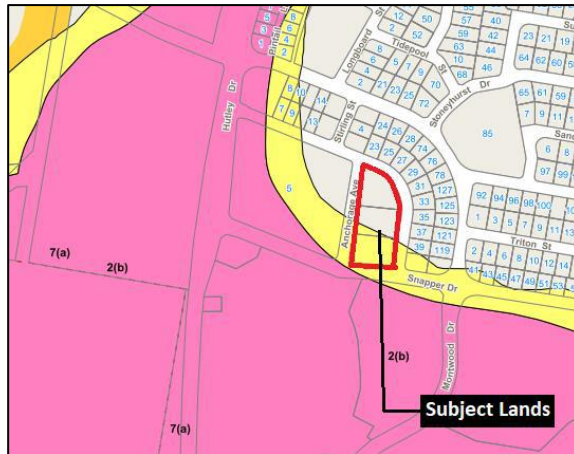


Figure 7: Acid Sulfate Soils Map Extract

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

The Concept Plan which applies to the subject lands provides for the use of the lots for residential purposes. The amendment involves addressing the current inconsistency between the land zoning and minimum lot size applying to the land. This planning proposal will facilitate the subdivision of the land and therefore provide for increased diversity of housing forms on the land.

The planning proposal is considered to provide benefits to the community via increased housing choice in close proximity to retail and community infrastructure. As such, social and economic outcomes resulting from the proposal are considered to be positive.

4.4 Section D – State and Commonwealth interests

Q10 Is there adequate public infrastructure for the planning proposal?

Infrastructure available to service the site and future residential development comprises the following:

- Electricity
- Water
- Sewer
- Telephone
- Sealed roadway

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

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

5. Mapping

The following maps will be prepared following the public exhibition of the planning proposal (Appendix 1):

- Map 1 – Land Zoning Map Ballina LEP 2012
- Map 2 – Lot Size Map Ballina LEP 2012
- Map 3 – Floor Space Ratio Map Ballina LEP 2012
- Map 4 – Height of Buildings Map Ballina LEP 2012

6. Community Consultation

This proposal will be exhibited in accordance with the Gateway determination and the terms of the *Environmental Planning and Assessment Act 1979*. It is anticipated that a minimum public notification period of 28 days will be applied to this planning proposal.

7. Timeline

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

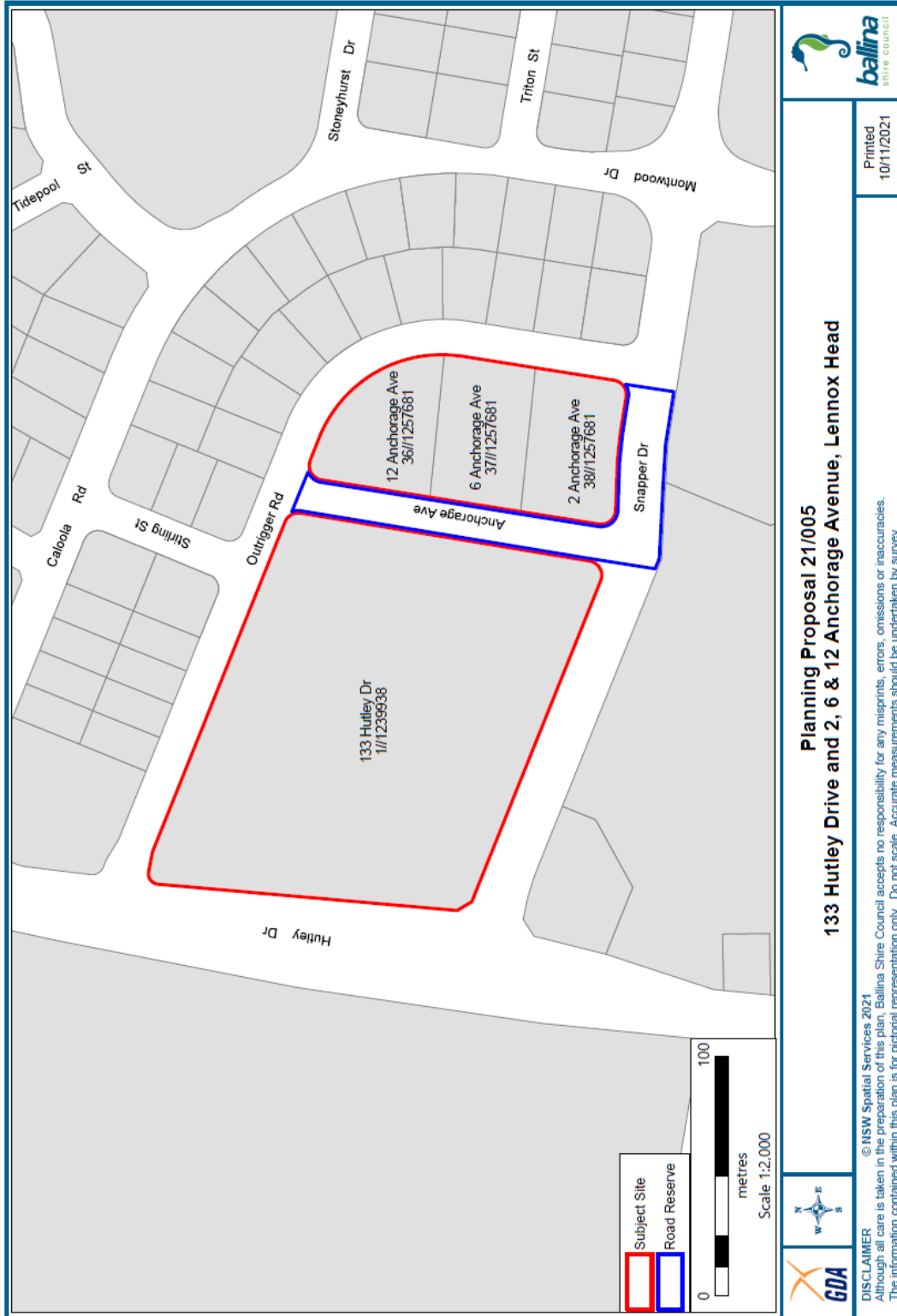
Plan Making Step	Estimated Completion (Before)
Gateway Determination	October 2021
Government Agency Consultation	N/A
Public Exhibition Period	January 2022
Public Hearing	N/A
Submissions Assessment	February 2022
RPA Assessment of Planning Proposal and Exhibition Outcomes	February 2022
Submission of Endorsed LEP to DPIE for Finalisation	N/A
RPA Decision to Make the LEP Amendment (if delegated)	March 2022 #
Forwarding of LEP Amendment to DPIE for Notification (if delegated)	April 2022

