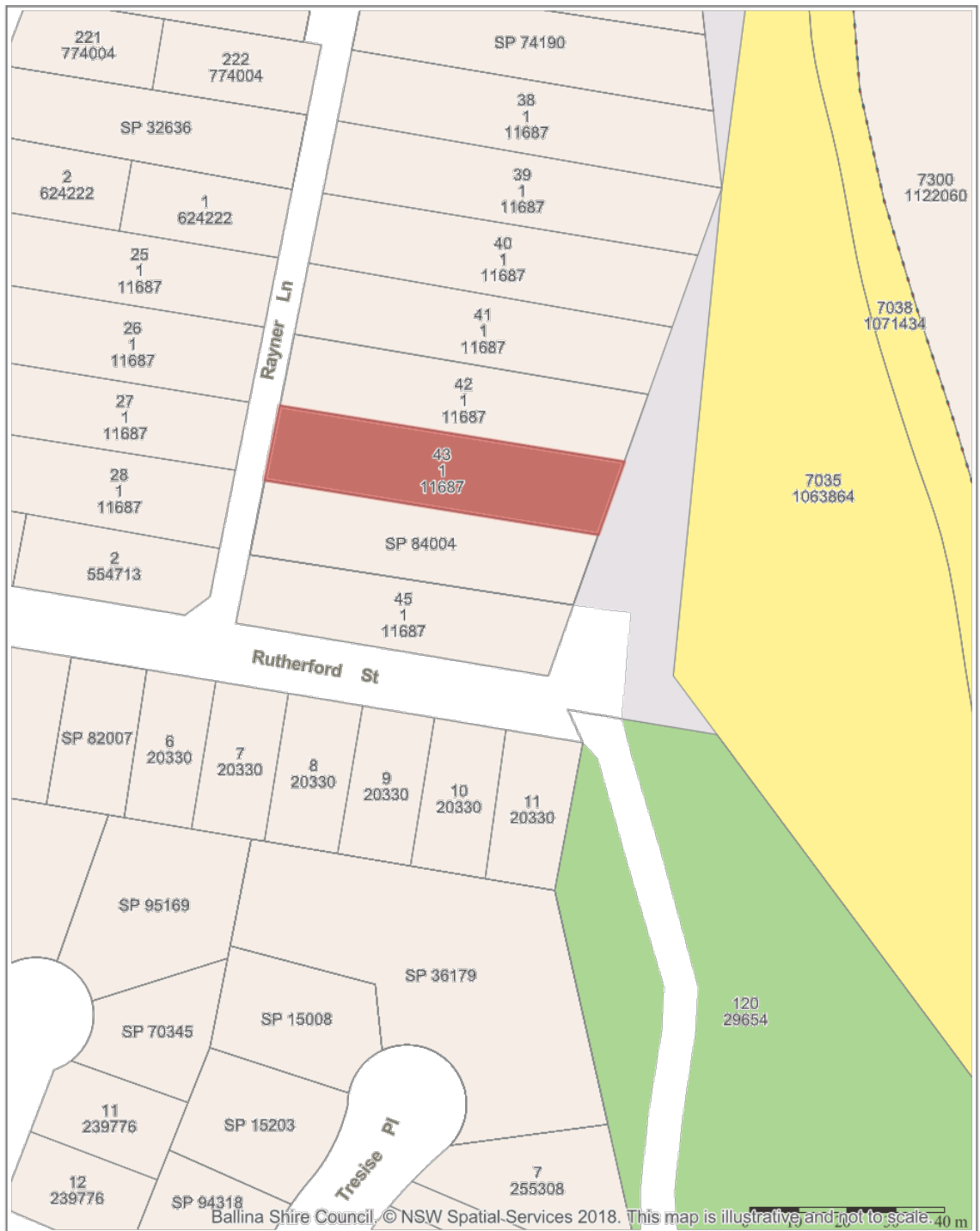


8.1 **DA 2016/510.2 - Review of Determination.DOC**



Ballina Shire Council
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BALLINA NSW 2478

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DA 2016/510 - 3 Rayner Lane Lennox Head

ballina shire council
geographical information system

Projection: GDA94 / MGA zone 56
Date: 9/08/2018

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8.2 DA 2016/510 - 3 Rayner Lane, Lennox Head - Modification

8.2 DA 2016/510 - 3 Rayner Lane, Lennox Head - Modification

Applicant	Ardill Payne and Partners
Property	Lot 43 DP 11687 No. 3 Rayner Lane Lennox Head
Proposal	Modifications to dwelling design
Effect of Planning Instrument	The land is zoned R3 Medium Density Residential under the provisions of the Ballina Local Environmental Plan (BLEP) 2012
Locality Plan	The subject land is depicted on the locality plan in Attachment 1. The site is also depicted in Figure 1.

Introduction

Council approved an application for a two storey dwelling and swimming pool at 3 Rayner Lane at the Ordinary meeting held on 25 January 2017. Figure 1 is an aerial photograph showing the location of the land.



Figure 1: Site locality plan (aerial photography) – 3 Rayner Lane marked by yellow dot

Construction of the dwelling has commenced where footings have been partially completed to the ground floor level. The applicant has now submitted amended plans for minor changes to the dwelling under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

Part of the modifications include a deck extension forward of the foreshore building line.

8.2 DA 2016/510 - 3 Rayner Lane, Lennox Head - Modification

The design changes are detailed as follows.

The applicant has submitted a report in support of the application (Attachment 2).

The existing approved plans for the building as well as plans for the proposed amendments are contained in Attachments 3 and 4 respectively.

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil (or state otherwise if this is not the case)

Public Exhibition

The application was target notified via written correspondence in accordance with our Development Control Plan (DCP) 2012 whereby three written submissions have been received. The submissions received are contained in Attachments 5, 6 and 7.

The details of the submissions are discussed within the report.

Applicable Planning Instruments

The subject property is zoned R3 Medium Density Residential under the BLEP 2012 and is subject to the relevant planning controls and objectives contained within the Ballina Shire DCP 2012.

The site is also subject to the provisions of the State Environmental Planning Policy SEPP (Coastal Management) 2018 (formerly SEPP 71 as in force at the time of original approval) and SEPP 55 Remediation of Land.

The NSW Coastal Policy 1997 is also applicable.

The proposal is considered to be consistent with the provisions of the BLEP and relevant SEPPs, with the amendments to be assessed against the relevant planning controls contained within DCP 2012.

Report

The proposed modifications to the plans are as follows:

- 1400mm unroofed cantilevered deck and associated balustrade extension eastward of the ground floor north/eastern pool deck resulting in a maximum 857mm projection into the foreshore building line setback;
- Relocation of the ground floor deck stairs from the eastern elevation to the southern elevation of the deck;
- The finished floor levels of the ground and first floor decks off the rumpus and dining rooms are to be raised approximately 70mm to match the floor levels of those internal rooms.

8.2 DA 2016/510 - 3 Rayner Lane, Lennox Head - Modification

Proposed Modifications

Ground floor deck extension

With respect to the ground floor 1400mm deck extension, the construction involves an increase in the deck width adjacent the proposed pool from the approved width of 1050mm to the proposed 2450mm, which is intended to provide a functional seating area to the eastern end of the pool.

The deck floor will sit approximately 2000mm above the existing ground level to match the required minimum habitable floor level of the building as required for development in the mapped Coastal Hazard Protection areas under DCP 2012.

The eastern elevation deck extension will extend forward into the nominated foreshore building line by approximately 300-857mm for the full length of the 6930mm long deck, due to the tapered building line running from north to south across the property. The area of deck forward of the foreshore building line is approximately 3m².

The nominated foreshore building line for the property is addressed within DCP 2012, which sets a foreshore building line of 40.43 metres and 41.95 metres for the respective northern and southern boundaries, as measured eastwards from the Rayner Lane front boundary.