Council has been given delegation to exercise the functions of the local plan-making authority for finalisation of this LEP amendment.

8. Appendices

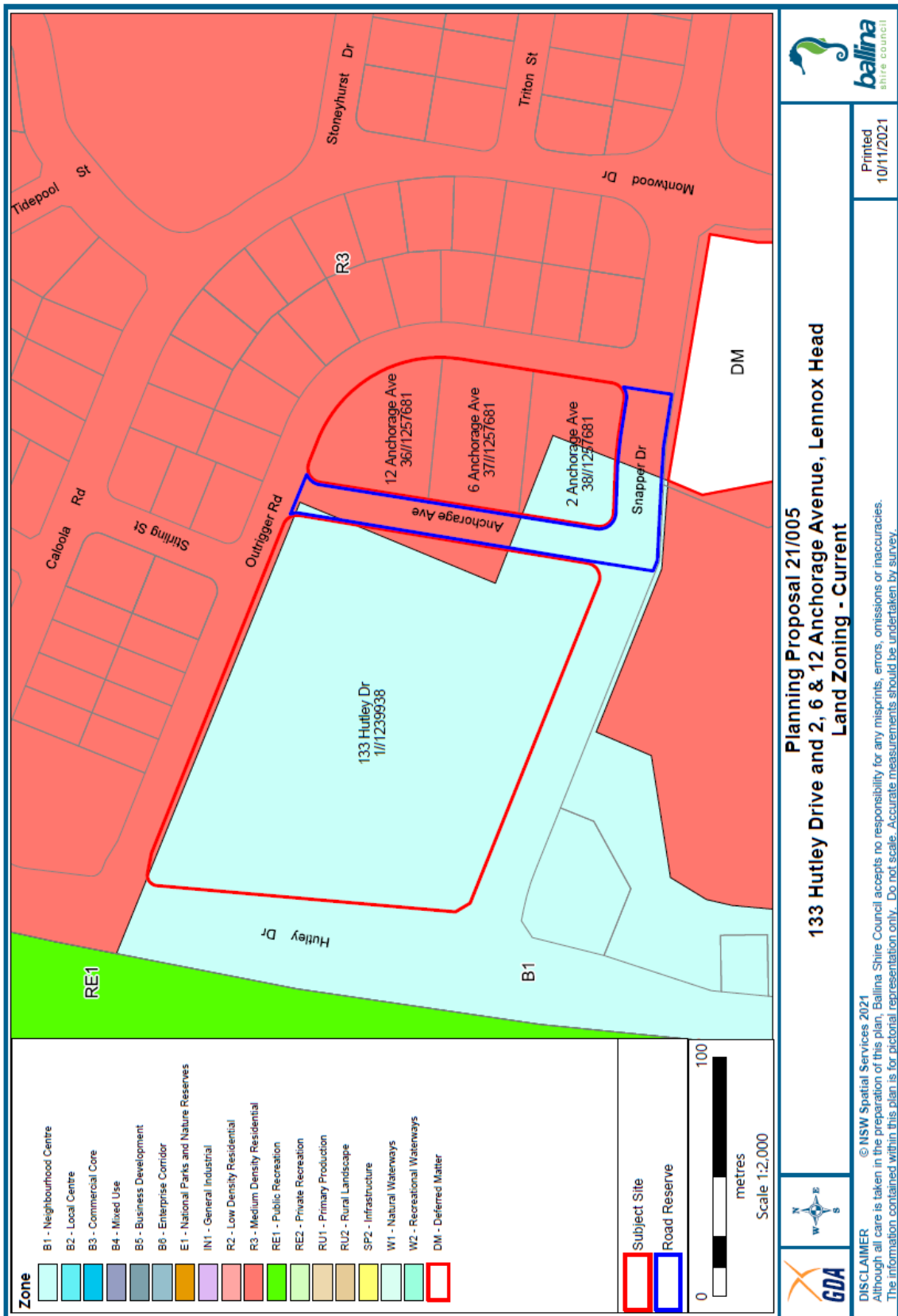
Appendix 1 – Maps

Site Identification Map

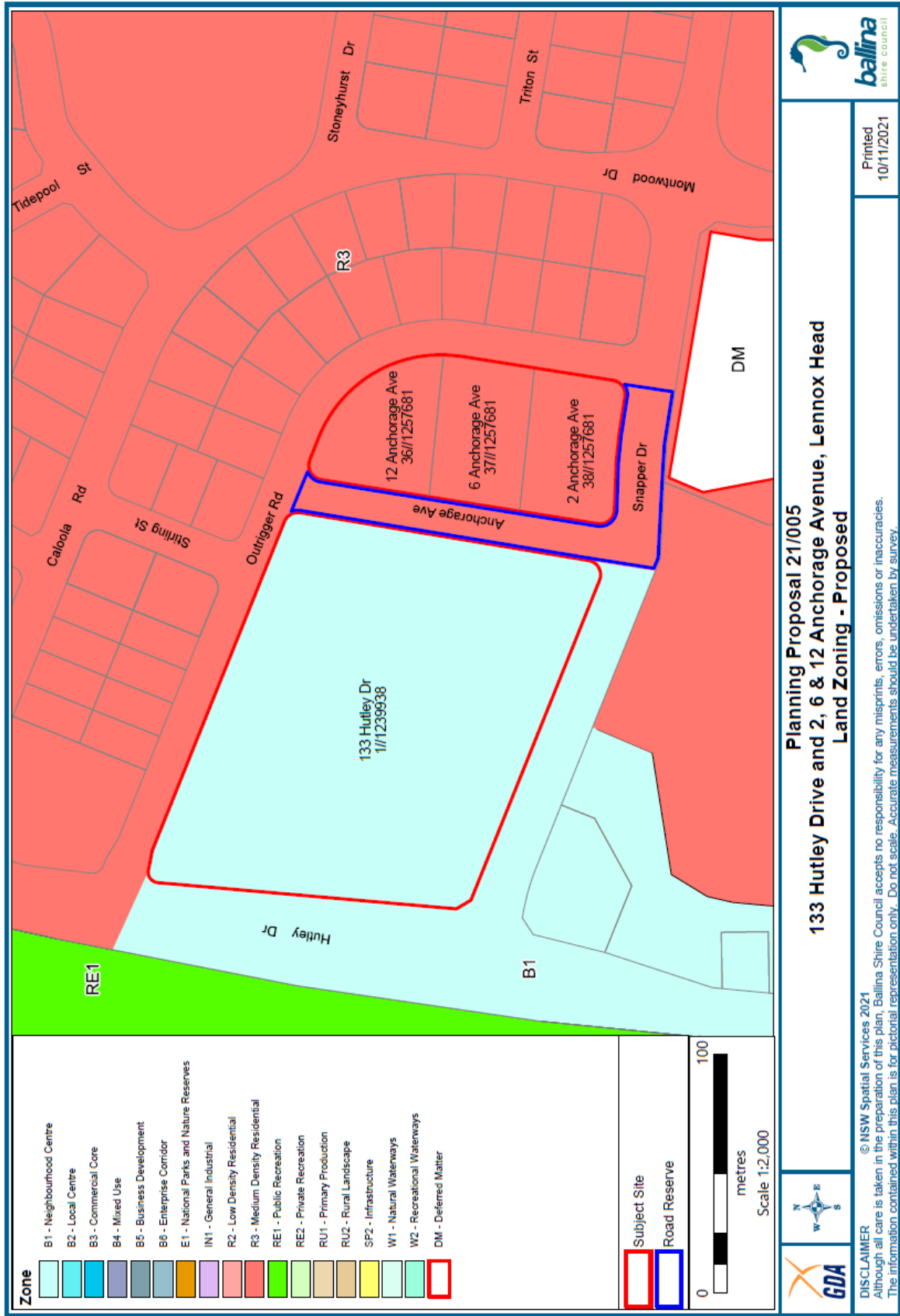


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Current Land Zoning Map Extract:



Proposed Land Zoning Map Extract:



Printed
10/11/2021

Planning Proposal 21/005
133 Hutley Drive and 2, 6 & 12 Anchorage Avenue, Lennox Head
Land Zoning - Proposed

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Appendix 2 – Section 9.1 Direction Checklist