Figures 2 and 3 show the proposed deck and the existing approved deck structures respectively. Figures 2 and 3 are extracts from the plans prepared by MS Design for the development.

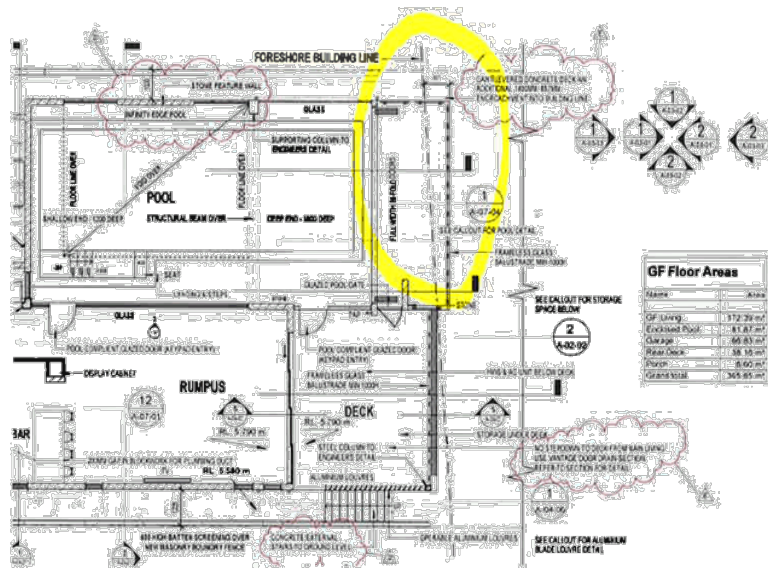


Figure 2: Proposed ground floor modification plan (revised deck structure highlighted yellow)

8.2 DA 2016/510 - 3 Rayner Lane, Lennox Head - Modification

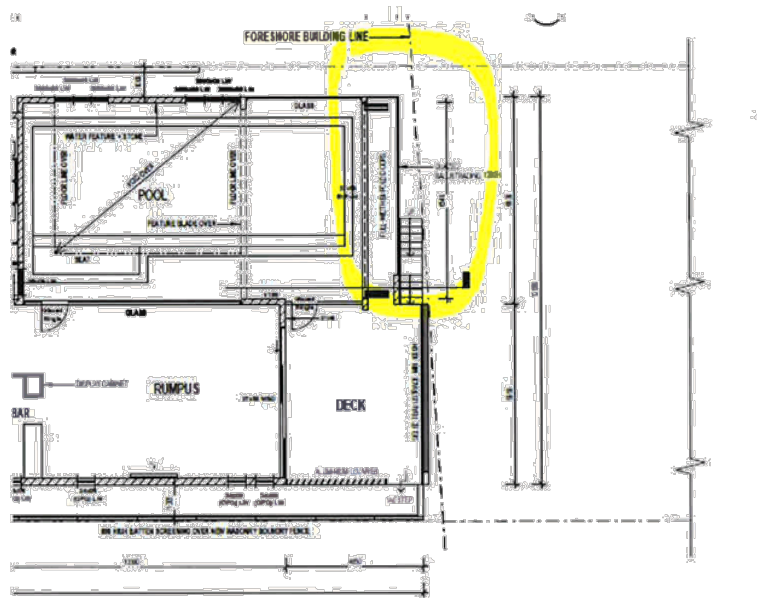


Figure 3: Approved ground floor plan (approved deck structure highlighted yellow)

Figures 4 and 5 shows the eastern elevation of the building (the deck structure the subject of the modification being located on the right hand side of the ground floor) as presented by MS Design in the modified and approved plans respectively. The plans also show the location of the staircase (discussed below) under the approved and modified scenarios.



2 East Elevation (Schematic)
Scale 1:75

Figure 4: Proposed ground floor modification plan (eastern elevation)

8.2 DA 2016/510 - 3 Rayner Lane, Lennox Head - Modification



2 East Elevation (Schematic)
Scale: 1:75

Figure 5: Approved ground floor plan (eastern elevation)

DCP 2012 is largely silent on variations and concessions to foreshore building line setbacks and tends to reference variations to street frontage setbacks, addressing streetscape rather than foreshore vistas. The building line concessions that are contained within the DCP regarding building components permitted within articulation zones applies to primary street frontages only rather than foreshore setbacks.

Recent modifications to DCP 2012 in 2017 have inadvertently removed the cantilevered balcony building line concession that also existed under Council's previous DCP No.1 (Policy Statement No.3), enabling unroofed cantilevered decks to project for a maximum 1800mm into building lines and other required setbacks, including foreshore setbacks.

It would appear this concession was removed due to there being contradictions with the newly introduced articulation zone provisions (that apply to primary street frontages only) in DCP 2012. The proposal would comply with the previous permissible unroofed cantilevered balcony DCP planning controls.

This matter has been discussed with Council's Strategic and Community Facilities Group where staff will be considering the re-introduction of the previous unroofed cantilevered balcony concession that has generally been successfully applied in the past to foreshore setback areas. This will be further considered as part of a future routine review of DCP 2012.

The existing adjoining two storey strata titled dual occupancy located to the south of the development site (approved under DA 2006/872) contains unroofed decks at ground and first floor levels, projecting a maximum 1800mm forward of the foreshore building line as permitted at the time under the previous DCP concessions. There are also other developments in Rayner Lane which have taken advantage of this previous concession.

8.2 DA 2016/510 - 3 Rayner Lane, Lennox Head - Modification

The deck extension is considered minor in size and scale and its location will have minimal effects on adjoining residents. The existing dual occupancy residence to the south will not be impacted in any significant way by the increase in deck width.

An existing aged dwelling adjoins to the north, which is currently set well back from the foreshore building line (approximately 8-10 metres) and the proposed building in total is likely to have a greater impact on views rather than the proposed minor deck extension.

It is also likely that the adjoining aged dwelling to the north will be redeveloped in the future and take advantage of the foreshore building line setback, permitting development further eastward, enhancing the available sea views.

The proposed deck encroachments could be seen to be similar or of a lesser scale when compared to currently permissible gable ended roof and roof eave encroachments, usually being in the vicinity of 600-850mm in width.

The objectives regarding building lines within DCP 2012 are as follows:

E. Element - Building Lines Objectives

- a. *Protect the amenity of the locality in which the dwelling is situated;*
- b. *Ensure new development makes a positive contribution to the local streetscape; and*
- c. *Setback buildings and garages/carports from the street to provide sufficient space for landscaping, visual and acoustic privacy and vehicle parking, whilst protecting the established character of the neighbourhood.*

It is considered the proposed minor deck modification is not contrary to these objectives.

Relocation of stairs

The applicant intends to relocate the stairs serving the ground floor deck off the rumpus/pool room areas from the eastern elevation to the southern elevation, located behind the foreshore building line.

The stairs are intended to be constructed adjacent to an existing southern dividing boundary concrete blockwork fence, having a minimal setback to the dividing boundary line.

The location of the proposed stairs is adjacent the ground floor living area and deck of the adjoining northern residential unit to the south.

The only significant issue is considered to be privacy when traversing the stairs, which can be overcome through the provision of a suitable privacy screen on top of the existing boundary concrete blockwork wall.

This area has been inspected and it is determined that a privacy screen of 2000mm in length and 800mm in height constructed on top of the existing wall adjacent the door opening to the deck would provide adequate privacy protection.

8.2 DA 2016/510 - 3 Rayner Lane, Lennox Head - Modification

This wall would then have an acceptable overall height of approximately 1600mm when viewed from the adjoining southern property, due to there being an existing elevated deck traversing the northern elevation of the adjoining unit, being built up to the existing boundary wall.

There will be no loss of views or significant impact on breezes to the adjoining residence through the provision of this additional screening.

The remainder of the boundary wall in question is to have a 600mm high privacy batten screen erected on top of the wall as originally approved.