Section 9.1 Direction Checklist Planning Proposal – No. 2, 6 & 12 Anchorage Avenue, Lennox Head and Lot 1 DP 1239938, 133 Hutley Drive, Lennox Head and adjacent road reserves	
Direction No.	Compliance of Planning Proposal
1. Employment and Resources	
1.1 Business and Industrial Zones	<p>Justifiably inconsistent.</p> <p>The planning proposal involves land that is zoned B1 Neighbourhood Centre. The requested amendment to rezone the B1 Neighbourhood Centre portion of Lot 38 DP 1257681 and adjacent road reserve to the R3 Medium Density Residential zone will essentially rectify the existing inconsistency between the Concept Plan and Ballina Local Environmental Plan 2012.</p> <p>In this respect, the current B1 zoning under the Ballina LEP within the Epiq Estate was determined by the originally approved Concept Plan (MP07_0026) which had envisaged commercial development extending further east along Snapper Drive. The Concept Plan was subsequently amended, and the Epiq Market Place has since been developed, whilst the subject lands have been approved for residential development. Accordingly, this proposal does not seek to remove commercial opportunities within the Epiq Estate as the land portion zoned B1 on Lot 38 DP 1257681 is not able to be developed for commercial uses under the Concept Plan. Accordingly, this proposal will align the Ballina LEP to the approved Concept Plan land use designations.</p> <p>In addressing subclause (4) of this direction, the following is submitted:</p> <ol style="list-style-type: none"> The proposal is not averse to the objectives of this direction as the commercial area approved for the Epiq Estate has been developed consistent with the approved Concept Plan. That is, this proposal does not adversely impact on opportunities for employment growth or protection of employment land. The proposal seeks to modify the land zoning in order to align to the business areas approved under the Concept Plan and developed within the Epiq Estate. The proposal does not reduce the total potential floor space area for employment uses or public services approved for the Epiq Estate under the approved Concept Plan (MP07_0026). The proposal does not reduce the total potential floor space area permitted for the Epiq Estate under the approved Concept Plan (MP07_0026). The proposal addresses the inconsistency between the Concept Plan and Ballina LEP 2012. Importantly, the theoretical development of the B1 zoned portion of Lot 38 is not able to occur by virtue of the Concept Plan approved land uses and master plan. Accordingly, this proposal is considered to adhere with the strategic planning for the site as presented through the approved Concept Plan. <p>The Director, Regions Northern Planning Services, Department of Planning, Industry and Environment in his letter dated 28 October 2021 has advised that he has agreed, as a delegate of the Secretary, that the inconsistency is justified and that no further approval is required in relation to this Direction.</p>
1.2 Rural Zones	Does not apply to planning proposal.
1.3 Mining, Petroleum Production and Extractive Industries	Does not apply to planning proposal.
1.4 Oyster Aquaculture	Does not apply to planning proposal.

Section 9.1 Direction Checklist	
Planning Proposal – No. 2, 6 & 12 Anchorage Avenue, Lennox Head and Lot 1 DP 1239938, 133 Hutley Drive, Lennox Head and adjacent road reserves	
Direction No.	Compliance of Planning Proposal
1.5 Rural Lands	Does not apply to planning proposal.
2. Environment and Heritage	
2.1 Environment Protection Zones	Consistent. The planning proposal does not involve the development of land identified as being of environmental significance.
2.2 Coastal Management	Consistent. The subject land is mapped as being partly within a coastal use area and wholly within a coastal environment area as defined by the <i>State Environmental Planning Policy (Coastal Management) 2018</i> . The proposal is not likely to impact on the biophysical, hydrological or ecological integrity of the adjacent coastal wetland, nor will it impact on the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland. The subject land is physically and spatially separated from any foreshore area or watercourse and is unlikely to impact on any coastal land or foreshore area. It is considered that this planning proposal is consistent with: (a) the objects of the <i>Coastal Management Act 2016</i> and the objectives of the relevant coastal management areas; (b) the NSW Coastal Management Manual and associated Toolkit; and (c) the NSW Coastal Design Guidelines 2003.
2.3 Heritage Conservation	Consistent. The site is not listed as containing an item of environmental heritage within Ballina LEP 2012.
2.4 Recreation Vehicle Areas	Consistent. The planning proposal does not involve the development of land for the purpose of a recreation vehicle area.
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	Does not apply to planning proposal.
2.6 Remediation of Contaminated Land	Consistent. Matters of land contamination have been considered by the Council when the land was initially zoned for residential purposes and within the Concept Plan approval (MP07_0026).
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	Consistent. The planning proposal will facilitate increased diversity in the choice and form of dwellings, facilitate improved efficiency in the servicing of land and provide for improved residential design outcomes. In addition, Ballina LEP 2012 includes an existing provision (Clause 7.7) that requires that adequate servicing be in place, or suitable arrangements to have been made for such servicing, before development proceeds.
3.2 Caravan Parks and Manufactured Home Estates	Does not apply to planning proposal.
3.3 Home Occupations	Revoked.

Section 9.1 Direction Checklist	
Planning Proposal – No. 2, 6 & 12 Anchorage Avenue, Lennox Head and Lot 1 DP 1239938, 133 Hutley Drive, Lennox Head and adjacent road reserves	
Direction No.	Compliance of Planning Proposal
3.4 Integrating Land Use and Transport	<p>Consistent.</p> <p>The planning proposal will provide for improved urban design outcomes in a manner consistent with <i>'Improving Transport Choice – Guidelines for planning and development'</i> (DUAP 2001).</p> <p>Importantly, the proposal relates to land which is approved under a Concept Plan for residential development and whereby transport arrangements relating to the design of the subdivision have already been considered. This proposal will not impact the transport arrangements already approved for the Epiq Estate.</p>
3.5 Development Near Regulated Airports and Defence Airfields	Does not apply to planning proposal.
3.6 Shooting Ranges	Does not apply to planning proposal.
3.7 Reduction in non-hosted short term rental accommodation period	Does not apply to planning proposal.
4. Hazard and Risk	
4.1 Acid Sulfate Soils	<p>Consistent.</p> <p>The land has been subject to an Acid Sulfate Soil (ASS) assessment as part of the subdivision application to create the three subject lots. In this respect, the proposed zoning or minimum lot size amendments to the BLEP 2012 will not be prejudiced by ASS pursuant to the ASS Model LEP in the ASS Planning Guidelines.</p>
4.2 Mine Subsidence and Unstable Land	Does not apply to planning proposal.
4.3 Flooding	Does not apply to planning proposal.
4.4 Planning for Bushfire Protection	Does not apply to planning proposal.
5. Regional Planning	
5.1 Implementation of Regional Strategies	Revoked.
5.2 Sydney Drinking Water Catchments	Does not apply to planning proposal.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Does not apply to planning proposal.
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Does not apply to planning proposal.
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	Revoked.
5.6 Sydney to Canberra Corridor	Revoked.
5.7 Central Coast	Revoked.
5.8 Second Sydney Airport: Badgerys Creek	Revoked.
5.9 North West Rail Link Corridor Strategy	Does not apply to planning proposal.
5.10 Implementation of Regional Plans	<p>Consistent.</p> <p>The planning proposal is consistent with the North Coast Regional Plan 2036.</p>
5.11 Development of Aboriginal Land Council Land	Does not apply to planning proposal.

Section 9.1 Direction Checklist	
Planning Proposal – No. 2, 6 & 12 Anchorage Avenue, Lennox Head and Lot 1 DP 1239938, 133 Hutley Drive, Lennox Head and adjacent road reserves	
Direction No.	Compliance of Planning Proposal
6. Local Plan Making	
6.1 Approval and Referral Requirements	Consistent. The planning proposal does not introduce any new concurrence or consultation provisions or any additional designated development types.
6.2 Reserving Land for Public Purposes	Consistent. The planning proposal does not create, alter or reduce existing zonings or reservations of land reserved for public purposes.
6.3 Site Specific Provisions	Consistent. The planning proposal does not relate to a specific development proposal to be carried out nor does it contain or refer to drawings that show details of the development proposal.
7. Metropolitan Planning	
7.1 to 7.13	Does not apply to planning proposal.

Appendix 3 – Council Reports

8.1 LEP Amendment Request - Anchorage Avenue, Lennox Head

8.1 LEP Amendment Request - Anchorage Avenue, Lennox Head

Section	Strategic Planning
Objective	To seek Council's direction regarding the initiation of an LEP amendment request relating to land located within the Epiq Estate, sites 2, 6 & 12 Anchorage Avenue, Lennox Head.

Background

Council has received a request to prepare a planning proposal to amend the Ballina Local Environmental Plan (LEP) 2012. Newton Denny Chapelle (NDC) has submitted the request on behalf of the owners of Lots 36-38 DP 1257681, located at 2, 6 & 12 Anchorage Avenue, Lennox Head (the site).

The site is located within the landholding known locally as the 'Epiq Estate'. The Epiq Marketplace shopping centre is situated immediately to the west of the site.

The LEP amendment request seeks Council's support to amend the LEP with respect to zoning and minimum lot size. Currently there are two zones and three differing lot sizes applicable to the site. The LEP amendment aims to rectify the mixed land zoning and minimum lot size over the three lots in order to provide consistency with the approved Concept Plan (Major Project 07_0026).

A copy of the LEP amendment request is included as Attachment 1.

The site is identified by red outline in Figure 1. Table 1 outlines the subject lands and the current land zoning and minimum lot sizes.

Figure 1: Site Location Diagram



8.1 LEP Amendment Request - Anchorage Avenue, Lennox Head

Table 1: Land Holdings Subject to the Planning Proposal

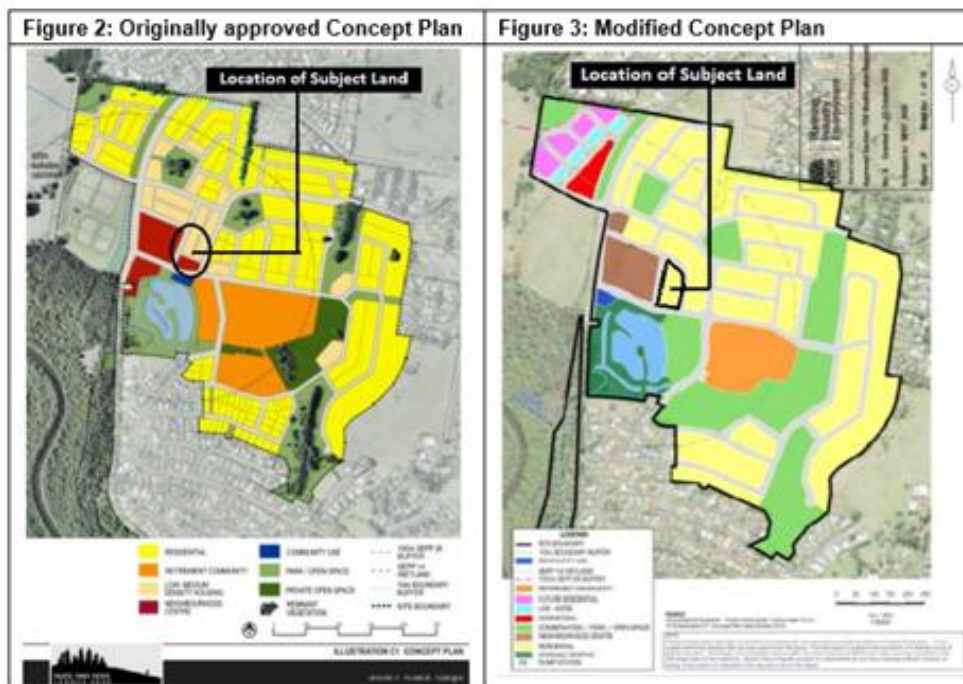
Lot/DP	Property Address	Land Zoning	Min. Lot Size (m ²)
38 / 1257881	12 Anchorage Avenue, Lennox Head	R3 Medium Density Residential	450 600
37 / 1257881	6 Anchorage Avenue, Lennox Head	R3 Medium Density Residential	450 600
38 / 1257881	2 Anchorage Avenue, Lennox Head	R3 Medium Density Residential B1 Neighbourhood Centre	450 600 800