Raising of finished floor levels of decks

The applicant is proposing to raise the finished floor levels of both the ground and first floor decks off the rumpus and dining rooms by approximately 70mm to match the floor levels of the respective internal rooms.

The internal floor levels and overall building height will remain unaltered through these changes.

The floor level modifications are minor and will have no adverse impacts on the adjoining residents.

Objector Submissions

The issues raised in the submissions are as follows with comments provided:

Increase in building footprint and scale with deck addition

Comment: The increase in deck area, resulting in 3m² of deck area being constructed forward of the building line, is considered negligible considering the scale of the overall development.

There will be no adverse visual impacts with the increase in deck width.

Increase in impervious areas and overshadowing of landscaped areas

Comment: The ground floor deck area addition is cantilevered construction, being open underneath and will not have any additional impacts on soft landscaped areas.

Alteration to stairway location impacting on general amenity regarding privacy, noise and overshadowing

Comment: the stairway in question is to provide eastern yard access off the ground floor deck serving the lower floor rumpus/pool room areas.

It is acknowledged that the pedestrian use of these stairs in the proposed location could present issues regarding privacy with the adjoining neighbour to the south.

As discussed, a privacy screen opposite this area can be installed, providing suitable privacy to the adjoining residents whilst having minimal impacts on their amenity.

8.2 DA 2016/510 - 3 Rayner Lane, Lennox Head - Modification

The overall height of the fencing and required screen will be approximately 1600mm as viewed from the adjoining residence, presenting no negative visual or overshadowing amenity issues.

It is again noted that the adjoining residence to the south also has an elevated deck which is used for pedestrian access, constructed approximately 1200mm above ground level at this point and located up to the dividing fence.

It is unlikely the relocation of the stairs will create additional unacceptable noise levels, considering stairs serving deck areas are common construction in the urban low/medium density environment, often located between adjoining residences.

Precedence with foreshore building line encroachment

As mentioned within the report, the proposed deck modification encroachments would have complied with the earlier planning controls within DCP No. 1 (Policy Statement No.3) and DCP 2012 prior to its amendment in 2017.

There are instances of cantilevered unroofed deck encroachments taking advantage of this previous concession in the immediate locality, including the adjoining two residential units to the south.

Council's planning staff will be considering concessions to foreshore building lines in the next DCP review.

Aside from the past permissible cantilevered balcony encroachments, Council staff have been diligent in ensuring the foreshore building line controls are maintained in the Rayner Lane, Allens Parade and Dress Circle Drive precincts.

Therefore, the current amendment is to be assessed on merit, as is the case for any other further applications submitted to Council.

Options

The options available to Council are as follows:

1. Approve the application for modification to plans for the construction of a dwelling and pool involving the raising of the ground/first floor deck levels, an increase in width of the ground floor north/eastern deck by a 1400mm unsupported cantilever and the relocation of the approved stairs to the ground floor south/eastern deck from the eastern to the southern elevation.
2. Refuse the application due to the encroachment of the deck extension into the foreshore building line being contrary to the objectives of DCP 2102, having an adverse impact on the amenity of the locality and the stair relocation having an unreasonable impact on the amenity of the adjoining residents.

8.2 DA 2016/510 - 3 Rayner Lane, Lennox Head - Modification

Conclusion

The modifications are considered minor in respect to the overall scale of the development.

The foreshore building line deck encroachment is only 857mm at its maximum, being similar to other permissible building line encroachments such as gable ended roofs and roof eaves.

Similar unroofed cantilevered balconies having 1800mm foreshore building line encroachments exist within the locality.

The stair relocation is similarly considered minor and any privacy concerns can be overcome by the inclusion of appropriate screening. Should the application for modification be approved, a condition of consent will be incorporated within the consent to address this issue.

In conclusion, the modifications are considered to be consistent with other development in the locality and will not have a significant adverse impact on the general amenity of the area or adjoining residents.

It is therefore recommended that the application for modification be approved in line with option one, with the application of additional conditions of consent to be applied consistent with the discussion within this report (as contained within the recommendation below). If the modification is approved, condition 24 of the existing development consent, which addresses the building line setback, will also require adjustment to ensure consistency.