Concept Plan – Major Project 07_0026

On 12 November 2008 the Minister for Planning granted approval to the Pacific Pines Estate (now known as Epiq Estate). In particular, Concept Plan Approval was given for a neighbourhood centre, a retirement community, residential subdivision, medium density housing, areas for revegetation and a road network. Project approval was also given to the first stage of the project.

The current land zonings and lot sizes reflect the Concept Plan land use designation which was current at the time the Ballina LEP 2012 was gazetted. Figure 2 shows the subject land as being designated partly for low/medium density housing and part neighbourhood centre.

The Concept Plan has been modified on several occasions to address the subdivision layout and land use designations over the Epiq Estate. The current Concept Plan (Figure 3) shows the site designated solely for residential land uses.



8.1 LEP Amendment Request - Anchorage Avenue, Lennox Head

As the current Concept Plan provides for the residential use of the subject land, the provisions of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017, Schedule 2, Clause 3B(2)(f) as provided below prevail:

3B(2)(f) the provisions of any environmental planning instrument or any development control plan do not have effect to the extent to which they are inconsistent with the terms of the approval of the concept plan.

Accordingly, despite the land containing a mixed zone, including the B1 Neighbourhood Centre over part of the land, the utilisation of the land for residential development under the Concept Plan prevails.

In line with the approved Concept Plan, the subdivision of the land into three residential lots was approved under Development Application 2017/204 on 28 September 2017. The subdivision was ultimately registered in October 2019.

Development consent (DA 2020/618) was subsequently issued on 28 May 2021 for an integrated multi-dwelling development comprising 25 residential dwellings.

However, a review of the development feasibility has resulted in the developer seeking to progress via the subdivision of land into smaller allotments capable of single dwelling or dual occupancy development.

The purpose of this report is to consider the key issues relating to the request and seek the Council's direction regarding the progress of the proposed amendment.

Key Issues

- Processing of LEP amendment request
- Flexibility in the use of residential land
- Diversity in housing forms
- Consistency with outcomes of approved Concept Plan

Discussion

In order to facilitate the orderly and economic development of the land, it is appropriate that the zoning and lot size applicable to the land be amended.

This will facilitate the future subdivision of the site and will remove inconsistencies between the provisions of the BLEP 2012 and the Concept Plan approval which applies to the site.

The thumbnail maps in Figures 4 and 5 show the existing land use zoning and minimum lot sizes applicable to the site, and the proposed amendments to zone boundaries and lot size (as requested by the proponent).

A number of zoning inconsistencies also exist with respect to the adjacent commercial site and adjoining road reserves. These inconsistencies can also be addressed in association with the requested changes.

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Figure 4: Existing and Proposed Land Zoning

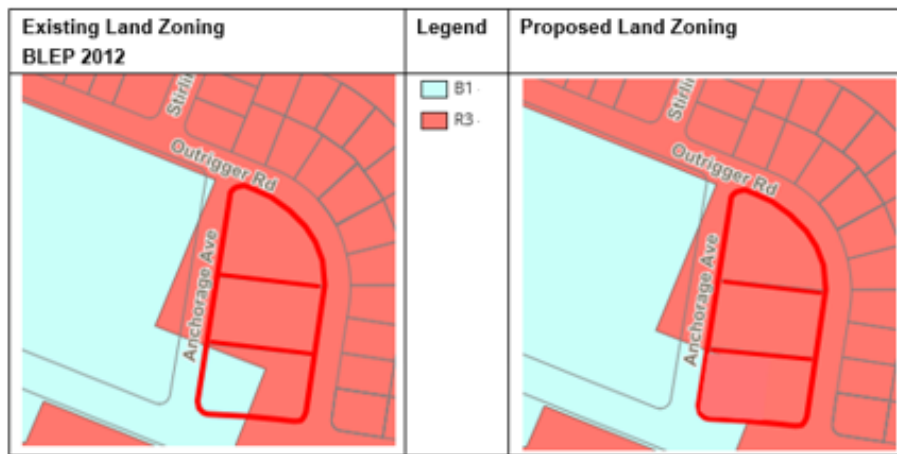
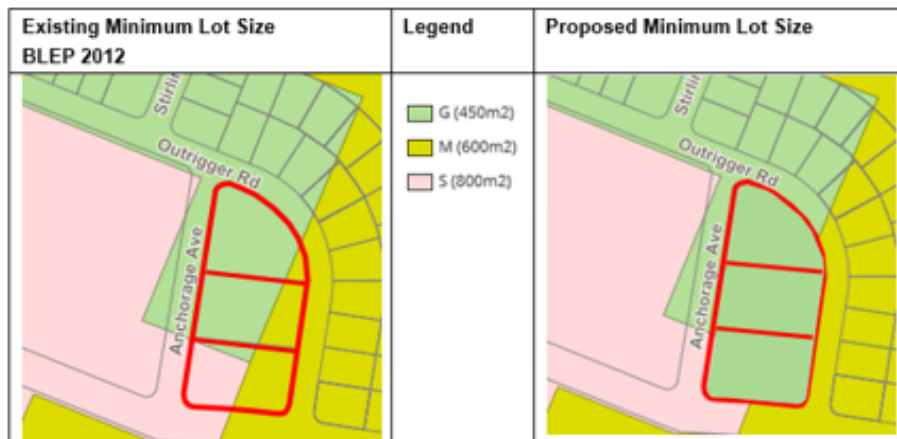