RECOMMENDATIONS

1. That Council **APPROVES** the Section 4.55 application made in relation to DA 2016/510 under the *Environmental Planning and Assessment Act 1979* for amendments to the plans for a dwelling and pool, involving the raising of the ground/first floor deck levels, an increase in width of the ground floor north/eastern deck by 1400mm and the relocation of the approved stairs to the ground floor south/eastern deck from the eastern to the southern elevation.
2. The following conditions are to be included within the approval:
 - A privacy screen, measuring 2000mm width x 800mm depth is to be provided on top of the existing southern boundary blockwork wall adjacent the doorway opening, stair landing and stairs off the ground floor south/eastern deck.
 - The cantilevered deck extension is to remain unroofed and unsupported with columns or posts in accordance with the submitted approved plans.
3. That condition 24 of the existing development consent regarding the building line setback is modified to ensure consistency with the approved modification to the development.

Julie and Don Priest
36 Blue Seas Parade
Lennox Head NSW 2478
Email: don@sayls.com.au
Mobile: 0418292163

7th September 2018

Ballina Shire Council
40 Cherry St
Ballina NSW 2478

Attention: Mr Matthew Wood
Group Manager
Development and Environmental Health

Copies: Mr Vince Hunt - BSC
Mr Dwayne Roberts – Ardill Payne

1 Attachment

Dear Mr Wood,

SUBJECT: REQUEST FOR REVIEW OF DETERMINATION FOR DA 2016/510.2 (Revised)

Further to Council's Notice to Applicant of Determination of a Development Application dated 30th August 2018, in which you advised of Council's refusal of DA 2016/510.2, we wish to request a Review of Determination under Division 8.2, Sections 8.2 and 8.3 of the Environmental Planning and Assessment Act 1979. The requisite fee of \$322.50 is accompanied.

We respectfully request Councillors reconsider their decision to refuse our amended DA at the August ordinary meeting (item 8.2). In this submission we refer to the report on our proposed Amended DA by Council staff to the General Meeting of Council on 23rd August 2018 and included in the agenda working papers under item 8.2 (herein referred to as the "REPORT"), and in particular its recommendation for **Approval, and the unintentional change in DCP2012 Amendment 11 regarding the foreshore building line.**

The reasons given in Council's notification for refusal of the Amended DA were:

"the encroachment of the deck extension into the foreshore building line is contrary to the objectives of the DCP 2012 having an adverse impact on the amenity of the locality", and

"the stair relocation having an unreasonable impact on the amenity of the adjoining residents".

There were three reasons for lodging our Amended DA.

1. To widen the eastern ground floor deck off the pool area by 1400mm which included cantilevering 857mm over the foreshore building line to provide a more useable deck outside the pool.
2. To allow the widening of the deck in Point 1., the stairs needed to be relocated to the southern side of the building.
3. To increase in height of all decks to eliminate the step down to help future proof the house for wheelchair access. Julie Priest has arthritis of the spine which may lead to a requirement for wheelchair later in life.

As deck height was not mentioned in the rejection letter we assume this was acceptable to Council.

1A. Encroachment of Deck over the foreshore building line.

We would submit that this is not contrary to the objectives of the current DCP2012. Unroofed balconies, cantilevered over the foreshore building line up to 1800mm, has been a concession allowed in Ballina's DCP for some 20 years. This concession has been taken advantage of by a number of residents in Rayner Lane including the two objectors in the duplex on our southern boundary which have 4 balconies between them which protrude over the foreshores building line by up to 1800mm.

This was noted in the REPORT to Council along with the advice that the concession was inadvertently removed in DCP 2012 Amendment 11, passed by Council in October 2017, and that it is intended to be re-instated in future DCP amendments.

This was explained in the REPORT on Page 31 of 163.

"Recent modifications to DCP 2012 in 2017 have inadvertently removed the cantilevered balcony building line concession that also existed under Council's previous DCP No.1 (Policy Statement No.3), enabling unroofed cantilevered decks to project for a maximum 1800mm into building lines and other required setbacks, including foreshore setbacks.

It would appear this concession was removed due to there being contradictions with the newly introduced articulation zone provisions (that apply to primary street frontages only) in DCP 2012. The proposal would comply with the previous permissible unroofed cantilevered balcony DCP planning controls.

This matter has been discussed with Council's Strategic and Community Facilities Group where staff will be considering the re-introduction of the previous unroofed cantilevered balcony concession that has generally been successfully applied in the past to foreshore setback areas. This will be further considered as part of a future routine review of DCP 2012.

The existing adjoining two storey strata titled dual occupancy located to the south of the development site (approved under DA 2006/872) contains unroofed decks at ground and first floor levels, projecting a maximum 1800mm forward of the foreshore building line as permitted at the time under the previous DCP concessions. There are also other developments in Rayner Lane which have taken advantage of this previous concession".

It is reasonable to assume that a key reason for the cantilever concession was the fact that the Foreshore Building Line significantly restricts the allowed building area. For 3 Rayner Lane, the lots size is 1070 square metres but the front, back and side setbacks, restrict the building area to around 460 square metres or less than half. If fully utilized, the concession would allow an additional 23 square metres or 5% of building area. Our Amended DA is only seeking approval for less than 4 square metres.

We would therefore submit that our proposed minor encroachment of up to 857mm is well inside previously approved developments in the area. It is not a "creeping encroachment" as claimed by the objector on behalf of 2/2 Rayner, or indeed a number of Councillors.

We would also submit that if re-instatement of the concession is not intended by Council, then all Shire residents who own coastal or river frontage properties affected by foreshore building lines, will be disadvantaged.

The REPORT states: *"The deck extension is considered minor in size and scale and its location will have minimal effects on adjoining residents. The existing dual occupancy residence to the south will not be impacted in any significant way by the increase in deck width".*

2A. Relocation of Stairs

Council's refusal of the relocation of the stairs on the grounds *"that it will have unreasonable impact on the amenity of the adjoining residents"* is disputed.

Councillors should be aware that the all three objectors use their properties as holiday houses and are absent most of the time, living as they do in Albury (No.4 Rayner), Brisbane (No.1/2 Rayner) and Sydney

(No 2/2 Rayner). The owners of No.4 and No.1/2 visit on some weekends and school holidays. No. 2/2 Rayner is used for short stay rentals (advertised as Costa Del Sol - for up to 8 adults), with their two balconies adjacent to the balconies of No.1/2. See: <http://www.costadelsol.com.au/> and <https://www.stayz.com.au/accommodation/nsw/northern-rivers-byron-bay/lennox-head/161755>

In contrast, we are two retirees who have lived in Lennox Head for 23 years. It is obvious who will cause the most "loss of amenity".

Relocation of the stairs is necessary to widen the balcony and achieve a useable deck. Stairs are only used as a passageway to and from the backyard, and then for only a few seconds at a time. There is already a pathway the full length of the house in the currently approved plans and relocation of the stairs would simply replace part of the pathway. The 'loss of amenity' for our southern neighbour would be minimal and less with the stairs than with the full-length path.

The REPORT recommended adding a condition to approval which increased the height of the privacy screen opposite the deck entrance to 800mm for a distance of 2 metres. To reduce concerns as to loss of amenity, we would be prepared to increase the height of the privacy screen along the whole southern fence.