Figure 5: Existing and Proposed Lot Size



The planning proposal is consistent with the following local and regional plans.

North Coast Regional Plan 2036 (NCRP)

The proposal supports the achievement of Direction 23 of the NCRP which encourages housing diversity through the following action:

Action 23.1 - Encourage housing diversity by delivering 40 per cent of new housing in the form of dual occupancies, apartments, townhouses, villas or dwellings on lots less than 400m² by 2036.

Ballina Shire Growth Management Strategy 2012 (BSGMS)

The planning proposal is consistent with the following principles of the BSGMS:

8.1 LEP Amendment Request - Anchorage Avenue, Lennox Head

- *Facilitate opportunities for well-designed higher density residential development in central areas, within proximity to community and commercial facilities.*

Lennox Head Structure Plan 2004 (LHSP)

The subject land falls within the provisions of the LHSP which apply to the Pacific Pines Estate (now known as the Epiq Estate). The key actions for the land prescribed under the LHSP are:

- *That any future development of the site comply with the development principles documented in Section 2.3.3 (NB: these principles include provision of a range of housing types and densities);*
- *That the revised layout include the community and commercial infrastructure envisaged in the current endorsed layout; and*
- *That the revised layout include opportunities for the provision of the southern extension of Hutley Drive as outlined in Section 4.8.3.*

The LHSP envisaged residential development on the subject land and consequently, the Structure Plan informed the initial Concept Plan for the Epiq Estate. The planning proposal is generally consistent with the LHSP.

Recommendation

Having regard to the contents of this report, it is recommended that a planning proposal be prepared. The planning proposal would seek to amend the land zoning of the site to R3 Medium Density Residential and apply a minimum lot size of 450m² to the site.

Once the planning proposal has been prepared it is proposed to seek a Gateway determination from the Department of Planning, Infrastructure and Environment (DPIE) to allow the proposal to proceed to public exhibition.

Council would then be invited to further consider and confirm the merits of the planning proposal and its finalisation following public exhibited.

Delivery Program Strategy / Operational Plan Activity

The content of this report relates to action HE3.1j – *Manage LEP amendment requests* in Council's adopted Delivery Program and Operational Plan.

Community Consultation Policy

No community or agency consultation has occurred to date with respect to this matter.

This matter will be subject to the usual community and agency consultation requirements associated with planning proposals and would be subject to the terms of any Gateway determination issued by DPIE.

A minimum public consultation period of 28 days is proposed.

8.1 LEP Amendment Request - Anchorage Avenue, Lennox Head

Financial / Risk Considerations

The preparation of a planning proposal can be accommodated within existing resources. Costs associated with the preparation and processing of the planning proposal will be met by the proponent in line with Council's fees and charges.

It is also considered appropriate that delegation of plan making powers be sought from DPIE with respect to this matter.

The legal effect of the LEP amendment would be to enable the lodgement of a development application for subdivision of land to a minimum of 450m² on the land, with various forms of housing permissible within the residential zone.

Options

The following options are presented for Council's consideration:

Option 1 – Council could resolve to prepare a planning proposal to amend the Ballina LEP 2012 to apply the R3 Medium Density Residential zone and 450m² minimum lot size requirement to the subject site (Lots 36-38, DP 1257681).

This option would involve the preparation of a planning proposal for referral to the Department of Planning, Industry and Environment for Gateway determination.

This option is recommended on the basis that the proposed LEP amendments are consistent with the existing pattern of development within the Epiq Estate and more specifically, will provide consistency with the approved Concept Plan for the development site.

Council also needs to determine whether to exercise its delegated plan making functions for this LEP amendment. In this instance it is recommended that Council seeks agreement from DPIE to exercise the plan making delegation.

Option 2 – Council could resolve to decline the planning proposal request.

Adoption of this option would prevent the subdivision of the entire site into smaller allotments capable of single or dual occupancy development.

At this stage this option is not recommended for the reasons outlined in Option 1 above.

Option 3 – Council could defer consideration of the matter.

Should Council require additional information, the matter could be deferred for a briefing or provision of additional details.

This option is not recommended as the proposal has sufficient merit to proceed to preparation of a planning proposal. Additionally, the proposal will be the subject of a further report to the Council once exhibited to allow Council to reconsider the merits of the proposal and its finalisation.