In conclusion, we would respectfully remind Councillors that Council staff recommended **approval** in the REPORT

OPTION 2

If, having reviewed the Determination for DA2016/510.2, Council is still unable to approve our modified DA as is, then we would request Council consider approval with an extra clause:

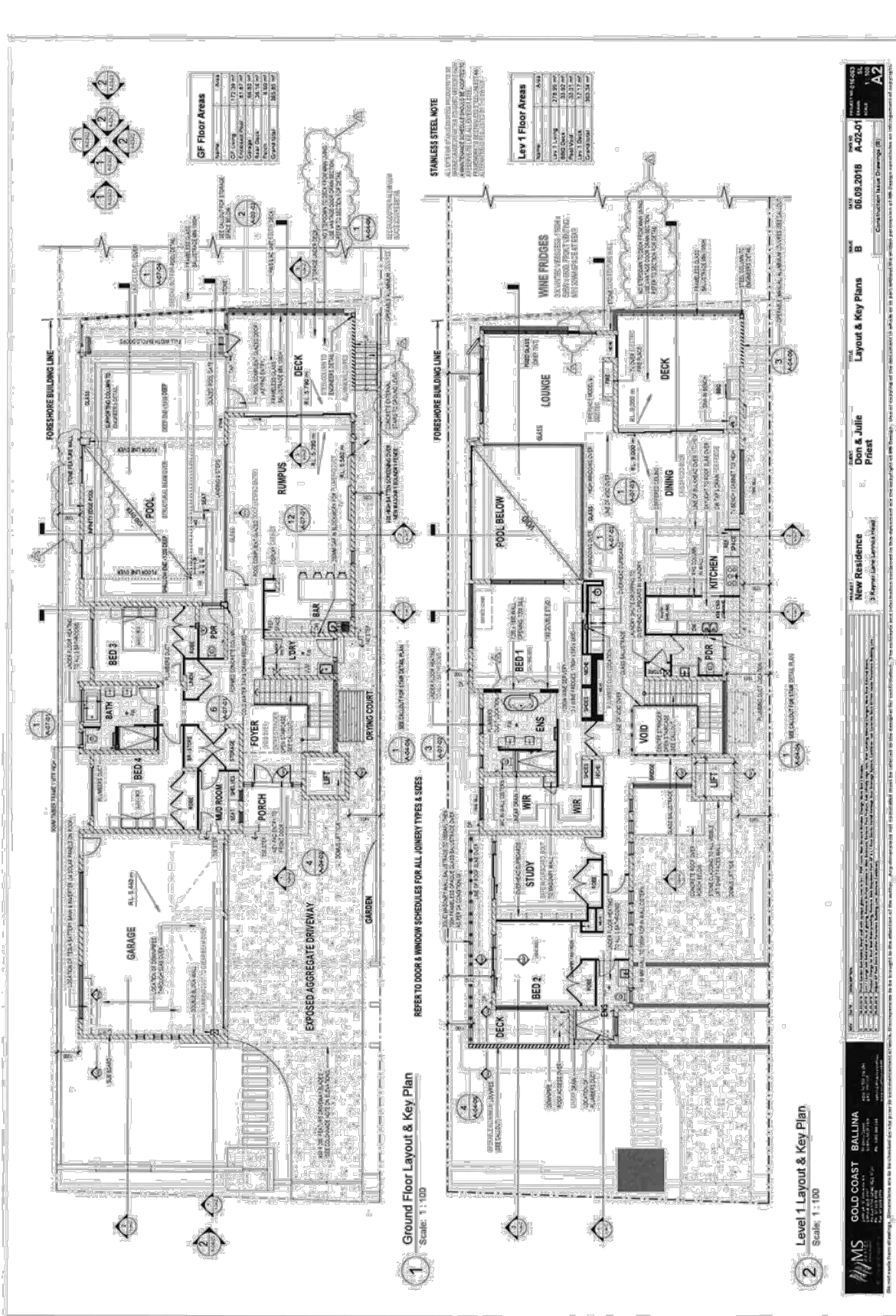
'that the deck extension be reduced in width to comply with the current DCP 2012'.

A revised plan for option 2 is attached.

Yours sincerely



Julie and Don Priest



M/S GOLD COAST BALLINA
 11/11/2016
 11/11/2016

New Residence
 (Residential Development)

Don & Julie
 Priest

Layout & Key Plans B

06.09.2018 A-02-01
 Construction Issue Drawing (B)

A2

Ballina Shire Council
 11/11/2016
 11/11/2016