8.1 LEP Amendment Request - Anchorage Avenue, Lennox Head

RECOMMENDATIONS

1. That Council proceed to prepare a planning proposal to amend the land zoning and minimum lot size maps of the Ballina LEP 2012 to apply an R3 Medium Density Residential zone and 450m² minimum lot size to Lots 36 – 38, DP 1257681, sites 2, 6 & 12 Anchorage Avenue, Lennox Head.
2. That the planning proposal also make adjustments to the land zoning and minimum lot size in the immediate vicinity of Lots 36 – 38, DP 1257681, sites 2, 6 & 12 Anchorage Avenue, Lennox Head to provide for consistency with approved and constructed subdivision and land use outcomes.
3. That the planning proposal be forwarded to the Department of Planning, Industry and Environment for a Gateway determination.
4. That the Department of Planning, Industry and Environment be advised that Council wishes to exercise its delegated plan making functions for this LEP amendment.
5. That upon an affirmative Gateway determination being received from the Department of Planning, Industry and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.
6. That Council receive a further report on the matter following the completion of the public exhibition of the planning proposal.

Attachment(s)

1. Proponent's Planning Proposal_PP-2021-5092 - 2, 6 & 12 Anchorage Avenue, Lennox Head

8.1 LEP Amendment Request - Anchorage Avenue, Lennox Head

230921/3 RESOLVED

(Cr Ben Smith/Cr Stephen McCarthy)

1. That Council proceed to prepare a planning proposal to amend the land zoning and minimum lot size maps of the Ballina LEP 2012 to apply an R3 Medium Density Residential zone and 450m² minimum lot size to Lots 36 – 38, DP 1257681, sites 2, 6 & 12 Anchorage Avenue, Lennox Head.
2. That the planning proposal also make adjustments to the land zoning and minimum lot size in the immediate vicinity of Lots 36 – 38, DP 1257681, sites 2, 6 & 12 Anchorage Avenue, Lennox Head to provide for consistency with approved and constructed subdivision and land use outcomes.
3. That the planning proposal be forwarded to the Department of Planning, Industry and Environment for a Gateway determination.
4. That the Department of Planning, Industry and Environment be advised that Council wishes to exercise its delegated plan making functions for this LEP amendment.
5. That upon an affirmative Gateway determination being received from the Department of Planning, Industry and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.
6. That Council receive a further report on the matter following the completion of the public exhibition of the planning proposal.

FOR VOTE - All Councillors voted unanimously.

Appendix 4 – Gateway Determination



Planning,
Industry &
Environment

PP-2021-5092 / IRF21/3617

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

Via email: council@ballina.nsw.gov.au

Dear Mr Hickey

Planning proposal PP-2021-5092 to amend Ballina Local Environmental Plan 2021

I am writing in response to Council's request for a Gateway determination under section 3.34(1) of the *Environmental Planning and Assessment Act 1979* (the Act) in respect of the planning proposal to rezone and amend associated development standards for Lots 36-38 DP 1257681, Anchorage Avenue, Lot 1 DP 1239938, Hutley Drive, and adjoining road reserves, Lennox Head.

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

I have also agreed, as delegate of the Secretary, the planning proposal's inconsistencies with section 9.1 Direction 1.1 Business and Industrial Zones is justified in accordance with the terms of the Direction. No further approval is required in relation to this Direction.

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

The amending local environmental plan (LEP) is to be finalised within six months of the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office six weeks prior to the projected publication date. A copy of the request should be forwarded to the Department of Planning, Industry and Environment.

The state government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to

meet these commitments, the Minister may take action under section 3.32(2)(d) of the Act if the time frames outlined in this determination are not met.

Should you have any enquiries about this matter, I have arranged for Ms Melissa Thomson to assist you. Ms Thomson can be contacted on 5778 1486.

Yours sincerely



28/10/2021

Jeremy Gray
Director, Northern Region
Local and Regional Planning

Encl: Gateway determination
Authorised plan-making reporting template



Gateway Determination

Planning proposal (Department Ref: PP-2021-5092): to rezone and amend associated development standards for Lots 36-38 DP 1257681 Anchorage Avenue, Lot 1 DP 1239938, Hutley Drive, and adjoining road reserves, Lennox Head,

I, the Director, Northern Regions at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Ballina Local Environmental Plan (LEP) 2012 to rezone and amend associated development standards for Lots 36-38 DP 1257681 Anchorage Avenue, Lot 1 DP 1239938, Hutley Drive, and adjoining road reserves, Lennox Head, should proceed subject to the following conditions:

1. All mapping must be updated prior to consultation to identify the adjoining road reserve affected by the proposal.
2. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal is classified as low impact as described in *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018) and must be made publicly available for a minimum of **14 days**; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018).
3. No consultation is required with public authorities/organisation under section 3.34(2)(d) of the Act
4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
5. The planning proposal authority is authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the Act subject to the following:
 - (a) the planning proposal authority has satisfied all the conditions of the Gateway determination;
 - (b) the planning proposal is consistent with section 9.1 Directions or the Secretary has agreed that any inconsistencies are justified; and

- (c) there are no outstanding written objections from public authorities.
6. The time frame for completing the LEP is to be 6 months following the date of the Gateway determination.

Dated 28 day of October 2021.



Jeremy Gray
Director, Northern Region
Local and Regional Planning
Department of Planning, Industry and
Environment

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

Appendix 5 – Proponent's Planning Proposal Submission

(Provided under separate cover)